ABSTRACT

A widespread and substantial modification in the traditional process of criminal sentencing is the introduction of sentencing guidelines in at least 20 states and the District of Columbia. Sentencing guidelines bring together characteristics of the offense and offender in a designed and structured format that determines both the location and severity of punishment.

The objective of the current research is to address the question, to what extent do sentencing guidelines contribute to: consistency—like cases are treated alike; proportionality—more serious offenders are punished more severely; and a lack of discrimination—age, gender and race are insignificant in who goes to prison and for how long. To date, the relative success of alternative sentencing guideline designs in meeting these fundamental goals remains unresolved. To address this issue, the current research examines how closely the Michigan, Minnesota and Virginia guideline systems approximate these values.

Moving from constructing a descriptive profile of the design characteristics of these systems to an empirical assessment of their operation requires precise definitions and rigorous methods. The organizing concepts of consistency, proportionality and discrimination are defined in terms of operational indicators for measurement purposes and an analytical strategy is developed to examine the extent to which the alternative guideline structures and their sentencing mechanics achieve desired kinds of sentencing outcomes. Finally, statistical issues are identified pertinent to modeling sentencing outcomes at two fundamental decision points, whether to incarcerate (in state prison) and, if so, the length of incarceration.

Based on statistical analyses, there are three main findings. First, the essential value of consistency is achieved in all three guideline systems. By comparing model estimates of how the guideline should work with actual sentences, the degree of correspondence is a test of the guideline's overall consistency; the greater the correspondence between the predicted and the actual sentences, the greater the overall consistency of the guidelines.

Second, a challenge for all three systems lies in proportionality, where the underlying policy distinctions among different levels of offense seriousness and criminal history categories are not uniformly significant in determining the recommendation for a prison sentence or the length of a recommended prison sentence. Third, while in all three systems there is evidence of statistically significant impacts for some potentially discriminatory factors, the substantive effect is minimal. Looking at these facts, refinement and closer monitoring of the guidelines in each state are recommended to achieve greater excellence rather than overhauling their structure and organization.

EXECUTIVE SUMMARY

INTRODUCTION

The process of criminal sentencing has undergone fundamental changes during the past several decades as policy makers have enacted a variety of ways to direct and control judicial decision making on the issues of who is sentenced to prison, and the length of prison terms. Policies popularly known as three strikes, truth-in-sentencing, and mandatory minimum imprisonment, have taken hold in some states, but a more widespread and substantial modification is the introduction of sentencing guidelines in at least 20 States and the District of Columbia. Structured sentencing is now an integral feature of the criminal justice landscape in the American states. Yet, despite the extensive interest by policy makers, judges, researchers and others in the general topic of criminal sentencing, the role of sentencing guidelines in achieving a balance between discretion and controlled decision making is still not fully understood either in the literature or in policy related discussions.

There are at least three reasons why this topic remains of critical interest. First, between 1980 and 2005 the prison population in the United States grew by more than 1.1 million individuals. And while Blacks make up 12 percent of the U.S. population, they account for about 44 percent of the prison population: African Americans are over-represented in every state's prison population versus the total population in each state.

Second, in many states the prison population is outstripping both the number of prison beds as well as the ability of the state to pay for its prison system. In Michigan, for example, the state is spending more on its prison system than it does on the entirety of its higher education system.

Third, the *Blakely* and *Booker* decisions have changed and expanded the debate over the legitimacy of more mandatory versus more advisory guideline systems. Additional procedural requirements required for departures under "mandatory" guidelines systems do not affect "advisory" guideline systems where judges are not required to impose the recommended sentence. In the wake of these Supreme Court decisions, many observers, including the U.S. Attorney General, argue a return to rigid mandatory sentencing guidelines is necessary to control discrimination and to achieve consistency in sentencing. Opponents of this view are equally adamant that mandatory sentencing laws fail to eliminate discrimination and may actually serve to introduce unfairness into the process. This ongoing debate underscores the conflicting views held by many practitioners and researchers as to the nature and type of judicial discretion that works best in achieving the articulated goals of a sentencing system. Given the racial composition, pressing financial problems in many states as well as the Supreme Court's continued jurisprudence in the area of sentencing, the time is ripe for a comprehensive assessment of sentencing outcomes under alternative guideline systems.

There is a growing and substantial literature on the extent to which social characteristics of offenders, especially race, account for why some offenders receive harsher sentences than others, but limited treatment on the extent to which these sorts of differentials occur (or do not occur) under alternative guideline structures. As a result, even though the literature on sentencing is well established and revolves around commonly agreed upon questions, the role of conscious, yet different, policy choices to control judicial discretion under guidelines has not been included in the equation.

The objective of the current research is to address questions concerning sentencing guidelines and what effect these institutional arrangements have on two types of sentencing decisions of research and policy interest. Who is sentenced to prison? What determines the length of time an offender is sentenced to prison?

One decision is whether to punish a defendant convicted of a felony offense with a prison sentence or to impose a less severe penalty, typically involving some combination of jail, probation, fines, work release, therapeutic treatment, and restitution. The choice between these alternatives is commonly known as the "in/out" decision. The second decision is aptly characterized as the prison length decision.

Three values are most salient. They are consistency, proportionality and a lack of discrimination. Hence, the overarching research question is reformulated. Under the aegis of sentencing guidelines, to what degree are sentences: *consistent*—like cases are treated alike;, *proportional*—more serious offenders are punished more severely; and *non-discriminatory*—age, gender and race are insignificant in who goes to prison and for how long?

To address this question, all states with sentencing guidelines are examined, and three state systems are selected as representatives of alternative ways of configuring the control of judicial discretion. They are Minnesota, Michigan and Virginia, which vary along critical dimensions of the presumptive versus voluntary nature of guidelines as well as basic mechanics. Minnesota, for example, tends to have tighter ranges on recommended sentences for similarly situated offenders than Michigan and Virginia, and Virginia employs a list-style scoring system to determine appropriate offender punishment in contrast to the use of sentencing grids in Minnesota and Michigan.

DESCRIPTIVE HIGHLIGHTS

A Continuum of Sentencing Guidelines. Given the genius of American federalism, it is understandable that not all states have adopted sentencing guidelines and those enacting them have made different conscious policy decisions on their design and operation. At least 21 different state guideline systems exist and can be classified along a single dimension that permits them to be seen in comparative perspective. A scheme is created by assigning points to states based on answers to six questions concerning each state guideline's basic organizational aspects (0, 1 or 2 points for each question). The questions are: is there an enforceable rule related to guideline use, is completion of guideline worksheets required, does a sentencing commission monitor compliance, are compelling and substantial reasons required for departure, are written reasons required for departure, and is appellate review allowed? Table 1 provides a summary of the evaluation and Figure 1 arrays the states on the continuum.

Table 1 Summary Point Values for State Guideline Systems

	I Enforceable Rule	II Worksheet Completion	III S.G. Monitors Compliance	IV Departure Rationale	V Written Reason	VI Appellate Review	**Total**
North Carolina	2	2	2	2	2	2	**12**
Minnesota	1	2	2	2	2	2	**11**
Oregon	1	2	1	2	2	2	**10**
Kansas	1	2	1	2	2	2	**10**
Washington	1	1	2	2	2	2	**10**
Pennsylvania	0	2	2	1	2	2	**9**
Michigan	1	1	0	2	2	2	**8**
Maryland	0	2	1	2	2	0	**7**
Massachusetts	0	1	1	1	2	2	**7**
Alaska	0	2	0	1	2	2	**7**
Virginia	0	2	2	0	2	0	**6**
Delaware	0	2	0	2	2	0	**6**
Utah	0	2	2	1	1	0	**6**
Louisiana	0	2	0	0	2	1	**5**
Arkansas	0	2	1	0	0	1	**4**
Tennessee	0	1	0	0	1	1	**3**
District of Columbia	0	0	1	0	2	0	**3**
Alabama	0	2	0	0	1	0	**3**
Missouri	0	2	0	0	0	0	**2**
Ohio	1	0	0	0	0	0	**1**
Wisconsin	0	0	0	0	0	1	**1**
Average	0.4	1.5	0.9	1.0	1.5	1.0	**6.2**

Figure 1: The State Guideline Continuum

The three states selected as research sites for the current research vary in structure, with Minnesota (11) the most presumptive system followed by Michigan (8) and Virginia (6) being the least presumptive of the three.

Critical Elements of Guideline Systems. The design and operation of the three selected guideline systems are important to describe because their mechanics are incorporated into a statistical model for analysis purposes. Additionally, understanding

why guidelines enhance consistency, proportionality and non-discrimination requires knowing the specific elements and their role in constraining judicial discretion.

Three variable elements framing the categorization of offenders are found in all guideline systems. They are the basic statutory conviction offense, prior record (or criminal history) and specific offense conduct. However, whereas all guidelines operate with these elements, they do so with different degrees of differentiation and complexity. For example, Minnesota uses 11 basic offense classifications, Michigan's system has 9 and Virginia operates with 15 offense groups. Even differences exist among the three states in terms of the specifics of the instant offense with Minnesota incorporating specific conduct into the presumptive sentence by imposing mandatory minimum sentences for select cases involving weapons or second/subsequent offenses. In contrast, Michigan evaluates the specifics in terms of 20 possible variables, including use of a weapon, psychological injury to a victim, the intent to kill or injure, multiple victims and victim vulnerability. Virginia, on the other hand, has some offense variables relating to particular offenses (e.g., Burglary/Dwelling) and those (e.g., weapon type) that apply across several crime groups. In addition, some common conduct variables are weighted differently under different crime groups.

Another important pattern is that Minnesota and Michigan operate with a grid system into which offenders are placed, whereas Virginia scores each individual offender across a range of variables in a worksheet format. Concerning recommended ranges, Michigan and Virginia have wide ranges and base them on past practices. In contrast, Minnesota has narrow ranges based on policy prescriptions on what is appropriate and desirable from the point of view of controlling correctional resources.

On the subject of departures, Virginia allows them with stated reasons, although they are not subject to appellate court review. In Minnesota and Michigan, judges may depart by disclosing reasons for such action, which is subject to appeal to the Court of Appeals. Michigan is similar to Minnesota.

Finally, in Minnesota, offenders generally serve two thirds of their sentence, in Virginia it is at least 85%, and in Michigan the parole board determines the sentence between the judicially imposed minimum (which is served in its entirety) and the statutory maximum.

Therefore, based on organizational structure and process, differences among the three state guideline systems are plausibly linked to different sentencing outcomes. As a result, it is reasonable to expect differences in the extent to which each state's system promotes consistency and proportionality and minimizes discrimination. To determine whether those expectations correspond to reality, it is next necessary to construct a way to model each system and then to apply the model.

ANALYTICAL METHODOGLOGY

The dependent variables or phenomena to be explained are twofold and correspond to the two types of sentencing decisions. The first is the in/out decision, and the second is the length of imprisonment. A statistical model is constructed to establish the relationship between each of these two dependent variables and two sets of independent variables or possible explanatory factors: (1) measures of the essential

elements and mechanics of each guideline system, and (2) measures of extra-legal (or more specifically extra-guideline) factors.

The first set of independent variables are tailored to fit the unique features of each guideline system but they generally include multiple measures of the: basic offense at conviction, prior record or criminal history, specific conduct surrounding the basic offense, the type of grid (Michigan and Minnesota) or score (Virginia) pertinent to each offender, the offender's habitual offender (Michigan) or modifier (Minnesota) status, and the invocation (or not) of a departure from the recommended range by the sentencing judge.

The second set of independent variables include measures on: the offender's age, race, gender (including combinations of age, race and gender) as well as the geographic region of the state (Are offenders in all parts of a state treated similarly?), and whether the offender chose the right to a trial instead of pleading guilty (Are offenders punished additionally for exercising this right?).

The model is applied in two ways using data containing measures of both the dependent variables (i.e., whether sentenced to prison, and if so, for how long) and the independent variables on guideline elements for each state. First, the model predicts the two sentencing decisions for each offender given their individual information and how the elements and mechanics of each guideline system are intended to use that information in producing recommended sentences to a trial court judge. Estimates can be made whether the information and guideline elements call for imprisonment and if so, for how long for every individual offender. Using these estimates, tests are conducted to

determine whether each guideline system achieves *consistency* and *proportionality*, and minimizes *discrimination.*

ANALYTICAL RESULTS

The statistical model provides a technique to evaluate consistency, proportionality and non-discrimination in the application of the guidelines and whether they are employed as designed. Table 2 summarizes a number of similarities and differences between the three sets of sentencing systems.

Table 2: Sentencing and Guideline Variation in Minnesota, Michigan and Virginia

			Virginia	
Comparative Factor	**Minnesota**	**Michigan**	**Assault**	**Burglary**
Sentencing Commisison	Active	Abolished	Active	
Guideline Type	Grid	Grid	List	
Number of "cells"	77	258	No cells	
Average Range within Cell	10-15%	50-67%	60-66%	
Degree of Cell Overlap	very low	high	high	
Percent to Prison	24%	16%	51%	49%
Average Prison Sentence	45.54	40.46	57.21	48.46
Truth in Sentencing	67%	100%	85%	
Departure Policy	Firm	Firm	Form Only	Form Only
Departure Frequency	High	Low	Moderate	Moderate
Departure Magnitude	Low	High	Moderate	Moderate
% Above	47.8%	121.0%	77.0%	42.0%
% Below	-29.1%	-48.5%	-55.0%	-55.0%
Proportionality	High	High	Low	Low
Percent Correctly Predicted	87.0%	89.9%	75.3%	81.4%
PRE	55.8%	45.8%	59.2%	68.5%
Percent Prison Correct	92.5%	99.0%	70.7%	83.6%
Percent No Prison Correct	69.5%	54.0%	80.1%	79.2%
Estimated R2	86.1%	67.2%	55.4%	49.3%
Hazard rate	Insignificant	Significant, Positive	Significant, Negative	Significant, Negative

Based on the statistical analysis, there is a battery of findings. First, the essential value of consistency is achieved in all three guideline systems based on the number of in/out decisions predicted correctly with Michigan registering the highest score (89.9%) followed by Minnesota (87%) and Virginia where 75% of the decisions for Assault offenses are correctly predicted and 81% in the case of Burglary. Similar degrees of success are exhibited by all three states on the Proportional Reduction in Error measure and the percentage of offenders sentenced to prison and those offenders not sentenced to prison, although the percentage of no prison predictions is greater in Virginia than in

either Minnesota or Michigan. Concerning the prison length decision, the estimated R^2 values suggest greater consistency in Minnesota (86.1%) than Michigan (67.2%), which in turn, is associated with a higher value than Virginia's 55% for Assault and 49% for Burglary Offenders.

Second, a challenge for all three systems lies in proportionality, where the underlying policy distinctions among different levels of offense seriousness and criminal history categories are not uniformly significant in determining the recommendation for a prison sentence or the length of a recommended prison sentence. Third, while in all three systems there is evidence of statistically significant impacts for some potentially discriminatory factors, the substantive effect is minimal.

RECOMMENDATIONS

Looking at these findings, refinement and closer monitoring of the guidelines in each state seems appropriate to achieve greater excellence rather than overhauling their structure and organization. To this end, two leading topics are recommended for policy and managerial consideration, although the issues within each area should be tailored to the purposes and circumstances of each system.

*Detailed Guideline Elements***.** For Minnesota and Michigan, this topic focuses on the number of grid cells. Conventional thinking might suggest the greater the number of sets of similarly situated offenders, the greater the degree of consistency. However, this notion is not supported by the data from the current research. A primary reason is that the extensive overlap between the different grid cells in Michigan means the different sets of similarly situated offenders do not really "sort" the offenders into subsets that warrant

different punishment. In a parallel manner, the finely grained detail given by the Virginia guidelines does little to achieve agreement by judges on exactly what elements should be the basis for sentencing decisions. Minnesota's more compact set of elements is a direction for the other states to consider.

Ranges. There are dramatic differences between the sizes of the ranges in the guideline systems. To compare the recommended ranges between the three systems, the cell range is divided by the midpoint of the range**.** In Minnesota the range as a percentage of the midpoint runs from 3.3% to 16% with most of the cells below 10%. In Michigan, the same analysis shows that (out of 258 cells) there are only three (3) instances in which the ratio is below 50%. For Virginia, the size of the ranges is 60% to 66% for Assault and Burglary. Michigan's original policy intent was to formulate ranges that encompass 75% of current practice and in Virginia the aim was to include the middle 50% of past practices, while in Minnesota the ranges are driven by policy and a desire to gain predictive control over prison capacity. Given the dramatic differences in the size of the choice set (absent a departure), it is not surprising that the three models have rather different levels of explanatory power (in terms of variance explained).

The relative magnitude of the ranges is also the likely source for the dramatic differences in the departure rates for the three systems as well as the magnitude of departures. In Minnesota, a departure above increases the predicted sentence by 48% while a departure below decreases the sentence by 29%. In Michigan, a departure above increases the predicted sentence by 121% while a departure below decreases the sentence by 49%. In Virginia, departures above increase sentences by 77% and 42% for Assault and Burglary, respectively. Departures below result in correspondingly in decreases of

55% for each offense**.** The greater differences in the size of the ranges means that in Minnesota a minimal increase gets "outside" the range while in Michigan and Virginia the large ranges mean that a judge must substantially increase the sentence to get outside the range**.**

Ultimately, how one interprets the observed differences in consistency among the three states will reflect individual views on the appropriate level of judicial discretion. At the conceptual level, desired consistency in sentencing outcomes clashes with desirable judicial discretion because they involve quite different fundamental assumptions. On the one hand, consistency posits that the most relevant criteria for classifying cases are identifiable and applicable to all cases. On the other hand, discretion posits cases are sufficiently different if not unique to make nearly impossible efforts to establish a common means of comparison in each individual case. Acceptance of the creative tension between consistency and discretion, which seems reasonable given the state of knowledge, means the seductive temptation to use consistency as the sole criterion of fairness in sentencing is avoided.

At the policy level, all guideline systems reflect alternative conscious choices about the extent to which discretion is considered necessary and appropriate. More detailed systems allowing for greater flexibility in how the guideline are to be applied (i.e., less presumptive), are, in fact, building in more opportunities for the exercise of discretion. Consequently, considering the systems under study, greater consistency is expected (and found) in Minnesota where two variables essentially define how offenders are graded in contrast to the more detailed mechanics in Virginia and Michigan. Thus, for both conceptual and policy reasons, sweeping assessments based on consistency

measures are avoided and instead, attention is given to whether intersystem differences in consistency are understandable and whether they are the basis for discriminatory sentencing practices.

Assessing Consistency and Fairness in Sentencing

A Comparative Study in Three States

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CHAPTER 1: SENTENCING GUIDELINE ISSUES

The sentencing decision is the symbolic keystone of the criminal justice system: in it, the conflicts between the goals of equal justice under the law and individualized justice with punishment tailored to the offender are played out, and society's moral principles and highest values—life and liberty—are interpreted and applied.

Blumstein, Research on Sentencing: The Search for Reform (1983)

INTRODUCTION

Determining the most appropriate punishment for particular offenses varying in seriousness and circumstances committed by individuals with different criminal backgrounds is rightly a perennial concern among policy makers, judges, and researchers. Sentences typically reflect statutory requirements, as well as information and recommendations from probation departments, but within these basic parameters judges ordinarily have discretion in sentencing. Judges ultimately assess the "facts" of a case, and apply the law, within this discretionary context.

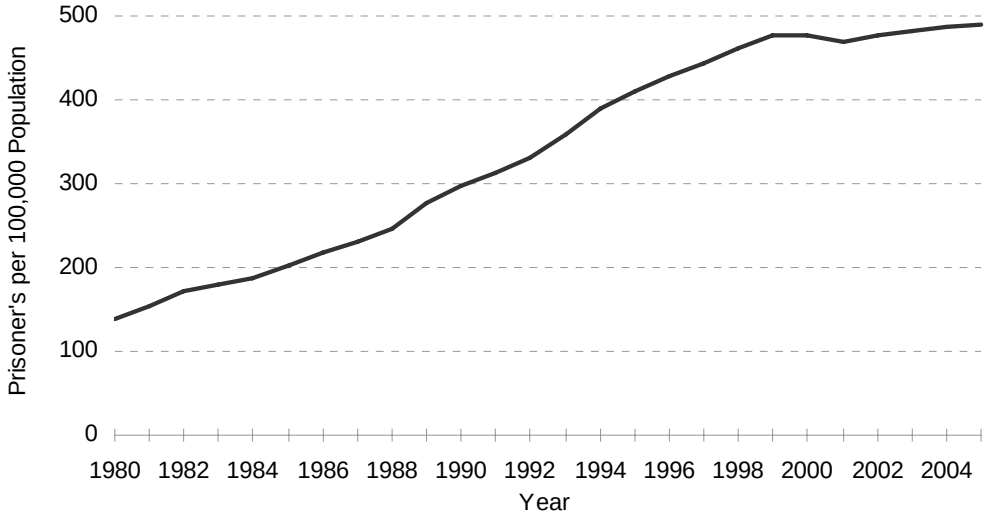
Since the late 1970s, judicial discretion has been constrained by the creation of sentencing guidelines and other means for structuring the sentencing decision. Reitz (2001, Disassembly…p. 222) states that over the past three decades. "the United States has witnessed an unprecedented sentencing reform movement that has produced widespread and diverse structural experimentation among the nation's sentencing systems." Nowhere is this experimentation more evident than in the breadth of alternative sentencing guidelines systems adopted by the states and federal governments during this time period. Some argue guidelines unduly restrict a judge's ability to weigh appropriately the factors that play a role in sentencing, while others feel that additional measures, such as mandatory minimum sentencing laws, are needed to constrain judicial discretion further. These philosophical issues have been debated widely in many

forums. What has been far less available is comparative empirical research on diverse U.S. experimentation with various sentencing systems in operation.

The aim of the current research is to evaluate the integrity of sentencing outcomes under alternative state guideline systems. The degree to which a sentencing system contributes to the maintenance of justice in a democratic society depends in large measure on the answers to three central questions. First, are offenders generally sentenced in a manner *consistent* with the elements a judge is expected to consider under a particular guideline arrangement? Second, are guideline systems effective in producing *proportional* gradations of punishment corresponding to categories of offense seriousness and prior record? And three, are guideline systems effective in minimizing *discrimination* or the extent to which extra-legal elements, such as age, gender and race, undesirably shape who is sentenced to prison and who receives a longer sentence than others?

The importance, relevancy and even urgency in addressing these questions are underscored by aggregate figures compiled nationally on the nation's state prison population. Between 1980 and 2005, the prison population in the United States grew by more than 1.1 million individuals (Appendix 1-A). As can be seen in Figure 1-1, the rate per 100,000 population members rose from 139 in 1980 to 491 by 2005 – an increase of 350%. Parallel changes have been experienced in almost all states.

Figure 1-1: Incarceration rates for prisoners under State or Federal jurisdiction, per 100,000 residents, 1980-2005



This is remarkably stable over the past two decades. Table 1-1 shows that while Blacks make up 12.3% of the U.S. population, they account for 43.7 percent of the prison population. Thus, African Americans are over-represented in every state's prison population versus the total population in each state (Appendix 1-B).[1]

Table 1-1: Racial Mix of Prison Population

State	Black percentage of state residents	Black percentage of incarcerated pop.	Ratio
Michigan	14.2%	48.9%	3.4%
Minnesota	3.6	28.5	8.2
Virginia	19.6	61.7	3.1
National	12.3	43.7	3.5

As shown in Table 1-2 (and for all states in Appendix 1-C), the average incarceration rate for Blacks is 2,209 per 100,000 population while the average for Whites is 366 per 100,000 – the

[1] In an earlier Bureau of Justice Statistics (BJS) special report (Bonczar et al. 1997) using 1991 as a base year, it was noted that Blacks have a 28.5% chance of going to prison in their lifetime, Hispanics have a 16% chance, and whites have a 4.4% chance.

incarceration rate for Blacks is approximately six times higher than for Whites. Such differences understandably raise the specter of systematic racial discrimination.

Table 1-2: Rate of Incarceration per 100,000 population

State	White	Black	Ratio
Michigan	369	2,247	6.1
Minnesota	139	1,755	12.6
Virginia	361	2,268	6.3
National	366	2,209	6.0

Source: Bureau of Justice Statistics, Prison and Jail Inmates at Midyear 2001, April 2002.

Finally, the increasing rate of imprisonment carries considerable economic consequences. Prison is expensive as can be seen in Table 1-3 (fully in Appendix 1-D).[2]

Table 1-3: Operating Expenditures per Inmate, FY 2001

State	Total expenditures (1,000's)	Operating expenditures per inmate	Per day
Michigan	$ 1,582,611	$ 32,525	$ 89.11
Minnesota	253,385	36,836	100.92
Virginia	723,767	22,942	62.85
National Total	29,491,268	22,650	62.05

Source: Bureau of Justice Statistics, Prison Expenditures 2001 (June 2004)

A finding that particular groups (based on such characteristics as race, age, or gender) are more likely to receive a prison sentence, or be sentenced to longer terms, than otherwise similarly situated offenders has direct fiscal consequences. These financial consequences, in turn, have considerable opportunity costs for state governments. About 10,000 new prisoners were incarcerated in Michigan prisons in 2002 at an average cost of $89 per day. Reducing all sentences by one month would save the state approximately $27 million. In Michigan, the share of the budget allocated to corrections – which has increased by 800% since 1980 – is now on a par with the level of funding for the state's higher education system. As a result, the policy

[2] According to BJS estimates (*Stephan 1996*), corrections spending has increased from $6.8 billion in 1984 to $22 billion in 1996.

making, judicial and the research communities are interested in determining ways of reducing if not minimizing inconsistent, disproportional and discriminatory sentence outcomes. Each sphere has its own goals, methods of analysis and products. However, everyone begins with the elemental fact of judicial involvement in sentencing.

STATEMENT OF OBJECTIVES

The primary goal of the current research is to provide a comprehensive assessment of sentencing outcomes in three states employing a range of alternative approaches to shaping and controlling judicial discretion through sentencing guidelines. Frase (2005b, p. 67) notes, "The reform goal of promoting reasonable consistency and reducing disparity in sentencing is meaningless without a frame of reference…we must first define the relevant sentencing factors (the offense and offender characteristics that judges should consider in determining appropriate sentences) and the weight given to each of these factors." However, because the choice and weighting of factors vary among states, the "frame of reference" is neither obvious nor easy to establish. In fact, the lack of comparative data on the implementation of alternative guidelines makes it difficult to know the true connection between guideline variability and the nature of sentence outcomes**.**

In the literature, comparisons among guidelines are often couched in the language of one system being more or less "presumptive" or "voluntary" than another (Reitz, 2005). For example, stricter departure policies, tighter sentencing ranges, and more vigorous appellate review are aspects of what are usually called more presumptive (or mandatory) systems. In contrast, under a voluntary (or advisory guideline) system, judges are not required to follow a particular sentencing recommendation, but must usually provide a reason when the recommendation is not followed. Implicit in one's preference for more presumptive or more

voluntary guidelines, is a judgment on the degree to which judicial discretion must be constrained to best achieve consistency and fairness.

The belief inconsistency, disproportionality and discrimination are most effectively minimized through strict limits on judicial discretion is a strong undercurrent in many presumptive guideline systems, and particularly evident in the creation of the U.S. Sentencing Guidelines.[3] During Congressional debate in the 1970s and 1980s, many congressional leaders and reform advocates argued forcefully for the implementation of mandatory sentencing laws to avoid disparity. However, the debate took a different turn following the *Blakely v. Washington* and *United States v. Booker* decisions in which the mandatory nature of the Federal guidelines was reduced (they are now referred to as advisory). In the wake of these Supreme Court decisions, the U.S. Attorney General urges a return to rigid mandatory sentencing guidelines is necessary to control discrimination and to achieve consistency in sentencing (Adelman, 2005, p.30). Opponents of this view are equally adamant that strongly mandatory sentencing guidelines fail to eliminate discrimination and may actually serve to introduce unfairness into the process.

This ongoing debate underscores the conflicting views held by many practitioners, researchers, and policymakers as to the nature and type of judicial discretion that works best in achieving the articulated goals of a sentencing system. As Reitz (2005, 158-59) has shown, how presumptive or voluntary a system is reflects the allocation of sentencing authority between rule makers (such as legislatures and sentencing commissions) and judges. At one end of the spectrum, "we can imagine a system in which judges hold hegemonic ability to fix penalties within expansive statutory ranges for felony offenses." At the opposite extreme, "we may imagine a system in which the facts of conviction (and perhaps other facts, such as the

[3] Reitz identifies federal guidelines as most mandatory, see Reitz (2005).

defendant's criminal history) determine a fixed and specific punishment in every case, with no judicial leeway permitted under any scenario." A critical policy question becomes where the line should be drawn between more voluntary and more presumptive alternatives both to constraining judicial discretion and increasing justice in sentencing outcomes. Because states vary in where they fall along this conceptual continuum, an evaluation of how well a structured sentencing system operates requires comparison. A multiple state analysis – in the context of the ongoing experiment – is necessary to determine the effectiveness of alternative guideline arrangement.

SENTENCING GUIDELINES

Currently there are at least 20 states and the District of Columbia employing sentencing guidelines. The approaches taken are numerous and there exist important differences in goals, design, and operation. Drawing on US Supreme Court Associate Justice Louis Brandeis's famous insight, guideline states are natural laboratories where hypothesized effects of alternative reform options are testable and the results available for dissemination to other interested jurisdictions. The current research examines sentencing outcomes in three large and diverse states, with different and distinct approaches to structuring sentencing through guidelines: Michigan, Minnesota and Virginia.

Michigan, the nation's 8th largest state, employs legislatively-mandated sentencing guidelines using a three-dimensional grid structure that has been in place since 1999. The Michigan guidelines augment the usual guideline assessment of statutory seriousness and prior record by adding a specific evaluation of the instant offense using up to 20 offense variables. In addition, the Michigan guidelines have relatively wide sentencing ranges and departures are grounds for appeal. Moreover, under Michigan's guidelines, the judge imposes a minimum sentence in combination with the statutory maximum. Michigan's truth-in-sentencing statute

mandates that offenders serve at least 100% of their minimum sentence. From that point, each offender's actual release date is determined by the parole board.

Virginia ranks 12th in size and instituted the current set of truth-in-sentencing guidelines at the start of 1995. Parole was eliminated at this time. Virginia's sentencing guidelines are organized into 15 felony offense groups, with the specific sentence recommendation being determined through worksheets rather than a grid. Compliance with the guideline recommendation is voluntary, although completion of a guidelines worksheet is mandatory. Because the guidelines are not legislatively mandated, judicial departures are not subject to appeal.

Minnesota, the 21st largest state, was the first state to implement sentencing guidelines. Adopted in 1980, presumptive guidelines are firmly part of the sentencing landscape. The Minnesota system employs a two-dimensional grid system (i.e., statutory seriousness and prior record) with "tight" sentence ranges. An appropriate sentence for each offender is presumed to fall within a relatively narrow range of sentences adopted by a legislatively created sentencing commission. All guideline departures must be accompanied by a written justification and are subject to appellate review.

All sentencing guidelines provide a framework for assessing the severity of criminal activity and a means to arrive at a recommended sentencing range. State guideline systems carry varying levels of authority that circumscribe the discretion of the judge in determining the appropriate sentence. A central issue, then, is how to construct the limits on that discretion and to what end. The states have answered in a variety of ways with respect to critical elements such as the offense and offender characteristics affecting a guideline recommendation, departure policy, and appellate review. In combination, these design criteria largely determine whether a

system is characterized as more presumptive or more voluntary. A key focus of this report is the extent to which alternative guideline systems affect consistency, proportionality and discrimination in sentencing.

MAJOR FINDINGS

Guidelines are an accepted part of the sentencing landscape and viewed by many as the best means to structure judicial discretion.[4] The current research contributes five key positions to the literature and policy discussions surrounding criminal sentencing under alternative guideline elements used in three different states. The comparative nature of the inquiry both enhances the findings and shapes their substantive content. The propositions are as follows:

Proposition One. The spectrum of guidelines adopted in 20 states and the District of Columbia are related to each other along a single dimension of enforcement. Some systems are almost wholly voluntary in whether judges adhere to loosely drawn guideline elements and others are presumptive and carefully monitor whether judges follow tightly tethered elements.

Proposition Two. Individual state guidelines are positioned on the voluntary-presumptive continuum based on an identifiable set of variable elements, including there is an enforceable rule related to guideline use, guideline worksheets are required, a commission monitors compliance, reasons are required for departure from guideline recommendations, whether reasons for departure are recorded or written, and the nature of appellate review. As a result each state is classifiable, including the three states under current study. Minnesota is more presumptive in its approach than Michigan, which in turn is more presumptive than Virginia.

Proposition Three. The three guideline states of Minnesota, Michigan and Virginia tend to achieve considerable consistency in the sentencing of individuals to prison and the length of prison sentences. Who is sentenced to prison and for how long is in accordance with the

[4] See, for example, the American Law Institute's Model Penal Code—Sentencing, 2007 (Draft).

elements established by the guidelines. However, less success is achieved in meeting the value of proportionality. Offenders who are considered more serious offenders and with more extensive prior records do not always receive more severe punishment. Not every discrete aspect of the guideline framework contributes to sentences in a distinct and uniform way. Finally, in all three guideline systems systematic and widespread discrimination on the basis of extra-guideline elements is almost non-existent.

Proposition Four: The success in meeting the goals of consistency and proportionality and minimizing discrimination is not the same in all three guideline systems. Variation in success is documented through a battery of statistical tests to measure the degree to which each value is achieved. With multiple measures, the chances of equal success by all three states in all respects is an unrealistic expectation. Fortunately, there is a rational basis for some of the different degrees of success traceable back to the nature of the design and operation of the consciously designed elements. For example, Minnesota's greater success in some areas is attributable to its simplified categories, limited range of recommended punishments and close monitoring.

Proposition Five. No guideline system is perfect. However, because of evidence that guideline systems are rationally related to sentencing outcomes, the results are a concrete basis to inform future policy makers for responding to Blakely and in refining guidelines. For this reason, the evidence accumulated from this investigation is a promising ground for changing elements in a controlled manner. Hence, the research concludes with recommendations for policy deliberations in each of the states.

CHALLENGES TO ASSESSING CONSISTENCY, PROPORTIONALITY AND NON-DISCRIMINATION

Building knowledge on how to achieve consistency, proportionality and minimize discrimination in sentencing is of paramount importance, although sentencing commissions do pay considerable attention to other goals (e.g., managing prison population). State efforts to "reconsider sentencing goals, redistribute discretionary authority, and determine the appropriate level of sanction are strongly affected by the distribution of discretion, [and] the extent and nature of sentencing disparity" (Blumstein, 1983). At least eleven sentencing commissions explicitly state that uniformity is a current goal of their sentencing guidelines (Table 1-4).

Table 1-4: Current Goals of Sentencing Commissions Addressing Sentencing Disparity

Arkansas	The standards seek to ensure equitable sanctions which provide that offenders similar with respect to relevant sentencing criteria will receive similar sanctions.
Florida	Sentencing is neutral with respect to race, gender, and social and economic status.
Kansas	Six goals are specified to achieve uniform sentencing in Kansas:. . . (2) to reduce sentencing disparity to ensure the elimination of any racial, geographical, or other bias that may exist.
Louisiana	The purpose of the guidelines is to recommend a sanctioning policy that ensures certainty, uniformity, consistency, and proportionality of punishment.
Michigan	The sentencing guidelines shall reduce sentencing disparities based on factors other than offense and offender characteristics and ensure that offenders with similar offense and offender characteristics receive substantially similar sentences.
Minnesota	The purpose of the sentencing guidelines is to establish rational and consistent sentencing standards that reduce sentencing disparity.
Missouri	The purpose of the sentencing guidelines is to recommend a uniform policy that will ensure certainty, consistency, and proportionality of punishment. Use of the guidelines will result in minimal sentencing disparity.
North Carolina	Sentencing policies should be consistent and certain: similarly situated offenders should receive similar sentences.
Oregon	Guidelines are intended to establish proportional and just punishment, create truth-in-sentencing, and establish sentencing uniformity.
Pennsylvania	The purpose of the sentencing guidelines is to insure that more uniform sentences are imposed in this Commonwealth.
South Carolina (proposed)	Sentencing guidelines should balance judicial and prosecutorial discretion with fairness and consistency in sentencing.
Virginia	The primary goal is to achieve certainty, consistency, and adequacy of punishment. Disparity reduction is also mentioned as an important goal.
Washington	The sentencing of felony offenders should be structured, but should not eliminate discretionary decisions affecting sentences. Sentence structure should ensure that the punishment is commensurate with the punishment imposed on others committing similar offenses.

A central problem for the analysis of sentencing outcomes is disentangling competing goals from the sentencing decisions of judges. Throughout the many characterizations of the goals of sentencing, four objectives stand out (Blumstein, et al. 1983, 48). First, there is a desire to deter the offender and other potential offenders. Second, there is a desire to incapacitate the offender so that he or she cannot commit further crimes. Third, there is a desire for retribution against the individual for his or her social transgressions. Finally, there is a desire to rehabilitate the offender and thereby ensure that he or she will commit no future crimes.[5]

Structured sentencing systems do not specify a single goal for judges to consider when devising their sentences. Because the four goals are only partially complementary, "the main burden of reconciling the competing goals of the criminal justice system falls on the sentencing judge" (Hogarth 1971, 4). Judge Sutton (Buchanon, 449 F.3d at 741) updates this view in the context of legislative intrusion into the sentencing realm: "The end is not the process in itself but the substantive goal that trial judges exercise independent and deliberative judgment about each sentence – making these sentences more than an algebraic equation and less than a Rorschach test."

Each goal incorporates different types of information**.** To pursue the goals of deterrence and/or retribution, a judge must examine the characteristics of the offense. If a judge wishes to focus on incapacitation, the offender's prior record becomes important. An interest in rehabilitation prospects leads each judge to examine the personal status characteristics of the offender. Researchers therefore stress the need to include information pertinent to all of the goals in their analyses. Any investigation of sentencing outcomes must proceed from a plausible model of sentence decision making that includes three distinct types of information: (1) factors

[5]A thorough discussion of the goals is found in Frase (2005).

related to the conviction offense, (2) factors describing the offender's prior criminal history, and (3) extralegal factors that (potentially) are related to the offender's prospects for rehabilitation.

The measurement and interpretation of a sentencing model are difficult because of the large number of factors potentially influencing sentencing decisions. A more fundamental issue, though, is correctly interpreting the findings of the model. In a detailed study of racial disparity under Pennsylvania's sentencing guidelines, Kramer and Steffensmeier (1993) find some evidence that incarceration patterns vary by race. They conclude, however, that the findings indicate not that racial discrimination exists, but that race is confounded with other factors that are not easily measured by the available data.

Further complicating the analysis is that social and economic factors that are generally considered in pursuit of the goal of rehabilitation (e.g., education, employment, and socioeconomic status) are often related to potential sources of disparity (e.g., race or gender). Therefore, results found in the literature are frequently contradictory. For example, some researchers, finding that African-Americans are incarcerated more often and receive longer sentences than whites, interpret this finding as evidence of racial disparity (Spohn and Welch 1981; Thompson and Zingraff 1981; Myers and Talarico 1986; Humphrey and Fogarty 1987; Spohn 1990; Albonetti 1991). Other studies argue that evidence of racial discrimination in sentencing primarily actually reflects inadequate research designs, a failure to rigorously take into consideration the full range of legal variables, or the disproportionate participation in crime among blacks (Kleck 1985; Kramer and Steffensmeier 1993; Steffensmeier, Kramer, and Steifel 1993; Wilbanks 1987).

Another source of difficulty in measuring sentencing discrimination is that a defendant passes through a number of "evaluation checkpoints" between the detection of a crime and

incarceration. These evaluation procedures introduce the possibility of an unacknowledged bias in the pool of individuals who reach the relatively late stage of sentencing. Research results may indicate evidence—or lack of evidence—of disparate sentencing by judges that is actually set in motion by the discriminatory practices at the arrest or prosecution stages. Examining whether women receive more lenient sentences than men can illustrate this potential for bias. It may be that systematic bias causes women to be treated more leniently in the earlier stages of the criminal justice process, so only the most nefarious female offenders reach the sentencing stage. Consequently, one might find no evidence of disparity at the sentencing stage because the previous bias has gone undetected (Steffensmeier 1993; Bickle and Peterson 1991).

A final noteworthy complication is that consistency and discrimination in sentencing can coexist**.** Discrimination can arise if judges use legitimate extralegal factors as calculation aids. As Nagel (1983, 482) has noted, "extralegal . . . is not synonymous with illegal, inappropriate, or socially unjust. It is defined as 'extra' to the law." Certain extralegal factors (e.g., age, employment, and education) could be used by a judge to simplify the task of identifying the types of individuals to receive particular intermediate sanctions. Even though the use of these factors may enhance "consistency" in sentencing, it may do so at the expense of creating unwarranted differences. The need to address these challenges drives this inquiry, which is divided into two parts.

ORGANIZATIONAL ROADMAP

Divided into two parts, the current research is organized to highlight how different system design choices are intended to shape and constrain the sentencing process**.** From this foundation, three distinct guideline systems are compared to determine the extent to which judges are *consistent* and *proportional* in their sentencing behavior and to assess the degree to

which there is evidence of *discrimination* in felony sentencing. Part 1 examines specific ways judicial discretion is constrained through sentencing guidelines, including the precise operation of the Michigan, Minnesota, and Virginia guideline systems. Part 2 conducts a comparative empirical analysis of judicial sentencing outcomes in these three states.

Part 1: Alternative Approaches to Structuring Judicial Discretion

Chapter 2 provides an overview of 21 state guideline systems and describes their primary similarities and differences. States are arrayed along a continuum to offer an explicit means to assess how presumptive or voluntary is a specific system. Comparative profiles are compiled based on data related to sentencing policy goals, worksheet completion requirements, the role of the sentencing commission, the nature of departure policies, and the scope of appellate review.

Using this framework, a more detailed exposition of sentencing in Michigan, Minnesota, and Virginia is provided in Chapter 3**.** Specific design characteristics of the sentencing guidelines in these three states are examined, including the precise design of the grid or worksheet, policies covering departures and appellate review, breadth of sentencing ranges, and mechanics of reaching the guideline recommendation are placed in proper context.

In Chapter 4, the groundwork for a statistical analysis of consistency, proportionality and discrimination under measured elements of each of three systems is laid. This chapter indicates the overall purpose of the analysis: to model the design of decision-making elements and then by applying the model to data on offenders to see if the results promote consistency, proportionality and minimize discrimination.

Part 2: Sentencing Practices and their Effects

Part 2 provides a rigorous empirical evaluation of sentencing outcomes under three alternative guideline systems. The primary goal is to simulate the actual sentencing process by modeling the content and form of information received by the judge at the time of sentencing. The advantage of this technique is that it focuses attention on the constellation of offense and offender characteristics actually provided to the judge. What characteristics of an offender and his crime are most relevant to the sentencing decision, and how do judges "score" these characteristics? The answers to these questions increase the understanding of how judges translate the blend of relevant offender attributes to arrive at a particular sanction decision, which is at the heart of the issue of "justice" in sentencing.[6]

In Chapter 5, Michigan and Minnesota, two grid type sentencing arrangements, are examined and in Chapter 6, the list and scoring arrangement of Virginia is examined. In both Chapters 5 and 6, the discussion is guided by three basic issues: consistency, proportionality, and non-discrimination. Chapter 7 provides overall conclusions and recommended actions the states might consider in refining their systems.

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[6] Perhaps the most succinct statement of this goal comes from the Introduction to the Virginia Sentencing Guidelines manual: "Unwarranted and dramatic differences in sentencing imposed in similar cases are generally condemned for several reasons. It is unjust for similarly situated offenders convicted of the same offense to receive markedly different sanctions. Further, when sentencing varies dramatically, no reasonable expectation exists of what the actual penalty will be for a crime."

Appendix 1-A: Correctional populations in the United States, 1980-2005

	Number of persons				
	Probation	Jail	Prison	Parole	Total
1980	1,118,097	183,988	319,598	220,438	1,842,100
1981	1,225,934	196,785	360,029	225,539	2,008,300
1982	1,357,264	209,582	402,914	224,604	2,194,400
1983	1,582,947	223,551	423,898	246,440	2,476,800
1984	1,740,948	234,500	448,264	266,992	2,690,700
1985	1,968,712	256,615	487,593	300,203	3,013,100
1986	2,114,621	274,444	526,436	325,638	3,241,100
1987	2,247,158	295,873	562,814	355,505	3,461,400
1988	2,356,483	343,569	607,766	407,977	3,715,800
1989	2,522,125	395,553	683,367	456,803	4,057,800
1990	2,670,234	405,320	743,382	531,407	4,350,300
1991	2,728,472	426,479	792,535	590,442	4,537,900
1992	2,811,611	444,584	850,566	658,601	4,765,400
1993	2,903,061	459,804	909,381	676,100	4,948,300
1994	2,981,022	486,474	990,147	690,371	5,148,000
1995	3,077,861	507,044	1,078,542	679,421	5,342,900
1996	3,164,996	518,492	1,127,528	679,733	5,490,700
1997	3,296,513	567,079	1,176,564	694,787	5,734,900
1998	3,670,441	592,462	1,224,469	696,385	6,134,200
1999	3,779,922	605,943	1,287,172	714,457	6,340,800
2000	3,826,209	621,149	1,316,333	723,898	6,445,100
2001	3,931,731	631,240	1,330,007	732,333	6,581,700
2002	4,024,067	665,475	1,367,547	750,934	6,758,800
2003	4,120,012	691,301	1,390,279	769,925	6,924,500
2004	4,143,466	713,990	1,421,911	771,852	6,995,300
2005	4,162,536	747,529	1,446,269	784,408	7,056,000

Note: The 2003 probation and parole counts are estimated.
*Totals for 1998 through 2005 exclude probationers in jail or prison.

Source: Bureau of Justice Statistics Correctional Surveys (The Annual Probation Survey, National Prisoner Statistics, Survey of Jails, and The Annual Parole Survey.)

Appendix 1-B: 2003 Incarceration Rate and Ratio Percentage

	Black Percentage Ratio of State Residents	Black Percentage Ratio of Incarcerated Population	Ratio
Alabama	26.0%	61.9%	2.4
Alaska	3.5	10.6	3.0
Arizona	3.1	13.3	4.3
Arkansas	15.7	44.4	2.8
California	6.7	28.7	4.3
Colorado	3.8	22.1	5.7
Connecticut	9.1	46.1	5.1
Delaware	19.2	63.1	3.3
District of Columbia	60.0	92.8	1.5
Florida	14.6	48.1	3.3
Georgia	28.7	61.7	2.2
Hawaii	1.8	3.9	2.2
Idaho	.4	1.7	3.9
Illinois	15.1	62.9	4.2
Indiana	8.4	37.8	4.5
Iowa	2.1	19.7	9.3
Kansas	5.7	34.0	5.9
Kentucky	7.3	35.3	2.2
Louisiana	32.5	72.1	2.2
Maine	.5	4.1	7.7
Maryland	27.9	72.3	2.6
Massachusetts	5.4	26.3	4.9
Michigan	14.2	48.9	3.4
Minnesota	3.5	28.5	8.2
Mississippi	36.3	70.5	1.9
Missouri	11.2	41.2	3.7

Appendix 1-B: 2003 Incarceration Rate and Ratio Percentage (continued)

	Black Percentage Ratio of State Residents	Black Percentage Ratio of Incarcerated Population	Ratio
Montana	.3%	2.0%	6.6
Nebraska	4.0	25.5	6.4
Nevada	6.8	27.3	4.0
New Hampshire	.7	6.5	8.9
New Jersey	13.6	59.7	4.4
New Mexico	1.9	10.0	5.3
New York	15.9	54.3	3.4
North Carolina	21.6	61.1	2.8
North Dakota	.6	3.3	5.4
Ohio	11.5	50.2	4.4
Oklahoma	7.6	31.3	4.1
Oregon	1.6	11.1	6.8
Pennsylvania	10.0	49.7	5.0
Rhode Island	4.5	35.9	8.0
South Carolina	29.5	67.2	2.3
South Dakota	.6	6.9	11.1
Tennessee	16.4	49.0	3.0
Texas	11.5	36.8	3.2
Utah	.8	5.9	7.4
Vermont	.5	5.2	10.3
Virginia	19.6	61.7	3.1
Washington	3.2	18.1	5.6
West Virginia	3.2	34.9	11.0
Wisconsin	5.7	38.8	6.8
Wyoming	.8	5.9	7.8
National	**12.3**	**43.7**	**3.5**

Source: U.S. Census Bureau data from Census 2000 on state residents and incarcerated population

Appendix 1-C: Prison & Jail Incarceration Rates, 2001

Rate of Incarceration per 100,000 Population

State	White	Black	Ratio
Alabama	417	1,877	4.50
Alaska	464	1,864	4.02
Arizona	544	2,849	5.24
Arkansas	393	1,759	4.48
California	470	2,757	5.87
Colorado	394	2,751	6.98
Connecticut	190	2,427	12.77
Delaware	427	2,799	6.56
District of Columbia	52	1,504	28.92
Florida	536	2,591	4.83
Georgia	519	2,149	4.14
Hawaii	455	609	1.34
Idaho	551	1,573	2.85
Illinois	251	1,889	7.53
Indiana	391	2,236	5.72
Iowa	284	3,302	11.63
Kansas	345	2,469	7.16
Kentucky	429	2,392	5.58
Louisiana	379	2,251	5.94
Maine	201	926	4.61
Maryland	248	1,686	6.80
Massachusetts	206	1,562	7.58
Michigan	369	2,247	6.09
Minnesota	139	1,755	12.63
Mississippi	399	1,645	4.12
Missouri	430	2,160	5.02
Montana	417	2,118	5.08
Nebraska	229	1,973	8.62
Nevada	646	2,769	4.29
New Hampshire	286	2,649	9.26
New Jersey	161	2,117	13.15
New Mexico	344	2,666	7.75
New York	173	1,638	9.47
North Carolina	265	1,612	6.08
North Dakota	189	1,321	6.99
Ohio	324	2,279	7.03
Oklahoma	644	2,980	4.63
Oregon	458	2,763	6.03
Pennsylvania	244	2,570	10.53
Rhode Island	198	1,672	8.44
South Carolina	349	1,740	4.99
South Dakota	385	2,022	5.25
Tennessee	392	1,991	5.08
Texas	640	3,287	5.14
Utah	372	2,341	6.29
Vermont	218	1,794	8.23
Virginia	361	2,268	6.28
Washington	374	2,141	5.72
West Virginia	294	1,708	5.81
Wisconsin	350	4,058	11.59
Wyoming	443	2,477	5.59
National	**366**	**2,209**	**6.04**

*Incarceration rates based on data from the Bureau of Justice Statistics, Prison and Jail Inmates at Midyear 2001, April 2002.

Appendix1-D: Operating Expenditures per Inmate, Fiscal Year 2001

State	Total Expenditures (1,000's)	Operating Expenditures per Inmate	Per day
Alabama	$ 228,871	$ 8,128	$ 22.27
Alaska	154,650	36,730	100.63
Arizona	618,571	22,476	61.58
Arkansas	199,003	15,619	42.79
California	4,166,573	25,053	68.64
Colorado	466,551	25,408	69.61
Connecticut	523,960	26,856	73.58
Delaware	166,327	22,802	62.47
Dist. of Columbia	143,700	26,670	73.07
Florida	1,484,799	20,190	55.32
Georgia	923,505	19,860	54.41
Hawaii	117,101	21,637	59.28
Idaho	95,494	16,319	44.71
Illinois	1,011,311	21,844	59.85
Indiana	477,628	21,841	59.84
Iowa	188,391	22,997	63.01
Kansas	199,843	21,381	58.58
Kentucky	288,438	17,818	48.82
Louisiana	479,260	12,951	35.48
Maine	76,479	44,379	121.59
Maryland	645,620	26,398	72.32
Massachusetts	413,071	37,718	103.34
Michigan	1,582,611	32,525	89.11
Minnesota	253,385	36,836	100.92
Mississippi	266,196	12,795	35.05
Missouri	436,081	12,867	35.25
Montana	71,994	21,898	59.99
Nebraska	126,857	25,321	69.37
Nevada	182,092	17,572	48.14
New Hampshire	62,754	25,949	71.09
New Jersey	799,560	27,347	74.92
New Mexico	149,077	28,035	76.81
New York	2,807,259	36,835	100.92
North Carolina	863,892	26,984	73.93
North Dakota	26,796	22,425	61.44
Ohio	1,277,622	26,295	72.04
Oklahoma	384,060	16,309	44.68
Oregon	404,255	36,060	98.79
Pennsylvania	1,203,219	31,900	87.40
Rhode Islanda	124,333	38,503	105.49
South Carolina	405,238	16,762	45.92
South Dakota	37,529	13,853	37.95
Tennesseec	421,807	18,206	49.88
Texas	2,315,899	13,808	37.83
Utah	133,963	24,574	67.33
Vermonta	46,128	25,178	68.98
Virginia	723,767	22,942	62.85
Washington	488,314	30,168	82.65
West Virginia	61,944	14,817	40.59
Wisconsin	709,292	28,622	78.42
Wyoming	56,199	28,845	79.03
Total	29,491,268	22,650	62.05

Source: Bureau of Justice Statistics, Special Report, State Prison Expenditures, 2001

CHAPTER 2: STRUCTURING JUDICIAL DISCRETION THROUGH SENTENCING GUIDELINES

INTRODUCTION

Judicial discretion is increasingly constrained through sentencing guidelines as well as mandatory minimum penalties, three-strikes laws, and other forms of structured sentencing. Sentencing reforms since the 1970s have sought to limit judicial discretion and, at least on paper, have largely succeeded in that objective. Judges in many states find statutory provisions mandating the factors that must be considered when passing sentence, designating the relative importance of those factors, and specifying a presumptive sentence (or range) for a defendant based on offense seriousness and prior criminal involvement. This chapter provides an overview of the recent history to control judicial discretion through sentencing guidelines. It also offers a detailed description, and resultant continuum, of 21 sentencing guideline systems that not only help place the Michigan, Minnesota, and Virginia systems into perspective but document their representativeness.

A SHORT HISTORY OF GUIDELINES

The attention given to judicial sentencing is part of a sea of change that occurred in sentencing philosophies. The 1970s brought the transition from a venerable system of "indeterminate sentencing" to a new one organized around the principle of "just desserts." Indeterminate sentencing combines two main elements. First, judicial discretion in sentencing was wide and largely unchecked, save for legislatively specified maximums and (less commonly) minimums. Second, judicial decisions regarding sentence length were paired with a system of state parole boards, appointed by the governor, whose release decisions determined the actual length of time offenders spent in custody.

The formal principle underlying indeterminate sentencing is substantive rationality: achieving the sentence that is just for each individual defendant (Ulmer and Kramer 1996). This principle encourages the use of extralegal factors to establish, for example, the rehabilitative potential of the offender. The heyday of indeterminate sentencing coincided with a period of optimism about the potential for rehabilitation--the 1960s--in which treatment displaced punishment as the official role for penal institutions.

Structured sentencing, including guideline systems, arose in response to what were perceived as undesirable features of indeterminate sentencing. Some critics claimed judicial disparity is promoted when judges are given no guidance in how to incorporate all sentencing-relevant factors in a consistent fashion (Freed 1992). In this regard, it is possible for offenders with identical offenses and prior criminal records to receive vastly different sentences. Also, critics note that indeterminate sentencing does not encourage appellate review of sentencing decisions (Freed 1992). Moreover, the broad discretionary powers of parole boards ensured judges cannot be certain of the actual time that a convicted offender will serve following imposition of sentence. With structured sentencing, formal rationality (predictable and uniform application of rules) replaces substantive rationality as the principle underlying sentencing**.**

Sentencing Guidelines Fundamentals

Sentencing guideline systems vary in both the type and extent of restrictions placed on judicial discretion. Furthermore, guideline states define flexibility in sentence decision-making in many different ways and use different authorities (sentencing commissions, state statute, court rule, case law) as rule makers in the context of applying guidelines in individual cases.

At least 21 states employ sentencing guidelines and have pursued various paths in their design and development.[7] Many states have adopted a prescriptive approach to guidelines development, whereby a sentencing rationale has been articulated at the onset, and guidelines have been formulated consistent with that rationale. Other states have created guidelines in a more descriptive fashion, such that sentence recommendations more closely reflect past sentencing behavior of judges. However, no state has gone the route of the U.S. Sentencing Commission, which developed a highly detailed and strongly mandatory set of guidelines.

Guideline sentences are typically based on factors such as offense severity, the offender's prior record, and concerns for community safety. Distinctions exist, though, in how stringent different guidelines systems are in "limiting" judicial discretion. The limits are found in the sentencing procedures that direct judges to reference, consider, and adhere to a specific recommendation on a sentencing grid or worksheet. In conjunction with state statutes and authority, these procedures or "mechanics" define the extent to which a system is more voluntary or presumptive in nature.

Sentencing guidelines systems developed during the early 1980s were quickly categorized by scholars and practitioners as either presumptive or advisory (mandatory or voluntary) and as either prescriptive or descriptive (Tonry 1997; Morris and Tonry 1990). As new systems have developed, these distinctions have blurred, with states using combinations or hybrids of the earlier systems. For this reason, it is difficult to classify the various sentencing guidelines systems into a rigid voluntary/presumptive dichotomy.

[7] It proves to be a difficult task to determine the exact number of states that employ sentencing guidelines at a given point in time. Guidelines can come into existence and out again with little notice or fanfare. One good source for national information and links to individual state sentencing commissions is the website for the National Association of State Sentencing Commissions (NASC): http://www.ussc.gov/states/nascaddr.htm. The challenge arises because most (but not all) states with guidelines are members of NASC and for many states the guidelines themselves are unavailable/inaccessible on search engines such as Lexis/Nexis or Westlaw.

In general terms, most sentencing guidelines systems make use of a grid or set of worksheets that are completed before sentencing and provided to the sentencing judge. Each guidelines system has policies and procedures addressing issues such as when guideline forms should be completed, when judges must review guidelines, how compliance or departures are to be handled, and what appellate rights are retained by the defense or prosecution.

Sentencing Guidelines Compared

An analysis of consistency, proportionality, and non-discrimination in sentencing under the alternative guideline structures of Michigan, Minnesota and Virginia benefits from viewing them in the context of all 21 states with guidelines. In this section, the major structural features of sentencing guidelines are examined with the goal of clarifying the degree to which each state's system is more presumptive or more voluntary. The result is that states fall along a voluntary/mandatory *continuum,* being classified by a number of state laws, rules of court, or sentencing commission policies. The continuum developed in the current research follows previous efforts to classify these complex and multifaceted institutional arrangements.

Ostrom and Kauder, et al. (1998) place guideline systems along a voluntary/mandatory continuum using a common set of comparative indicators. They array 13 state guideline systems by analyzing policies that govern sentencing guidelines application, in particular, the extent to which state law requires guideline completion, when judges must review guidelines, how compliance and departures are to be handled, and what appellate rights are retained by the defense or prosecution. In their analysis, North Carolina was seen as the most stringent and Missouri as the least stringent in terms of limiting judicial discretion.

Wool and Stemen (2004), while not explicitly using a continuum, classify 25 states for the purposes of determining the potential impact of the *Blakely v. Washington* decision on state

sentencing practices.[8] Because legal observers at the time saw *Blakely* as having the most influence on states with more rule-driven systems, Wool and Stemen sort states into presumptive vs. voluntary, guideline vs. non-guideline, and determinate vs. indeterminate classifications. However, the voluntary/presumptive distinctions are made more by assertion than by documented reference to actual sentencing policies and procedures.

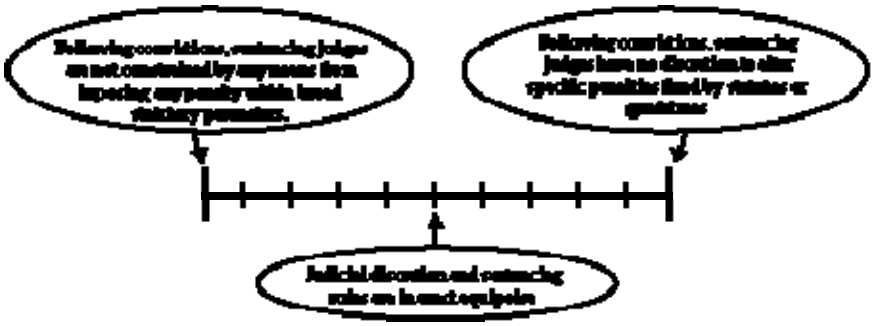
Following further clarification of the U.S. Supreme Court line of reasoning in *United States v. Booker* (2005), interest has increased in the distinction between presumptive and voluntary guidelines. Writing for the majority, Justice Breyer's opinion in *Booker* appears to hold that "voluntary" guidelines are exempt from the new procedural requirements of *Blakely*. In response to the evolving legal environment, Frase (2005a) developed an in-depth descriptive overview that compares "certain key structural features" for 19 state sentencing guideline systems, the federal guidelines and the model guidelines developed by the American Bar Association (1994). While not a continuum, Frase's summary compares guideline systems in terms of structure and regulatory authority, including the existence of a permanent sentencing commission, resource impact assessment, appellate review, and abolition of parole. Frase's (2005, 1194) stated goal was to describe key issues that "must be examined by any jurisdiction that is considering whether and in what form to adopt guidelines."

A major advance in formulating a guideline continuum is provided by Reitz (2005). Motivated by *Booker* and the consequent attachment of the term "advisory" to the federal sentencing guidelines, Reitz argues for the need to clarify guideline terminology. "These terms

[8] Wool, Jon, and Don Stemen, (2004) *Aggravated Sentencing: Blakely v. Washington — Practical Implications for State Sentencing Systems*, Vera Institute of Justice. *Blakely* ruled that a judge may not increase a defendant's penalty beyond that which would be available "solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." Blakely, when the law establishes an effective maximum sentence for an offense, the Sixth Amendment's right to trial by jury prohibits a judge from imposing a longer sentence if it is based on a fact—other than prior conviction—determined by the judge. Any such fact must be proved to a jury beyond a reasonable doubt if not admitted by the defendant.

[advisory, voluntary, presumptive, and mandatory]….have never been wholly adequate to capture the continuum of possibilities for the design of sentencing systems". Reitz offers the following diagram and description of a continuum:

Figure 2-1



> At the left end of the continuum—or position zero—we can imagine a system in which judges hold hegemonic ability to fix penalties within expansive statutory ranges for felony offenses. There are no rules or prohibitions that judges must respect when doing so, except that the distant statutory maximum may not be exceeded. At position zero, in other words, trial judge sentencing discretion exists in a pure form within broad statutory bounds, and rulemakers—such as the legislature, sentencing commission, and appellate courts—exercise no authority at all within those boundaries. At position ten, the opposite extreme of the continuum, we may imagine a system in which the facts of conviction (and perhaps other facts, such as the defendant's criminal history) determine a fixed and specific punishment in every case, with no judicial leeway permitted under any scenario. This represents the total hegemony of rulemakers. For purposes of analysis, it does not matter whether the rules come from statutory command, definitive guidelines, or some other source. At position ten, someone with system-wide competence has mandated the exact sentencing outcome of every case in advance of its litigation, and judges are mere functionaries in the punishment process (Reitz, 2005 158-159).

The Reitz continuum does not specifically locate each state on the continuum; rather, he stays at a more conceptual level by arraying five "paradigmatic sentencing systems" along the scale. For example, the label "Advisory Guidelines; no statement of reasons for departure required" is located at far left, "Presumptive guidelines; liberal departure power; deferential appellate review" in the middle, and "Presumptive guidelines; restrictive departure power; tight

appellate review," at far right. These descriptions help define the space of the continuum by identifying significant features that affect judicial discretion.

A NEW CONTINUUM

Taken together, these previous efforts to compare and contrast state guideline systems provide consensus on the key structural attributes necessary for distinguishing more presumptive from more voluntary systems. Consequently, six criteria are used in the current research to create the rankings (discussed more fully in sections I to VI that follow):

- Is there an enforceable rule related to guideline use?
- Is completion of guideline worksheets required?
- Does a sentencing commission monitor guideline compliance?
- Are substantial and compelling reasons required for departure?
- Are written or recorded reasons required for departure?
- Is appellate review allowed?

The criteria are posed as questions, and each state is awarded 0 points for a "no or unlikely" position, 1 point for a "possible or moderate" position, and 2 points for a "yes or likely" position. Summing the points determines, in an objective way, the degree to which a state is mandatory or voluntary. States having higher scores, that is, more "yes" points (with 2's in individual cells) are more mandatory than those with lower scores (with more 0's and 1's in cells). All commentary in each cell is footnoted with sources found at the end of the Table 2-1. Table 2-1 is found at the end of the chapter.

In more presumptive systems, state statute and/or legislatively-established sentencing commission policy requires a sentencing guideline worksheet is completed for all convicted offenders. Once completed, judges impose the designated sentence, and compliance is

monitored by a sentencing commission. However, even in the most mandatory system, judges maintain some leeway to sentence outside the prescribed guideline range. The guideline departure policy may define a limit on a judge's ability to deviate from the guideline recommendation. More presumptive systems will require a "substantial and compelling" reason, while more voluntary systems leave the departure rationale to the discretion of the individual judge. A related aspect of departure policy is whether the judge must state the reason for the departure in writing, perhaps from a prescribed set of legitimate reasons (more presumptive) or whether no written justification is required (more voluntary). Finally, location of a particular state on the continuum is affected by the availability and scope of appellate review. Vigorous appellate review of guideline departures is characteristic of a more presumptive guideline system, while states at the more voluntary end of the continuum expressly lack appellate review of sentencing departures.

A distinguishing feature of these six criteria is that there are explicit rules describing each criterion within the written documentation for each guideline system. Of course, these six criteria are not the only system attributes that constrain judicial discretion and shape "cultural acceptance" of a guidelines system. For example, in Virginia where there is no appellate review, other incentives are thought to play a role in furthering judicial compliance. Specifically, judges are said to believe that legislators (who are responsible for renewing judicial terms) consider guideline departure rates when reviewing individual judges for reappointment. Likewise, in Pennsylvania, judge-specific compliance rates are released to the public, a policy that some believe has an impact on retention elections and has shored up respect for an "advisory" guidelines system (Reitz, 2005). However, while such intangible considerations might play a

role in sentencing practices, the focus in the current research is on comparing similarities and differences with more measurable indicators.

The following Sections (I-VI) briefly define and discuss each of the six criteria in the table.

I: Is There an Enforceable Rule Related to Guidelines Use?

The first criteria in classifying guideline systems is determining whether there is an explicit state law or court rule requiring that guideline recommendations be followed. At the most basic level, the more explicit and narrowly defined a state statute is with regard to guidelines adherence (and enforcement of that adherence), the more presumptive is a state on the continuum. Legislatively-established guidelines with clearly prescribed judicial sentencing requirements have more authority than informal commission instructions or court rules. Judges are required to follow state statutes, and furthermore, are typically reluctant to have their decisions reviewed through the appeal process.

Reitz (2005) makes the point that, under guidelines, judges share authority with other rule makers (e.g., sentencing commission) in the determination of sentencing outcomes. The question for this section is the relative degree of dominance that external rule makers have over judicial sentencing decisions under the various state guideline regimes. North Carolina stands apart from other states in that the legal code explicitly states the guidelines are mandatory and that the judge must select a sentence from the prescribed range. These guidelines receive two points for this criterion because "they require a judge in every case to impose a sentence within the designated cell of sentencing guidelines grid." North Carolina judges are not allowed to go outside specified aggravated and mitigated ranges so that larger durational departures are forbidden.

State code in Kansas, Michigan, Minnesota, Oregon, and Washington emphasize a strong expectation guidelines will be followed in usual cases, yet allow for departures under certain conditions. Once the relevant offense conduct and offender prior record factors are scored, the guidelines in these six states direct the judge to a presumptive sentencing range that must be considered. Because legislative language in these states emphasizes the legal authority of the guidelines, these systems are given one point on this criterion.

Nine states (Maryland, Virginia, Delaware, Tennessee, Missouri, Arkansas, District of Columbia, Alabama and Wisconsin) use the word "voluntary," "discretionary," or "advisory" in their state code to describe the relatively high level of judicial discretion under the guidelines. No descriptive term such as voluntary is used in the code of an additional five states (Pennsylvania, Alaska, Massachusetts, Louisiana, and Utah), but legal language makes clear the guidelines are not presumptive. The low level of legal enforceability in these 14 states leads to a score of 0 being awarded on this factor.

II: Is Worksheet Completion Required?

Fifteen of the 21 guideline states require that worksheets be completed when using the guidelines system. This indicator of enforceability is another means to assess the relative influence of lawmakers in shaping sentencing outcomes by measuring the commitment of a state to having sentencing guidelines completed and before a judge in all cases. Without formal worksheet completion, guidelines use cannot automatically be assumed. This continuum indicator reveals a consensus in requiring documentation of worksheet completion.

With the exception of Washington and Michigan, all states with a "1" on the first criterion receive a "2" on worksheet completion. Even though worksheet completion is required

in Michigan, the lack of a functioning sentencing commission means there is no monitoring of this requirement.

Of the states that do not have enforceable rules relating to their guidelines use (the first criteria) most still require guideline worksheets to be completed (Pennsylvania, Maryland, Massachusetts, Virginia, Alaska, Delaware, Louisiana, Utah, Arkansas, Tennessee, Alabama, and Missouri). Wisconsin and DC have no presumption that the judge is bound by the guideline recommendation or even that a guideline form will be completed. Finally, Ohio code does not require completion.

Two states specifically require the judge or court to fill out the worksheet (Oregon, Alaska), six others do not specify who is to fill out the worksheet, only to say it is required. States use different language and name a variety of officials to complete the worksheets. Utah's Probation Department officials complete their form. In Virginia, a probation officer fills out the sheets, although the prosecutor can also be assigned the task. The Office of the Prosecuting Attorney is responsible in Arkansas. In Alabama, a judge determines who completes the form, and in Missouri, the Board of Probation and Parole is the responsible party.

III: Does the Sentencing Commission Monitor Guideline Compliance?

A key measure of accountability for sentencing guidelines is the extent to which judges comply with the guideline recommendations. State guidelines carry a greater sense of enforceability if a sentencing commission or other body is monitoring compliance rates among judges. A necessary first step in this process is to actually collect, compile and report judicial compliance with the guidelines. In addition to providing an obvious accountability and performance measure for courts and judges, sentencing commissions know when guideline

recommendations might need to be modified. In terms of a continuum, it is an indirect measure of how much attention the guidelines receive from policymaking officials.

There is a relatively even split, with 12 states indicating at least some explicit monitoring procedures. For example, Oregon specifically examines departure rates. Kansas's Commission's main objective "is to determine the number of guidelines sentences imposed, the characteristics of offenders and the offenses committed, the number and types of departure sentences, and the overall conformity of sentences to sentencing guidelines." The Commission in North Carolina closely monitors sentencing outcomes, specifically the impact of legal and extralegal factors on sentencing. Minnesota and Virginia routinely publish compliance rates in their annual report, while Michigan produces no report at all.

IV: Are Substantial and Compelling Reasons Required for Departure?

Eight states receive 2 points because state code specifies there must be substantial and compelling reasons when departing; that is, a judge must articulate the substantial and compelling circumstances and demonstrate why a sentence given is more appropriate or fair than the guideline recommendation. Establishing a substantial and compelling threshold for departure (typically subject to appellate review) is yet another way to gauge the level of judicial accountability to a sentencing commission or higher court. For example, in North Carolina, the departure threshold is explicitly laid out in a set of possible aggravating or mitigating circumstances from a statutorily prescribed list of substantial and compelling reasons. In contrast, judges in Louisiana are free to reject the guideline recommendation and "impose any sentence which is not constitutionally excessive…"[9] Clearly, departure policy in alternative guideline systems ranges from more lenient to more rigid. In states where judges must justify their decisions to sentence outside of the guidelines to the level of substantial and compelling

[9] L.A. Stat. Ann. §15-321 (West)

"the rulemakers have gained power and judicial discretion is proportionately limited." (Reitz, 2005, 159).

Maryland and Delaware are states on the continuum which do not have an enforceable rule related to guidelines use, but do require substantial and compelling reasons for departure. Also of interest, Michigan's guidelines require a substantial and compelling reason to depart, but judges are not given an accepted set of departure reasons; rather, the guidelines list reasons that the court cannot use in departing.

Thirteen of the 21 states do not require substantial or compelling reasons to depart from the sentencing guidelines. However, in Alaska, Massachusetts, and Utah, even though the term substantial and compelling is not used, judges are pointed to a non-exclusive list of mitigating and aggravating factors to be considered as part of the decision to depart. Because judges in these three states receive specific language from a sentencing commission as to what constitutes a legitimate reason for departure, they are partially constrained and receive one point on the continuum.

V: Are Written or Recorded Reasons for Departure Required?

Requiring judges to provide written reasons for departure is another indicator of the degree to which judicial discretion is constrained by rules. When a rationale for departure is required, it adds a constraint to the sentencing judge and serves to move the guideline system further to the right of the continuum. A statute or rule requiring a written rationale serves to reinforce the applicability of the guidelines recommendation, prompting the judge to consider why a typical sentence may not be warranted in a particular case. The full strength of the departure policy is seen when this indicator is viewed in combination with whether the departure must be for substantial and compelling reasons. More presumptive guideline systems will put

strong restrictions on departures (perhaps limited to a discrete set of substantial and compelling reasons) and require the rationale in writing. On a practical note, written departure reasons provide systematic feedback from judges and can help a sentencing commission assess the validity of the guideline scoring factors.

Seventeen of the 21 guideline states require a judge to write or record their reasons for departing from a sentencing guidelines recommendation. The four states that do not--Arkansas, Missouri, Wisconsin, and Ohio--rank among the most voluntary in the study: 16th, 19th, 20th, and 21st, respectively. Arkansas requires written reasons for departures for negotiated pleas, but not for bench trials. Missouri makes no mention of whether written or recorded justification for departure is required. Wisconsin and Ohio specifically state that judges are not required to give any reasons for departure.

VI: Is Appellate Review Allowed?

The sixth criteria for differentiating more presumptive from more voluntary systems relates to whether the system provides appellate review of guideline departures. A considerable literature has developed over the purpose and boundaries of appellate review in the context of structured sentencing. (Reitz, 1997) Chanenson (2005) makes the point that "[w]ith their dual focus on establishing broad principles of sentencing law and evaluating individual cases, appellate courts can bring a distinctive voice to the sentencing discussion." The result of meaningful appellate review is deemed to be greater transparency and accountability in sentencing outcomes. (Reitz, 2005) In a similar vein, the Model Penal Code (2003) argues that appellate review should lead to greater uniformity in sentencing and the reduction of unwarranted sentencing disparities. But while appellate review is a common enforcement device in state guideline systems, "it can mean many things—from review that is so deferential as to be

ineffectual, to review that is so intrusive it denies trial courts the flexibility they need to accommodate case-specific circumstances and experiment with different approaches." (Frase, 2005a, 1220).[10]

Of the 21 guideline states examined, 12 states received points for some form of appellate review. Nine states (Alaska, Kansas, Massachusetts, Michigan, Minnesota, North Carolina, Oregon, Pennsylvania, and Washington) are given two points on the continuum for more active appellate review. Drawing largely on more detailed perspective available in Reitz (2005) and Frase (2005), Louisiana, Tennessee, and Wisconsin are assigned one point because "sentence appeal is available, but the standard of review is highly deferential." (Frase 2005a, 1199).

In all states with appellate review, the defendant has the right to appeal, but in a few states the prosecutor may also appeal the sentence (e.g., Washington and Pennsylvania). Alaska entitles the defendant to appeal, and the state can appeal based on the grounds that a sentence was too lenient. Similarly, in Massachusetts, the defendant or the Commonwealth may appeal a sentencing departure.

In the remaining nine states, "the appellate bench effectively abstains from the review of the merits of punishment decisions." (Reitz, 2005, 160). Virginia law requires guidelines completion and written reasons for departure, but specifically denies appellate relief for any reason related to the guidelines. Delaware's policies are similar, requiring written reasons for departure but preventing appellate review of those sentences. Utah, rather than using state statutes, requires completion of guidelines forms through authority of the sentencing commission and also denies appellate review for guideline sentences. Considered more voluntary than most,

[10] For extensive and informative discussion of the range and scope of appellate review in state guideline systems see Reitz, Frase, Chanenson (The Next Era of Sentencing Reform, 54 Em. L.J. 377 (2005).

Missouri's sentencing guidelines system does not require completion of guidelines forms and allows judges to depart at their discretion with no appellate review.

SUMMARY

This chapter provides a means to compare and contrast key characteristics of state guideline systems. Table 2-2 summarizes the point values for each state across the six criteria and sorts them from more presumptive to more voluntary.

Table 2-2: Summary Point Values for State Guideline Systems

	I	II	III	IV	V	VI	
	Enforceable Rule	Worksheet Completion	S.G. Monitors Compliance	Departure Rationale	Written Reason	Appellate Review	**Total**
North Carolina	2	2	2	2	2	2	**12**
Minnesota	1	2	2	2	2	2	**11**
Oregon	1	2	1	2	2	2	**10**
Kansas	1	2	1	2	2	2	**10**
Washington	1	1	2	2	2	2	**10**
Pennsylvania	0	2	2	1	2	2	**9**
Michigan	1	1	0	2	2	2	**8**
Maryland	0	2	1	2	2	0	**7**
Massachusetts	0	1	1	1	2	2	**7**
Alaska	0	2	0	1	2	2	**7**
Virginia	0	2	2	0	2	0	**6**
Delaware	0	2	0	2	2	0	**6**
Utah	0	2	2	1	1	0	**6**
Louisiana	0	2	0	0	2	1	**5**
Arkansas	0	2	1	0	0	1	**4**
Tennessee	0	1	0	0	1	1	**3**
District of Columbia	0	0	1	0	2	0	**3**
Alabama	0	2	0	0	1	0	**3**
Missouri	0	2	0	0	0	0	**2**
Ohio	1	0	0	0	0	0	**1**
Wisconsin	0	0	0	0	0	1	**1**
Average	0.4	1.5	0.9	1.0	1.5	1.0	**6.2**

Taken together, the 21 states form the following continuum.

Figure 2.2

This yardstick measures the similarities and differences among states in how they limit judicial discretion through guidelines. The systems of Wisconsin, Ohio, and Missouri anchor the left end of the continuum and are characterized as more voluntary. On the right side of the continuum are the systems characterized as more presumptive: Washington, Kansas, Oregon, Minnesota, and North Carolina. Among the three states under review, Minnesota shows the most presumptive profile with a total of 11 points.

However, total points tell only part of the story because the overall score can be reached through different combinations of point values on the six criteria. In particular, the states in the middle of the continuum do not all look the same as evidenced by Michigan (eight points) and Virginia (six points). Examining the first three criteria shows Michigan with only two points, while Virginia scores four. On the other hand, Michigan scores 6 points on the final three factors, while Virginia scores only two. Michigan is typically viewed as a more presumptive system because of its legislative mandate, stricter departure policy, and possibility of appellate review. But the absence of an active sentencing commission means there is minimal oversight of actual guideline usage.

In contrast, while Virginia is usually characterized as a more voluntary system because it is not legislatively mandated and guideline departures are not grounds for appeal, the sentencing commission closely monitors guideline compliance and provides considerable oversight. For example, "[t]he clerk of court is required to send the original guideline worksheet and court order to the Criminal Sentencing Commission with five days after sentencing,"(VSG, p. 3) with any departure noted and explained. This stronger administrative framework likely provides an incentive to judges to comply with the guidelines belied by the "voluntary" title.

There are clear differences in the formal design, administration, and statutory framework of the Michigan, Minnesota, and Virginia systems. The primary goal of the current research is to investigate how this variation in structure plays out in actual sentencing practice.

Appendix 2-A

Table 2-1: 21 State Sentencing Guidelines Continuum

(Cell values: 0=no or unlikely, 1= possible/moderate, 2=yes or likely)

	I	II	III	IV	V	VI
Score along the Mandatory vs. Voluntary Continuum (Relative scores)	**Enforceable Rule Related to Guidelines use?**	**Worksheet Completion Required?**	**Sentencing Commission Monitors Guideline Compliance?**	**Substantial & Compelling Reasons Required for Departure?**	**Written or Recorded Reasons for Departure Required?**	**Appellate Review Allowed?**
North Carolina (12)	Guidelines are classified as mandatory because "they require a judge in every case to impose a sentence within the designated cell of a sentencing guidelines grid."[1] **(2)**	District attorney completes prior record form, judges are required to be complete a sentencing judgment form.[2] **(2)**	Sentencing Commission regularly issues reports examining North Carolina's sentencing practices under its system of structured sentencing.**(2)**	The guidelines are mandatory but judges can impose a guidelines specified minimum sentence based on aggravating or mitigating circumstances.[3] **(2)**	Written justifications are required if the court "selects a minimum sentence from the aggravated or mitigated sentence range…."[4] **(2)**	Defendant may appeal a sentence that results from aggravating or mitigating circumstances.[5] **(2)**
Minnesota (11)	The Minnesota Code points out that the guidelines shall be advisory to the district court.[6] The Guidelines promulgated by the Sentencing Commission shall establish a "presumptive, fixed sentence for offenders…."[7] **(1)**	Requires completion of guideline worksheets.[8] **(2)**	The Commission has statistical data from 1999 studying guideline compliance.[9] **(2)**	Judges are required to give the sentence within the presumptive range. Judges can depart from the presumptive sentence if "there exist identifiable, substantial, and compelling circumstances…."[10] **(2)**	The judge "must disclose in writing or on the record the particular substantial and compelling circumstances…."[11] **(2)**	If the judge departs from the guidelines, the defendant can appeal the sentence. **(2)**
	ORS 137.669 indicates that the guidelines are	Judges are required to complete guideline	The Commission has done studies regarding guideline	A judge must impose the sentence found from the	In the case of a departure, the judge must state on the	A defendant may appeal a sentence that departs from the

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Oregon (10)	mandatory.[12] **(1)**	worksheets.[13] **(2)**	compliance, specifically examining departure rates.[14] **(1)**	classification grid, unless there are substantial and compelling reasons for departure.[15] **(2)**	record the reasons for the departure.[16] **(2)**	guidelines.[17] **(2)**
Kansas (10)	Kansas Code states that the courts have "discretion to sentence at any place within the sentencing range."[18] **(1)**	Requires completion of guideline worksheets.[19] **(2)**	One of the Commission's objectives is to "[d]etermine the number of guidelines sentences imposed, the characteristics of offenders and the offenses committed, the number and types of departure sentences, and the overall conformity of sentences to the sentencing guidelines."[20] **(1)**	The sentencing judge must impose the presumptive sentencing stated in the guidelines, unless there are substantial and compelling reasons for departure.[21] **(2)**	"If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure."[22] **(2)**	A departure sentence may be appealed by the defendant or the state.[23] **(2)**
Washington (10)	One of Washington's purposes of sentencing is to establish a system that "does not eliminate, discretionary decisions affecting	Judges are not required to complete sentencing worksheets.[25] **(1)**	Washington has statistical summaries of adult felony sentencing for every year beginning with 1999.[26] These summaries examine	Judges may depart from the presumptive sentence range based upon "substantial and compelling reasons justifying an exceptional	Reasons for departure must be explained in writing.[29] **(2)**	Sentencing departures may be appealed by the prosecutor or the defendant.[30] **(2)**

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	sentences."[24] **(1)**		the effect that sentencing departures have on sentencing.[27] **(2)**	sentence."[28] **(2)**		
Pennsylvania (9)	Language does not indicate that the guidelines are mandatory.[31] **(0)**	The Guideline Sentence Form must be completed, by the court and becomes part of the record.[32] **(2)**	Sentencing data is used to measure conformity to the guidelines.[33] **(2)**	When certain conditions are present, judges are allowed to impose an aggravated or mitigated sentence.[34] **(1)**	A judge must state both on the record and on the Guideline Sentence Form his reasons for imposing an aggravated or mitigated sentence.[35] **(2)**	Both the prosecutor and the defense attorney can appeal a sentence based on the fact that a judge "departed from the guidelines and imposed an unreasonable sentence."[36] **(2)**
Michigan (8)	The Michigan guidelines state that, "the minimum sentence imposed by a court of this state…shall be within the appropriate sentence range under the version of those guidelines in effect on the date the crime was committed."[37] **(1)**	Worksheet completion is required but there is no Commission to monitor compliance **(1)**	Found no information pertaining to studies on guideline compliance. **(0)**	Judges can "depart from the appropriate sentence range established under the sentencing guidelines…if the court has a substantial and compelling reason for the departure…."[38] **(2)**	Reasons for departure must be stated on the record.[39] **(2)**	Defendant may appeal a sentence departure.[40] **(2)**
Maryland	Language does not indicate that the guidelines are mandatory.	Guideline worksheets must be completed by the judge, counsel, or a	The Maryland Sentencing Commission requires judges to complete	Judges are instructed to sentence within the sentencing range unless there are	Judges must write down any reasons for departure.[46] **(2)**	Appellate review is not available for sentencing departures.[47] **(0)**

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(7)	Moreover, the Maryland Code specifically states, that the guidelines are intended to be voluntary.[41] **(0)**	member of the judge's staff for all "Guidelines Offenses."[42] If a pre-sentence investigation is ordered, "an agent of the Division of Parole and Probation shall complete each worksheet up to the section labeled 'Actual Sentence.'"[43] **(2)**	sentencing worksheets. "Since its creation, the primary objective of the worksheet has been to collect information on judicial departure rates for the sentencing guidelines."[44] **(1)**	compelling circumstances that justify departure.[45] **(2)**		
Massachusetts (7)	Language does not indicate that the guidelines are mandatory. **(0)**	All sentences are "to be recorded on a sentencing statement." These statements are to be submitted to the sentencing commission.[48] **(1)**	In 2003, the Commission compared all existing sentences "with the proposed sentencing guidelines in order to estimate whether the sentence imposed was below the guideline range, within the guideline range, or above the guideline range."[49] **(1)**	A sentencing judge may depart from the guideline range by imposing a sentence based on a finding that "one or more mitigating or aggravating circumstances exist."[50] **(1)**	Reasons for any sentencing departure must be set "forth in writing reasons for departing from that range on a sentencing statement, giving the 'facts, circumstances, evidence, opinions, and any other matters considered.'"[51] **(2)**	A defendant or the commonwealth may appeal a sentencing departure.[52] **(2)**
	Language does not	The court is required	Found no	Judges are required	"The court may	A defendant may

Appendix 2-A

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	I	II	III	IV	V	VI
Score along the Mandatory vs. Voluntary Continuum (Relative scores)	**Enforceable Rule Related to Guidelines use?**	**Worksheet Completion Required?**	**Sentencing Commission Monitors Guideline Compliance?**	**Substantial & Compelling Reasons Required for Departure?**	**Written or Recorded Reasons for Departure Required?**	**Appellate Review Allowed?**
Alaska (7)	indicate that the guidelines are mandatory.[53] **(0)**	to prepare a sentencing report.[54] **(2)**	information pertaining to studies on guideline compliance. **(0)**	to "impose sentences within the ranges set by the Alaska Legislature."[55] However, "[p]resumptive sentences do not cover all offenses." For offenders not covered by presumptive guidelines, "trial court judges have more discretion to base the length and type of sentence on individual circumstances."[56] Additionally, according to AS 12.55.155, the court may decrease or increase the presumptive term based on aggravating or mitigating factors.[57] **(1)**	modify or reduce a sentence by entering a written order under a motion made within 180 days of the original sentence." Code lists both aggravating and mitigating factors that judges must consider when departing [58] **(2)**	appeal a sentence on the grounds that it is excessive. The state can appeal based on the grounds that it is too lenient.[59] **(2)**
Virginia	The Virginia Code specifically states that the guidelines are discretionary.[60] **(0)**	While compliance with guideline recommendations is voluntary,	The 2005 annual report "provides a comprehensive examination of	Judges are to be given the appropriate sentencing guideline worksheets and	In a felony case, if the court "imposes a sentence which is either greater or less	Sentencing departures are not subject to appeal. **(0)**

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Score along the Mandatory vs. Voluntary Continuum (Relative scores)	**Enforceable Rule Related to Guidelines use?**	**Worksheet Completion Required?**	**Sentencing Commission Monitors Guideline Compliance?**	**Substantial & Compelling Reasons Required for Departure?**	**Written or Recorded Reasons for Departure Required?**	**Appellate Review Allowed?**
(6)		completion of guideline worksheets is mandatory.[61] Judges are required to review the guidelines in all cases covered by the guidelines and sign the worksheet.[62] **(2)**	judicial compliance with the felony sentencing guidelines for fiscal year 2005."[63] **(2)**	should "review and consider the suitability of the applicable discretionary sentencing guidelines…"[64] **(0)**	than that indicated by the discretionary sentencing guidelines, the court shall file with the record of the case a written explanation of such departure."[65] **(2)**	
Delaware (6)	The 2005 sentencing benchbook indicates that the guidelines are voluntary and non-binding.[66] **(0)**	Requires completion of sentencing worksheets.[67] **(2)**	Delaware has not published any studies regarding sentencing compliance.[68] **(0)**	Judges may depart from the standard sentence range if they find "that there are substantial and compelling reasons justifying an exceptional sentence."[69] **(2)**	"[T]he governing factor(s) leading to the exceptional sentence must be stated for the record, and should be identified in the sentencing order or on the sentencing worksheet."[70] **(2)**	Sentencing departures are not subject to appeal.[71] **(0)**
Utah (6)	Language does not indicate that the guidelines are mandatory. **(0)**	Guideline forms must be completed by the probation department.[72] **(2)**	Utah periodically examines guideline compliance and overall has a 90-95% compliance rate.[73] **(2)**	Judges are encouraged to follow the guidelines. Departures based on aggravating or mitigating circumstances are allowed.[74] **(1)**	Any aggravating or mitigating circumstances used to justify a sentencing departure "should be stated in open court and included on the judgment and	Sentencing departures are not subject to appeal.[76] **(0)**

Appendix 2-A

Table 2-1: 21 State Sentencing Guidelines Continuum

(Cell values: 0=no or unlikely, 1= possible/moderate, 2=yes or likely)

	I	II	III	IV	V	VI
Score along the Mandatory vs. Voluntary Continuum (Relative scores)	**Enforceable Rule Related to Guidelines use?**	**Worksheet Completion Required?**	**Sentencing Commission Monitors Guideline Compliance?**	**Substantial & Compelling Reasons Required for Departure?**	**Written or Recorded Reasons for Departure Required?**	**Appellate Review Allowed?**
					commitment order."[75] **(1)**	
Louisiana (5)	Language does not indicate that the guidelines are mandatory. **(0)**	Commission requires completion of sentencing reports.[77] **(2)**	Found no information pertaining to studies on guideline compliance. **(0)**	A judge can reject the guidelines and "impose any sentence which is not constitutionally excessive, but which is within the statutory sentencing range for the crime for which the defendant has been convicted…."[78] **(0)**	Judge must state on the record any aggravating, mitigating, or other circumstances it takes into account.[79] **(2)**	The defendant may appeal the sentence "which exceeds the maximum sentence authorized by the statute under which the defendant was convicted and any applicable statutory enhancement provisions."[80] **(1)**
Arkansas (4)	Arkansas code specifically refers to its sentencing standards as voluntary.[81] **(0)**	"[T]he office of the prosecuting attorney [is] responsible for completion of Judgment and Commitment and Judgment and Disposition forms."[82] **(2)**	The Arkansas Sentencing Commission has studied the rate of compliance with sentencing standards.[83] **(1)**	Judges can depart from the sentencing standards in "non-typical" cases.[84] **(0)**	Arkansas requires written reasons for departures for negotiated pleas but not for bench trials.[85] **(1)**	A defendant may not appeal a sentence departure.[86] **(0)**
	The Tennessee Code states that, "the court shall consider, but is	Uniform judgment document must be completed which	Found no information pertaining to studies	The judge is supposed to impose a sentence within the	The judge must state either on the record or in writing the	The defendant can appeal an excessive sentence.[90] But see

Appendix 2-A

Table 2-1: 21 State Sentencing Guidelines Continuum

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	I	II	III	IV	V	VI
Score along the Mandatory vs. Voluntary Continuum (Relative scores)	**Enforceable Rule Related to Guidelines use?**	**Worksheet Completion Required?**	**Sentencing Commission Monitors Guideline Compliance?**	**Substantial & Compelling Reasons Required for Departure?**	**Written or Recorded Reasons for Departure Required?**	**Appellate Review Allowed?**
Tennessee (3)	not bound by, the…advisory sentencing guidelines.[87] **(0)**	contains sentencing information **(1)**	on guideline compliance. **(0)**	given range of punishment but may depart based on aggravating or mitigating factors.[88] **(0)**	aggravating or mitigating factors that were considered and any other reasons for the imposed sentence.[89] **(1)**	2005 Tenn. Pub. Acts. which gives a presumption of correctness to trial court sentences. **(1)**
District of Columbia (3)	D.C.'s 2005 practice manual states that the guidelines are voluntary.[91] **(0)**	Judges are not required to complete sentencing guideline worksheets.[92] **(0)**	The Commission has been able to "report some preliminary data on compliance."[93] **(1)**	Judges are allowed to depart from the guidelines based on the presence of aggravating or mitigating factors.[94] **(0)**	"The judge must state on the record the aggravating or mitigating factor upon which he or she relies in sentencing outside of the box."[95] Also, if a judge decides not to follow the guidelines he is encouraged to fill out a sentencing data form. The form allows him to indicate and explain his reasons for not following the guidelines.[96] **(2)**	Defendant cannot appeal a sentencing departure.[97] **(0)**
Alabama	The Alabama Sentencing Commission describes its sentencing	Requires completion of guideline worksheets. The judge can determine	Alabama's voluntary sentencing standards were sent to the legislature for	Judges can depart from the standard range "based on the facts presented in	If an imposed sentence is outside the standard range then a judge is	Sentences imposed according to the guideline standards are not subject to

Appendix 2-A

Table 2-1: 21 State Sentencing Guidelines Continuum

(Cell values: 0=no or unlikely, 1= possible/moderate, 2=yes or likely)

	I	II	III	IV	V	VI
Score along the Mandatory vs. Voluntary Continuum (Relative scores)	**Enforceable Rule Related to Guidelines use?**	**Worksheet Completion Required?**	**Sentencing Commission Monitors Guideline Compliance?**	**Substantial & Compelling Reasons Required for Departure?**	**Written or Recorded Reasons for Departure Required?**	**Appellate Review Allowed?**
(3)	standards as voluntary.[98] **(0)**	who completes the worksheets; they may be completed by "the district attorney, defense attorney, probation officer, court referral officer and/or community corrections personnel." [99] **(2)**	approval in 2004.[100] Thus, it is too early for Alabama to have commissioned any guideline compliance studies. **(0)**	each individual case."[101] **(0)**	"requested to write a brief explanation as to why the standards are not followed."[102] **(1)**	appellate review.[103] **(0)**
Missouri (2)	Missouri's Sentencing Report notes that "[j]udicial discretion is the cornerstone of sentencing in Missouri courts."[104] **(0)**	The Board of Probation and Parole is supposed to provide the court with a Sentencing Assessment Report.[105] The SAR, "summarizes the offender's criminal history, provides a risk assessment, identifies the victim impact and develops an offender management plan. The recommended sentence and the available alternative sentence are determined."[106] **(2)**	Could not find any Missouri studies regarding sentencing compliance. **(0)**	Judges have discretion to "lower or exceed the sentence recommended by the commission as otherwise allowable by law, and to order restorative justice methods, when applicable."[107] **(0)**	No mention of whether written or recorded justifications for departure are required. **(0)**	Appellate review is not available.[108] **(0)**

Appendix 2-A

Table 2-1: 21 State Sentencing Guidelines Continuum

(Cell values: 0=no or unlikely, 1= possible/moderate, 2=yes or likely)

	I	II	III	IV	V	VI
Score along the Mandatory vs. Voluntary Continuum (Relative scores)	**Enforceable Rule Related to Guidelines use?**	**Worksheet Completion Required?**	**Sentencing Commission Monitors Guideline Compliance?**	**Substantial & Compelling Reasons Required for Departure?**	**Written or Recorded Reasons for Departure Required?**	**Appellate Review Allowed?**
Ohio (1)	Ohio's guidelines used to be mandatory. The guiding statutes indicated that judges "shall" do certain things. However, because of the recent Ohio Supreme Court case State v. Foster, Ohio has begun to move towards an advisory sentencing system.[109] **(1)**	Judges are not required to complete guideline worksheets.[110] **(0)**	Ohio has no statewide data regarding sentencing patterns or practices.[111] **(0)**	Judges are allowed to depart from the guidelines. Substantial and compelling reasons for departure are not required.[112] **(0)**	Reasons for departure are no longer required.[113] **(0)**	Sentencing departures are no longer subject to appeal.[114] **(0)**
Wisconsin (1)	The "Wisconsin Sentencing Guidelines Notes" state that the guidelines are advisory.[115] The Wisconsin Code notes that just because a Wisconsin judge is required to consider the sentencing guidelines "does not require a court to make a sentencing decision that is within	Judges are not required to complete sentencing worksheets.[117] **(0)**	The Wisconsin Sentencing Commission does not monitor sentencing guideline compliance.[118] **(0)**	Judges may consider adjustment factors that can lead to sentences that are longer than recommended.[119] In fact, "judges are free to deviate from the recommended sentence as they see fit."[120] **(0)**	Judges are not required to give any reasons for departure.[121] **(0)**	A defendant has no right to appeal "a court's sentencing decision based on the court's decision to depart in any way from any guideline."[122] But see State v. Gallion, 678 N.W. 2d. 197 (Wis. 2004) where the Wisconsin Supreme Court states the appellate

Appendix 2-A

Table 2-1: 21 State Sentencing Guidelines Continuum

(Cell values: 0=no or unlikely, 1= possible/moderate, 2=yes or likely)

	I	II	III	IV	V	VI
Score along the Mandatory vs. Voluntary Continuum (Relative scores)	**Enforceable Rule Related to Guidelines use?**	**Worksheet Completion Required?**	**Sentencing Commission Monitors Guideline Compliance?**	**Substantial & Compelling Reasons Required for Departure?**	**Written or Recorded Reasons for Departure Required?**	**Appellate Review Allowed?**
	any range or consistent with a recommendation specified in the guidelines."[116] **(0)**					courts will now get involved in sentencing appeals. **(1)**

[1] Jon Wool and Don Stemen. "Aggravated Sentencing: Blakely v. Washington Practical Implications for State Sentencing Systems," *Vera Institute of Justice* (2004): 4 (*citing* N.C. Gen. Stat. § 15A-1340.13).
[2] Telephone interview with John Madler, Associate Director for Policy, North Carolina Sentencing and Policy Advisory Commission, March 26, 2007.
[3] "Structured Sentencing: Training and Reference Manual," 13 (North Carolina Sentencing and Policy Advisory Commission, 2004), http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/trainingandreferencemanual2004.pdf (last visited Apr. 5, 2006) [hereinafter North Carolina Sentencing].
[4] *Id.*
[5] North Carolina Sentencing, *supra* note 23, at 30.
[6] Minn. Code § 244.09, (Minnesota Statutes, 2005), http://www.revisor.leg.state.mn.us/bin/getpub.php?pubtype=STAT_CHAP_SEC&year=2005&section=244.09&keyword_type=exact&keyword=sentencing (last visited Apr. 6, 2006).
[7] *Id.*
[8] "Report to the Legislature," 4 (Minnesota Sentencing Guidelines Commission, 2002), http://www.msgc.state.mn.us/Data%20Reports/leg2002.pdf (last visited Apr. 6, 2006). *See* "Electronic Worksheet System (EWS) Overview," http://www.msgc.state.mn.us/Text%20Only/training_and_forms.htm#ews (last visited Apr. 6, 2006).
[9] "Minnesota Sentencing Guidelines Background Information and Summary Statistics," 4-5 (Minnesota Sentencing Guidelines Commission, 2001), http://www.msgc.state.mn.us/Data%20Reports/background.pdf (last visited Apr. 6, 2006).
[10] "Minnesota Sentencing Guidelines and Commentary," 24-25 (Minnesota Sentencing Guidelines Commission, 2005), http://www.msgc.state.mn.us/ (last visited Apr. 6, 2006).
[11] *Id.*
[12] O.R. Rev. Stat. § 137.669, (2005), http://www.leg.state.or.us/ors/137.html (last visited May 9, 2006).

[13] Telephone conversation with Mr. Craig Prins, Executive Director of the Oregon Criminal Justice Commission, May 8, 2006.
[14] *Id.*
[15] "Oregon Criminal Justice Commission, Division 8: Departures," (Oregon State Archives, 2006), http://arcweb.sos.state.or.us/rules/OARS_200/OAR_213/213_008.html (last visited Apr. 10, 2006).
[16] *Id.*
[17] O.R. Rev. Stat. § 138.222, (2005), http://www.leg.state.or.us/ors/138.html (last visited Apr. 10, 2006).
[18] Kan. Stat. Ann. § 21-4704, (Kansas Codes and Regulations, 2004), http://www.megalaw.com/ks/kscode.php (last visited Apr. 6, 2006).
[19] "Instructions for the Kansas Sentencing Guidelines Act: Criminal History Worksheet," (Kansas Sentencing Commission, 2004), http://www.accesskansas.org/ksc/2004%20Criminal%20History%20Worksheet%20Instructions.doc (last visited Apr. 6, 2006).
[20] "Goals and Objectives," (Kansas Sentencing Commission), http://www.accesskansas.org/ksc/miksc.htm (last visited Apr. 6, 2006).
[21] Kan. Stat. Ann. § 21-4716, (Kansas Codes and Regulations, 2004), http://www.megalaw.com/ks/kscode.php (last visited Apr. 6, 2006).
[22] *Id.*
[23] Kan. Stat. Ann. § 21-4721, (Kansas Codes and Regulations, 2004), http://www.megalaw.com/ks/kscode.php (last visited Apr. 6, 2006).
[24] Wash. Rev. Code § 9.94A.010, (2006), http://apps.leg.wa.gov/RCW/default.aspx?cite=9.94A.010 (last visited Apr. 6, 2006).
[25] Email from Ms. Ida Leggett, Executive Director Washington Sentencing Guidelines Commission, May 8, 2006.
[26] "Statistical Summary," (Washington State Sentencing Guidelines Commission 1999-2005), http://www.sgc.wa.gov/PUBS/Statistical_Summaries/Statistical_Summaries_LinkPage.htm (last visited Apr. 6, 2006).
[27] *Id.*
[28] "Washington Sentencing Manual," I-ix, I-23 (State of Washington Sentencing Guidelines Commission, 2005), http://www.sgc.wa.gov/PUBS/Adult_Manual/Manual_2005_Section_I.pdf (last visited Apr. 6, 2006) [hereinafter Washington Guidelines]. *See also*, Senate Bill 5477, http://www.leg.wa.gov/pub/billinfo/2005-06/Htm/Bills/Senate%20Passed%20Legislature/5477.PL.htm (last visited Apr. 6, 2006).
[29] Washington Guidelines, *supra* note 30, at I-23. *See also*, Wash. Rev. Code § 9.94A.535, (2006), http://apps.leg.wa.gov/RCW/default.aspx?cite=9.94A.535 (last visited Apr. 6, 2006).
[30] *Id.*
[31] *See* Penn. Code Rule 704, http://members.aol.com/RulesPA/Crim.Cp.7.html (last visited Apr. 6, 2006).
[32] Pennsylvania Manual, *supra* note 38, at 1.
[33] "Sentencing Data, Dissemination of Information," (Pennsylvania Commission on Sentencing, 2004), http://pcs.la.psu.edu (last visited Apr. 6, 2006).
[34] "6th Edition Sentencing Guidelines Implementation Manual, Title 204. Judicial System General Provision, Part VIII. Criminal Sentencing, Chapter 303.1(e) Sentencing Guidelines," §303.13, at 13, (Pennsylvania Commission on Sentencing, 2005), http://pcs.la.psu.edu/ (last visited Apr. 6, 2006) [hereinafter Pennsylvania Manual].
[35] *Id.* at 14.
[36] "Conformity to the Guidelines," (Pennsylvania Commission on Sentencing, 2004), http://pcs.la.psu.edu/ (last visited Apr. 6, 2006).
[37] Mich. Code § 769.34(2), (2006), http://www.legislature.mi.gov/(13nak4zex1pnslfb0xukga45)/mileg.aspx?page=GetMCLDocument&objectname=mcl-769-34 (last visited Apr. 10, 2006).
[38] *Id.* at § 769.34(3).
[39] *Id.* .
[40] *Id.* at § 769.34(7).
[41] M.D. Code § 6-202, (2006), http://mlis.state.md.us/cgi-win/web_statutes.exe (last visited Apr. 10, 2006).
[42] Maryland Manual, *supra* note 61, at 5-6.

[43] *Id.* at 6.
[44] "Sentencing Data Overview," (State Commission on Criminal Sentencing Policy), http://www.msccsp.org/data/overview.html (last visited Apr. 10, 2006).
[45] "Sentencing Guidelines Overview," (Maryland State Commission on Criminal Sentencing Policy), http://www.msccsp.org/guidelines/overview.html (last visited Apr. 10, 2006)
[46] *Id.*
[47] Christopher Ayers, et al. "Issues in Maryland Sentencing-Sentencing Policy and Pragmatism: A Survey of Systems Across the United States," *State Commission on Criminal Sentencing Policy* (2001), http://www.msccsp.org/publications/issues_policy.html (last visited Apr. 10, 2006).
[48] "Step 9 – Recording a Sentence: Sentencing Guidelines," (The Massachusetts Court System, 2004), http://www.mass.gov/courts/formsandguidelines/sentencing/step9.html (last visited Apr. 10, 2006).
[49] "Survey of Sentencing Practices FY 2003," 29 (Massachusetts Sentencing Commission, 2004), http://www.mass.gov/courts/admin/sentcomm/fy2003survey.pdf (last visited Apr. 10, 2006).
[50] "Step 6 – Departures: Sentencing Guidelines," (The Massachusetts Court System, 2004), http://www.mass.gov/courts/formsandguidelines/sentencing/step6.html (last visited Apr. 10, 2006).
[51] *Id.*
[52] Email from Ms. Linda K. Holt, Research Director Massachusetts Sentencing Commission, May 4, 2006. *See also*, G.L. c. 211E, § (4).
[53] Alaska Stat. § 12.55.025, (2005), http://touchngo.com/lglcntr/akstats/Statutes/Title12/Chapter55/Section025.htm (last visited Apr. 6, 2006).
[54] Alaska Stat. § 12.55.025, (2005), http://touchngo.com/lglcntr/akstats/Statutes/Title12/Chapter55/Section025.htm (last visited Apr. 6, 2006).
[55]Marcia Vandercook. "A Guide to Alaska's Criminal Justice System," *Alaska Judicial Council* (1998): 6, http://www.ajc.state.ak.us/reports/CjguideWithCharts.pdf (last visited Apr. 6, 2006).
[56] *Id.* at 7.
[57] Alaska Stat. § 12.55.155, (2005), http://touchngo.com/lglcntr/akstats/Statutes/Title12/Chapter55/Section155.htm (last visited Apr. 6, 2006).
[58] Alaska Stat. § 12.55.088, (2005), http://touchngo.com/lglcntr/akstats/Statutes/Title12/Chapter55/Section088.htm (last visited Apr. 6, 2006).
[59] Alaska Stat. § 12.55.120, (2005), http://touchngo.com/lglcntr/akstats/Statutes/Title12/Chapter55/Section120.htm (last visited Apr. 6, 2006).
[60] Va. Code § 17.1-801, (2005), http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+17.1-801 (last visited Apr. 11, 2006).
[61] *Id.*
[62] "Worksheets," (Virginia Criminal Sentencing Commission, 2005), http://www.vcsc.state.va.us/worksheets.htm (last visited Apr. 11, 2006).
[63] "Virginia Criminal Sentencing Commission: 2005 Annual Report," 5 (2005), http://www.vcsc.state.va.us/2005FULLAnnualReport.pdf (last visited Apr. 11, 2006).
[64] Va. Code § 19.2-298.01, (2005), http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+19.2-298.01 (last visited Apr. 11, 2006).
[65] *Id.*
[66] "Delaware Sentencing Accountability Commission, Benchbook" 17 (SENTAC, 2005), http://www.state.de.us/cjc/PDF/BB.2005.II.12.12.05.pdf (last visited Apr. 13, 2006).
[67] *Id.* at 94.
[68] Telephone conversation with Ms. Jennifer Powell, Criminal Justice Council of the Delaware Sentencing Accountability Commission, May 8, 2006.
[69] *Id.* at 94.
[70] *Id.*
[71] *Id.* at 17.
[72] Utah Sentencing, *supra* note 76, at 3.
[73] Telephone conversation with Mr. Tom Patterson, Director of the Utah Sentencing Commission, May 10, 2006.

[74] Tom Patterson, "2006 Adult Sentencing and Release Guidelines," *Utah Sentencing Commission* (2006): 3, http://www.sentencing.state.ut.us/Guidelines/Adult/AdultGuidelineManual2006.pdf (last visited Apr. 11, 2006) [hereinafter Utah Sentencing].
[75] *Id.*
[76] Utah Code § 77-18a-1, (2005), http://www.le.state.ut.us/~code/TITLE77/htm/77_15002.htm (Apr. 12, 2006).
[77] Neal B. Kauder, et al., "Sentencing Commission Profiles," *National Center for State Courts* (1997): 12, http://www.ncsconline.org/WC/Publications/KIS_SentenSenCommProfiles.pdf (last visited Mar. 15, 2006).
[78] L.A. Stat. Ann. § 15-321 (West).
[79] L.A. Stat. § 894.1, (2006), http://www.legis.state.la.us/lss/lss.asp?doc=112889 (last visited Apr. 10, 2006).
[80] L.A. Stat. § 881.2, (2006), http://www.legis.state.la.us/lss/lss.asp?doc=112858 (last visited Apr. 10, 2006).
[81] Ark. Code § 16-90-801, (2005), http://www.arkleg.state.ar.us (last visited Apr. 13, 2006).
[82] Arkansas Sentencing, *supra* note 102, at 64.
[83] "Biennial Report," 18-28 (Arkansas Sentencing Commission, 2001-2002), http://www.arkansas.gov/asc/2002_biennial.pdf (last visited Apr. 13, 2006).
[84] "Sentencing Standards Grid, Offense Seriousness Rankings and Related Material," 3, 65 (Arkansas Sentencing Commission, 2003), http://www.arkansas.gov/asc/pdfs/2003benchbook.pdf (last visited Apr. 13, 2006) [hereinafter Arkansas Sentencing].
[85] Telephone conversation with Ms. Wanda Hayes, Research Coordinator Arkansas Sentencing Commission, May 9, 2006 [hereinafter Conversation with Ms. Hayes].
[86] Conversation with Ms. Hayes, *supra* note 103.
[87] Tenn. Code, § 40-35-210, (2004), http://www.megalaw.com/tn/tncode.php (last visited Feb. 16, 2006).
[88] *Id.*
[89] *Id.*
[90] Tenn. Code, § 40-35-401, (2004), http://www.megalaw.com/tn/tncode.php (last visited Mar. 14, 2006).
[91] "2005 Practice Manual," 1-2 (The District of Columbia Sentencing Commission, 2005), http://www.scdc.dc.gov/acs/frames.asp?doc=/acs/lib/acs/pdf/practice_manual_body.pdf (last visited Apr. 13, 2006).
[92] Email from Dr. Kim S. Hunt, Executive Director District of Columbia Sentencing Commission, May 2, 2006.
[93] "2005 Annual Report", 17 (The District of Columbia Sentencing Commission, 2005), http://acs.dc.gov/acs/frames.asp?doc=/acs/lib/acs/pdf/Annual_Report_2005.pdf (last visited May 8, 2006).
[94] *Id.* at 5-1.
[95] *Id.*
[96] *Id.* at 5-5.
[97] *Id.* at 1-3.
[98] "A Rational Sentencing Plan—Ready for Approval," 12 (Alabama Sentencing Commission, 2005), http://sentencingcommission.alacourt.gov/Publications/2005%20Annual%20Report.pdf (last visited Apr. 13, 2006) [hereinafter Alabama Sentencing Plan].
[99] *Id.* at 1, 37.
[100] Alabama Sentencing Plan, *supra* note 116, at 4.
[101] "Initial Sentencing Standards Instructions and Worksheets," 37 (Alabama Sentencing Commission, 2005), http://sentencingcommission.alacourt.gov/Publications/SentencingStandards_9.30.2005.pdf (last visited Apr. 13, 2006).
[102] *Id.*
[103] *Id.* at 38.
[104] "Recommended Sentencing: Report and Implementation Update," 11 (Missouri Sentencing Advisory Commission, 2005),

http://www.mosac.mo.gov/Documents/final%20report21June%202005.pdf (last visited Mar. 21, 2006) [hereinafter Missouri Sentencing Report].
[105] Missouri Sentencing Report, *supra* note 123, at 8.
[106] *Id.*
[107] *Id.* at 71.
[108] "Encyclopedia of Every Day Law, Sentencing and Sentencing Guidelines," http://law.enotes.com/everyday-law-encyclopedia/89923 (last visited Feb. 1, 2006).
[109] Telephone conversation with Mr. David Diroll, Executive Director of the Ohio Criminal Sentencing Commission, May 10, 2006 [hereinafter Conversation with Mr. Diroll].
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] Conversation with Mr. Diroll, *supra* note 139.
[115] "Wisconsin Sentencing Guidelines Notes," 2, (Wisconsin Sentencing Commission, 2005), http://wsc.wi.gov/docview.asp?docid=3297 (last visited Apr. 13, 2006) [hereinafter Wisconsin Notes].
[116] Wis. Code § 973.017(10), (2004), http://www.legis.state.wi.us/statutes/Stat0973.pdf (last visited Apr. 13, 2006).
[117] Email from Mike Connelly, Executive Director Wisconsin Sentencing Commission, May 2, 2006.
[118] *Id.* In terms of guideline compliance, Mr. Connelly stated that, "there is no way of telling whether a judge has applied the guidelines correctly, since that process is entirely subjective, and, once they choose a guideline cell…they are encouraged to deviate if necessary, which they do in roughly 25% of the cases."
[119] Dan Fischer, "Comparison of Sentencing Lengths to Recommended Ranges," *in Wisconsin Sentencing Commission, Sentencing in Wisconsin: Snapshots of Information on Wisconsin Sentencing,* (2005): 1, http://wsc.wi.gov/docview.asp?docid=3313 (last visited Feb. 8, 2006).
[120] Brandon Von Feldt, "Sentencing Guidelines Offenses: Summary Statistics on Worksheet Grid Cells," *in Sentencing in Wisconsin: Snapshots of Information on Wisconsin Sentencing,* (2005), http://wsc.wi.gov/docview.asp?docid=5359 (last visited Apr. 13, 2006).
[121] Wool, *supra* note 22, at 5.
[122] Wis. Code § 973.017(10), (2004), http://www.legis.state.wi.us/statutes/Stat0973.pdf (last visited Apr. 13, 2006).

CHAPTER 3: STRUCTURE OF SENTENCING IN MICHIGAN, MINNESOTA, AND VIRGINIA

INTRODUCTION

The purpose of this chapter is to provide a review of the design and operation of the sentencing guidelines in Michigan, Minnesota, and Virginia. The content highlights the judicial decision-making elements incorporated into the statistical analyses covered in later chapters. Using the continuum in Chapter 2 as a guide, the discussion proceeds from the more presumptive system in Minnesota, to the intermediate system in Michigan, to the more voluntary system in Virginia. Each state profile provides specific information on key aspects of the guideline system, including: the rationale and basic design considerations, the information assembled on every convicted offender, how it is brought together through a grid or worksheet, how a judge determines an exact sentence recommendation, and how departure policy and appellate review serve to constrain judicial discretion. The discussion of each guideline system culminates with summary data concerning the number of offenders, incarceration rates, and average prison sentences.

The Summary to this Chapter synthesizes the individual guideline system descriptions by comparing and contrasting all three systems on five characteristics: (1) to how the central elements of offense type and severity and prior record are handled, (2) the manner in which sentences are determined according to the guidelines, (3) sentencing ranges are established, (4) policies guide departures from recommended sentences and appellate review is conducted, and (5) the extent to which time served is credited? Readers might want to scan individual guideline profiles, and then turn to the Summary for helpful cues in understanding what features of each system are of most interest and then return to the individual descriptions in an iterative manner.

MINNESOTA SENTENCING GUIDELINES[11]

Background[12]

In 1978 the Minnesota legislature formed the Minnesota Sentencing Guidelines Commission and charged it with developing sentencing guidelines in response to criticism of disparity resulting from broad judicial discretion under their indeterminate sentencing structure (Frase 2005c). While the resulting guidelines developed were grounded in historical sentencing practices, they were also designed to be sensitive to the capacities of state and local correctional facilities.[13] In the end, the Minnesota guidelines are prescriptive rather than descriptive. Even though prior judicial practices were taken into account, the guidelines are guided by a number of independent decisions about which offenders should go to prison and for how long (Frase 2005c).[14]

On May 1, 1980 the nation's first legislatively mandated sentencing guidelines took effect for felony offenders.[15] The guidelines were created with the goals of assuring public safety, promoting proportionality and uniformity in sentencing, reducing disparity in sentencing, and coordinating sentencing practices with correctional resources (Minnesota Sentencing Guidelines Commission).[16] To ensure that these various goals are being met, the Minnesota

[11] The following narrative is reflective of the guideline structure as of 2002. This is the year of our data set.
[12] For a comprehensive history of the development of the sentencing guidelines see Frase (2005) and Parent (1988).
[13] During the drafting of the guidelines the commission made use of computer-based forecasting models to ensure that state prison populations would not exceed 95 percent of its prison capacity (Frase, 2005).
[14] Minnesota has received national recognition for linking prison capacity to available resources and in limiting the growth of its prisons well below national averages.
[15] The guidelines have changed significantly since their origination. Frase (2005, 153) notes that these changes have come about through a combination of legislative, commission, and judicial decisions. Prominent among the changes have been adjustments to presumptive ranges (e.g., in 1988 and 1989 prison durations were increased for robbery, rape, murder, drug crimes, and other violent and sex crimes), the adoption of a criminal history weighting scheme, an increase in the levels of offense severity from ten to eleven with the addition of felony DWI cases (new level VII), and the flipping of the vertical axis of offense severity in 1996 with the most severe offense now found at the top, rather than the bottom of the grid. For a detailed overview of additional changes, see Frase (2005).
[16] Frase (2005) notes that the legislative and commission goals and principles underlying the guidelines have evolved and grown over time to include: (1) uniformity in the use of state prison sentences; (2) proportionality of prison commitment and duration decisions; (3) the rationality of sentencing decisions and sentencing policy

Sentencing Commission closely monitors and evaluates sentencing practices under the guidelines on an ongoing basis. Modifications to the guidelines are made each year in response to legislative changes, case law, problems identified by the monitoring system, and issues raised by various groups (Minnesota Sentencing Guidelines Commission Web-site, 2004). In addition, the Commission has published numerous reports focused on compliance rates, sentencing disparity (Minnesota Sentencing Commission, 1984), and charging practices (Frase 2005). Finally, the Minnesota sentencing guidelines have been subject to occasional external evaluations (e.g., Miethe and Moore 1985 and Frase 1993).

Sentencing Grid

The Minnesota guidelines employ a single grid based on two dimensions: (1) the severity of the conviction offense (vertical axis), and (2) the extent of the offender's criminal history (horizontal axis). A tabulated score on each dimension is used to place the offender into a particular cell on the grid and determines whether the offender should be sentenced to prison and, if so, for how long. The decision to adopt a two-dimensional grid format was influenced by the existing federal and state parole guidelines and previous experiments with voluntary sentencing guidelines (Frase, 2005 146). The guidelines provide presumptive recommendations for sentences based on typical circumstances. The sentencing guidelines apply to all felonies except first-degree murder and any other offense that carries a statutory life sentence. A copy of Minnesota's sentencing grid is presented as Table 3-1.

formulation; (4) coordination of sentencing policy with available correctional resources; (5) truth in sentencing; (6) public safety; (7) sentencing parsimony; and (8) guidelines simplicity.

Table 3-1: Minnesota's Sentencing Grid

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure. Offenders with nonimprisonment felony sentences are subject to jail time according to law.

SEVERITY LEVEL OF CONVICTION OFFENSE (Common offenses listed in italics)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
Murder, 2nd Degree (intentional murder; drive-by-shootings)	XI	306 *299-313*	326 *319-333*	346 *339-353*	366 *359-373*	386 *379-393*	406 *399-413*	426 *419-433*
Murder, 3rd Degree *Murder, 2nd Degree (unintentional murder)*	X	150 *144-156*	165 *159-171*	180 *174-186*	195 *189-201*	210 *204-216*	225 *219-231*	240 *234-246*
Criminal Sexual Conduct, 1st Degree[2] *Assault, 1st Degree*	IX	86 *81-91*	98 *93-103*	110 *105-115*	122 *117-127*	134 *129-139*	146 *141-151*	158 *153-163*
Aggravated Robbery 1st Degree	VIII	48 *44-52*	58 *54-62*	68 *64-72*	78 *74-82*	88 *84-92*	98 *94-102*	108 *104-112*
Felony DWI	VII	36	42	48	54 51-57	60 57-63	66 63-69	72 69-75
Criminal Sexual Conduct, 2nd Degree (a) & (b)	VI	21	27	33	39 *37-41*	45 *43-47*	51 *49-53*	57 *55-59*
Residential Burglary *Simple Robbery*	V	18	23	28	33 *31-35*	38 *36-40*	43 *41-45*	48 *46-50*
Nonresidential Burglary	IV	12[1]	15	18	21	24 *23-25*	27 *26-28*	30 *29-31*
Theft Crimes (Over $2,500)	III	12[1]	13	15	17	19 *18-20*	21 *20-22*	23 *22-24*
Theft Crimes ($2,500 or less) *Check Forgery ($200-$2,500)*	II	12[1]	12[1]	13	15	17	19	21 *20-22*
Sale of Simulated Controlled Substance	I	12[1]	12[1]	12[1]	13	15	17	19 *18-20*

Presumptive commitment to state imprisonment. First Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence. See section **II.E. Mandatory Sentences** for policy regarding those sentences controlled by law, including minimum periods of supervision for sex offenders released from prison.

Presumptive stayed sentence; at the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in this section of the grid always carry a presumptive commitment to state prison. These offenses include Third Degree Controlled Substance Crimes when the offender has a prior felony drug conviction, Burglary of an Occupied Dwelling when the offender has a prior felony burglary conviction, second and subsequent Criminal Sexual Conduct offenses and offenses carrying a mandatory minimum prison term due to the use of a dangerous weapon (e.g., Second Degree Assault). See sections **II.C. Presumptive Sentence** and **II.E. Mandatory Sentences**.

1 One year and one day

2 Pursuant to M.S.§ 609.342, subd. 2, the presumptive sentence for Criminal Sexual Conduct in the First Degree is a minimum of 144 months (**see II.C. Presumptive Sentence** and **II.G. Convictions for Attempts, Conspiracies, and Other Sentence Modifiers**).

Effective August 1, 2002

Sentencing Mechanics

Offense Severity. Assessment of offense conduct is limited to the severity of the conviction offense. With the exception of select mandatory minimums discussed below, no specific aggravating or mitigating factors (such as harm to victim or multiple victims) are included in the calculation. Eleven levels of offense severity are distinguished, from low (Severity Level I) to high (Severity Level XI). The offenses found within each severity level have been deemed reasonably equivalent in severity by the commission. Table 3-1 shows the 11 offense categories and common offenses included in each level on the vertical axis.

Offender Criminal History. The criminal history index constitutes the horizontal axis of the sentencing grid and is comprised of points based upon:

(a) Prior felony record: An offender is given points for every prior felony conviction for which a felony sentence was stayed or imposed before the current sentencing. The weight assigned is determined according to its severity level. For example, a prior conviction of Theft – over $2,500 (offense severity III) would equate to 1 criminal history point.[17]

Severity Level I – II = ½ point;
Severity Level III – V = 1 point;
Severity Level VI –VIII = 1 ½ point;
Severity Level IX - XI = 2 points; and
Murder 1st Degree = 2 points

(b) Prior misdemeanor and gross misdemeanor record: The offender is assigned one unit for each misdemeanor conviction and for each gross misdemeanor conviction for which a sentence was stayed or imposed before the current sentencing. An offender needs to amass four such prior misdemeanor and gross misdemeanor units to equal one point on the criminal history

[17] When determining the final criminal history score, partial points are rounded down.

score. No offender can receive more than one point for prior misdemeanor or gross misdemeanor convictions.[18]

(c) Custody Status: One criminal history point is assigned if the offender was under some form of criminal justice custody when the offense was committed for which they are now being sentenced.

(d) Prior Juvenile Record: The offender is assigned one unit for every two offenses committed and prosecuted as a juvenile that are felonies under Minnesota law. Two juvenile units equal one point on the criminal history score.

Each offender's Criminal History score is determined by adding the points from each of the above four areas. The total number of points determines which of the seven Criminal History levels is applicable to the offender.

Locating the Presumptive Sentence

Prior to sentencing, a probation officer completes a sentencing guidelines worksheet for each offender that determines the precise grid cell within the guidelines matrix.[19] The guidelines provide sentences that are presumptive with respect to whether the sentence should be executed (disposition) and the length of the sentence (duration). The grid is divided into two sections by a bold solid line. Cells that fall above and/or to the right of the bold line indicate cases for which the presumptive sentence is incarceration in the state prison. The number in the cell is the recommended length of the prison sentence in months. The guidelines also provide a narrow range of months around the presumptive duration that a judge may pronounce and still be in compliance with the guidelines. Offenders are expected to serve a minimum term of

[18] The exception is DWI and Criminal Vehicular Operation (CVO), where there is not limit to the total number of misdemeanor points included in the criminal history score due to DWI or CVO violations.
[19] Beginning in August 2000 the Commission introduced a Web-based application whereby the worksheets are submitted directly into a statewide database that is accessible to criminal justice practitioners.

imprisonment equal to two-thirds of the total executed sentence and a maximum of one third of the total sentence under supervised release.[20] For example, an offender convicted of residential burglary (severity level V) with a criminal history score of 4 would receive a presumptive sentence of incarceration with a recommended length of 38 months in prison, with a range of compliance of 36 to 40 months.

For persons convicted of attempted offenses or conspiracies, the presumptive sentence is determined by locating the Sentencing Guidelines Grid cell of the completed or intended offense and dividing the duration contained therein by two, such sentence shall not be less than one year and one day.

Cells below and/or to the left of the line and within the shaded region carry a presumptive stayed sentence, unless the conviction offense carries a mandatory minimum sentence. The sentence imposed is at the discretion of a judge. Sentences can range from up to a year in jail and/or other non-jail sanctions can be imposed as condition of probation. The length of probation is determined by the judge, but it cannot be longer than the statutory maximum. In addition, a judge may require up to a year of conditional confinement in a local facility (jail or workhouse). Other conditions such as fines, restitution, treatment, house arrest, and so forth may also be imposed (Minnesota Sentencing Guidelines Website).[21]

Proportionality

The hallmark of a proportional sentencing guidelines structure is that different sets of similarly situated offenders should receive different sentences. For true proportionality, the sentencing ranges must be relatively circumscribed and there should be little, if any, overlap

[20] The amount of time the offender actually serves in prison may be extended by the Commissioner of Corrections if the offender violates disciplinary rules while in prison or violates conditions of supervised release. This extension period could result in the offender serving the entire executed sentence in prison (Minnesota Sentencing Guidelines Website). There is no parole board to grant early release from prison.

[21] The guidelines do not specifically address the type of sentence offenders should receive.

between grid cells. The "tighter" the range width, the less overlap there will be in the recommended sentences for different groups of similarly situated offenders. Therefore, it makes sense to pay attention to both the size of the range and degree of overlap.

To assess the size of the range, a measure is developed that takes the size of the range (i.e., Range Maximum – Range Minimum) and divides it by the Midpoint. This number provides a relative indication of discretion within a grid cell. Using the recommended midpoints and ranges from the 2002 grid, this measure of relative range width is displayed in Table 3-2 for all grid cells where the recommended sentence requires an executed prison sentence. As can be seen in Table 3-2, the overall magnitude of the ranges is quite "tight" – in very few cases is the range of total discretion greater than 10%. The clear intent of the Minnesota Sentencing Commission is on the grid cell midpoints as the presumptive sentence; there is little variation available absent a departure.

Table 3-2: Range Size as Percentage of Midpoint – 2002 Grid

	TOTAL HISTORY (6 THRU HI=6)						
Severity	**0**	**1**	**2**	**3**	**4**	**5**	**6**
11	4.6%	4.3%	4.0%	3.8%	3.6%	3.4%	3.3%
10	8.0%	7.3%	6.7%	6.2%	5.7%	5.3%	5.0%
9	11.6%	10.2%	9.1%	8.2%	7.5%	6.8%	6.3%
8	16.7%	13.8%	11.8%	10.3%	9.1%	8.2%	7.4%
7				11.1%	10.0%	9.1%	8.3%
6				10.3%	8.9%	7.8%	7.0%
5				12.1%	10.5%	9.3%	8.3%
4					8.3%	7.4%	10.0%
3					10.5%	9.5%	8.7%
2							9.5%
1							10.5%

The second measure –which is impressionistic in nature – looks at the degree to which identical sentences could be given to offenders in other adjacent grid cells. Looking at Table 3-1, it is clear that for the vast preponderance of grid cells there is either no or minimal overlap. The minimal nature of the overlap arises from the fact that in very few cases can offenders in adjacent grid cells received identical sentences. The only overlap occurs at the endpoints of the range. For example, there are only two grid cells for which a sentence of 31 months is appropriate – lower bound of V/3 and upper bound of IV/6. As will be seen in our discussion of Michigan and Virginia, this is a remarkable state of affairs. There is a relatively high degree of distinctiveness when compared to Michigan and Virginia, which are examined below.

Mandatory Minimums

A number of offenses carry a presumptive prison sentence regardless of where the offender is on the guidelines grid (see Minnesota §609.11 subd. 9). Offenders sentenced under mandatory minimum provisions are always given a prison sentence (at least one year and one day) and the duration is the statutory minimum or the presumptive guidelines sentence, whichever is longer. Offenders are not eligible for probation, parole, discharge, or supervised release until having served the full term of imprisonment.

Factors related to weapons use and second or subsequent offenses may modify the presumptive guidelines sentence:

Weapons: Mandatory minimum sentences apply to three classes of weapons modifiers. For first offenses, using a firearm during the course of a crime (Weapons I) carries a mandatory term of imprisonment of 36 months; possessing a firearm when ineligible to possess a firearm (Weapons II) carries a mandatory minimum of 60 months; and for first offenses using a weapon other than a firearm during the course of a crime (Weapons III) carries a minimum sentence of

one year and one day. Second convictions, or *Subsequent Weapon Offenses*, carry mandatory sentences of 60 months for Weapons I, 60 months for Weapons II, and 36 months for Weapons III.

Subsequent Sexual Offense: If the current and prior offenses are criminal sexual conduct, the minimum sentence is 36 months.

Subsequent Drug Offense: The Minnesota Statutes specify mandatory minimum prison terms for second or subsequent First through Third-degree drug offenses. The sentence is directly related to the degree of the controlled substance offense. First degree offenses carry a commitment to corrections of not less than 48 months, second degree 36 months, third degree 24 months, and fourth and fifth degree carry a mandatory sentence below the pronouncement of the guidelines.

Appellate Review and Departure Policy

Judges are required by the sentencing commission to follow the presumptive recommendations of the guidelines. However, for cases in which substantial and compelling factors exist, a judge may depart from the guidelines recommendation.[22] Written reasons for durational or dispositional departures must be provided. The judge must explain "why the [departure] sentence selected … is more appropriate, reasonable, or equitable than the presumptive sentence" (Reitz 1997, 1482). The state or the defendant has the right to appeal a departure sentence. Sentences where a judge has not departed from the guidelines are not subject to appeal.[23]

[22] Minnesota's guidelines state that the offender's race, gender, and employment status are not legitimate grounds for departure.

[23] The appellate sentence review process in Minnesota has been characterized as placing a high importance on the sentence review function, engaging in policy-based analysis of cases, and contributing to both substantive and procedural law of sentencing (Reitz 1997, 1480). Reitz comments that the "Minnesota appellate courts have undertaken substantive review of departure decision and other discretionary actions by sentencing courts with an attitude of moderate or mixed deference toward trial court judgments" (Reitz 1997, 1481).

In 2002, 85.7% of the 12,978 felony offenders sentenced received the "dispositional" sentence recommended under the guidelines; 4.1% of those who were recommend for an stayed prison sentence had their sentence executed while 10.2% of those who were recommended for an executed sentence were stayed. In terms of durational departures, only 61.4% of the offenders who received a prison sentence were sentenced within the recommended range; 9% received a sentence above the recommended range and 29.6% received a prison sentence below the recommended range. Given the "tightness" of the ranges noted earlier, Minnesota judges demonstrate limited reluctance to sentencing outside the recommended ranges.

Dispositional and durational departure rates in Minnesota between 1981 and 2002 are shown in Table 3-3. During these years the overall dispositional departure rate has increased largely due to increases in downward (mitigating) dispositional departures. Similarly, the durational departure rate has increased mainly due to increases in downward durational departures (Minnesota Sentencing Guidelines Commission, March 2004).[24] These trends, along with the associated magnitudes, indicate no stigma is attached to departing in the Minnesota guidelines system. While the majority of offenders receive a sentence in the recommended range, nearly 40% do not.

[24] The largest increases to the downward (mitigating) durational departure rate corresponds with period following the 1989 changes to sentencing policy (Minnesota Sentencing Commission, March 2004).

Table 3-3: Dispositional and Durational Departure Rates: 1981-2002

	guidelines recommendation			% of Executed Sentences		
Year	Aggravated Dispositional Departure	Mitigated Dispositional Departure	Overall Dispositional Departure	Aggravated Durational Departure	Mitigating Durational Departure	Overall Durational Departure
1981	3.1	3.1	6.2	7.9	15.7	23.6
1982	3.4	3.6	7.0	6.6	13.8	20.4
1983	4.5	4.4	8.9	6.0	16.9	22.9
1984	4.0	6.3	10.2	8.7	13.0	21.7
1985	3.4	7.4	10.8	5.2	14.2	19.4
1986	4.1	6.3	10.4	5.2	14.0	19.1
1987	4.5	6.3	10.7	7.1	13.7	20.8
1988	3.5	6.9	10.4	7.4	13.9	21.2
1989	3.6	6.9	10.5	6.8	17.9	24.7
1990	2.9	8.2	11.2	8.7	20.4	29.1
1991	2.9	8.6	11.5	9.9	21.0	30.9
1992	2.7	8.4	11.2	8.6	19.9	28.5
1993	3.3	9.0	12.3	8.6	20.6	29.2
1994	3.2	9.1	12.4	10.5	19.9	30.4
1995	3.7	8.8	12.6	10.6	21.3	31.8
1996	4.3	9.0	13.3	11.7	20.8	32.5
1997	4.0	9.8	13.8	10.6	26.4	36.9
1998	5.0	8.4	13.4	10.4	24.8	35.2
1999	4.7	8.2	12.9	11.6	25.5	37.1
2000	4.0	8.2	12.2	11.9	27.9	39.8
2001	3.8	9.8	13.7	11.3	29.6	40.9
2002	4.1	10.2	14.3	9.0	29.6	38.6

Note: Aggravated dispostional departures occur when the guidelines recommend a stayed sentence and the judge decides to send the offender to prison. Mitagating dispositional departures occur when the guidelines recommend prison and the judge imposes inte

Empirical Overview--2002

This brief overview of the Minnesota sentencing guidelines – circa 2002 – provides an introduction to the key parts of the guideline system. As a conclusion, it also makes sense to look at a few descriptive statistics relating to the Minnesota Guidelines.

Table 3-4 presents the distribution of offenders across the guidelines for 2002. As can be seen the distribution across the 11 severity levels is quite uneven. Less than 10% of all 2002 offenders fall into Levels VIII-XI. Over one-third of all offenders fall into Severity Level II.

With respect to the Criminal History dimension, 43% of all offenders fall into the lowest category (less than 1 prior history point). The most frequently occurring grid cell is Severity Level II, Criminal History 0 with 14% of all offenders falling into that category.

Table 3-4: Minnesota's Sentencing Grid – 2002 Data

	TOTAL HISTORY (6 THRU HI=6)								
Severity	**0**	**1**	**2**	**3**	**4**	**5**	**6**	**Total**	**Percent**
11	0	2	2	1	1	0	1	7	0.1%
10	12	3	3	2	0	1	4	25	0.2%
9	14	2	3	1	0	0	1	21	0.2%
8	342	104	92	56	33	26	35	688	5.3%
7	350	141	80	80	35	34	54	774	6.0%
6	631	278	225	130	106	59	88	1,517	11.7%
5	320	134	71	41	33	19	45	663	5.1%
4	910	343	276	188	148	86	134	2,085	16.1%
3	777	283	240	145	111	87	184	1,827	14.1%
2	1,833	694	591	408	333	205	371	4,435	34.2%
1	430	130	115	91	66	39	65	936	7.2%
Total	**5,619**	**2,114**	**1,698**	**1,143**	**866**	**556**	**982**	**12,978**	**100.0%**
Percent	**43.3%**	**16.3%**	**13.1%**	**8.8%**	**6.7%**	**4.3%**	**7.6%**	**100.0%**	

Table 3-5 presents the average incarceration rate for each grid cell using 2002 data. As can be seen, the percentages for the top four levels correspond nicely with the universal recommendation for an executed prison sentence. These rates stand in marked contrast with those found in level VIII where only 71% of the offenders receive an executed prison sentence. In Level VII the imprisonment rate is similar even though three of the seven grid cells recommend a stayed sentence. All in all, there is a great deal of consistency in spite of some cell-by-cell anomalies.

Table 3-5: Percent with Executed Prison Sentence – 2002 Data

	TOTAL HISTORY (6 THRU HI=6)							
Severity	**0**	**1**	**2**	**3**	**4**	**5**	**6**	**Total**
11		100.0%	100.0%	100.0%	100.0%		100.0%	100.0%
10	100.0%	100.0%	100.0%	100.0%		100.0%	100.0%	100.0%
9	100.0%	100.0%	100.0%	100.0%			100.0%	100.0%
8	62.6%	67.3%	80.4%	85.7%	78.8%	92.3%	97.1%	71.2%
7	45.1%	67.4%	80.0%	78.8%	77.1%	85.3%	88.9%	62.5%
6	10.6%	20.5%	36.4%	67.7%	69.8%	76.3%	83.0%	32.0%
5	2.2%	9.0%	16.9%	61.0%	63.6%	89.5%	84.4%	19.9%
4	1.4%	4.7%	16.3%	19.7%	62.2%	75.6%	80.6%	18.0%
3	0.4%	4.2%	9.2%	15.9%	68.5%	72.4%	82.6%	19.2%
2	2.3%	4.9%	10.0%	13.5%	16.8%	23.4%	72.2%	12.7%
1	1.2%	5.4%	10.4%	20.9%	31.8%	23.1%	76.9%	13.1%
Total	9.5%	14.7%	22.3%	31.7%	45.5%	54.1%	79.1%	23.6%

Table 3-6 presents the average prison sentence for each of the Minnesota grid cells. The top three severity levels have rather large averages while the average for Level VIII is approximately 8 years. On the whole, the remaining average sentences look very similar to the recommended ranges in Table 3-1.

Table 3-6: Average Prison Sentence – 2002 Data

	TOTAL HISTORY (6 THRU HI=6)							
Severity	**0**	**1**	**2**	**3**	**4**	**5**	**6**	**Average**
11		212.0	218.0	176.0	240.0		180.0	208.0
10	271.3	273.7	315.3			153.0	295.5	273.9
9	163.4	165.0	148.0	168.0			336.3	169.8
8	82.1	80.8	96.8	99.0	105.8	112.1	174.7	95.0
7	46.5	50.8	56.1	64.2	76.8	81.1	107.6	60.7
6	31.1	37.9	38.7	37.8	40.4	43.0	51.4	40.0
5	18.4	28.3	28.8	31.8	33.0	34.1	44.3	34.6
4	12.0	15.2	17.2	21.1	22.7	25.0	29.6	23.6
3	12.0	12.8	14.3	16.6	17.3	17.5	22.1	19.0
2	16.5	13.8	13.7	15.7	15.0	16.9	20.0	17.5
1	25.6	12.0	12.5	15.4	14.0	16.1	17.8	16.1
Average	63.0	50.0	48.0	44.6	33.7	37.8	40.0	45.5

MICHIGAN'S SENTENCING GUIDELINES

Background

The first comprehensive investigation of criminal sentencing in Michigan was completed in 1979 (Zalman & Ostrom et al, 1979). The principle finding of the study was considerable inconsistency as well as indications of racial discrimination. In response, the Michigan Supreme Court developed an advisory guideline system that was put in place by administrative order in 1986. With broad acceptance by the judiciary of the guideline system, the legislature formed a sentencing commission in the mid 1990s. The Michigan Sentencing Guidelines were promulgated as Public Act 317 in January of 1999.[25]

The Michigan guidelines were established within an indeterminate sentencing system and a fully functioning parole board. Therefore, the guidelines provide guidance about the recommended minimum sentence.[26] The parole board retains control over the actual release date of the offenders. Under the Michigan Truth-in-Sentencing statute, an offender must serve 100% of the judicially-imposed minimum sentence. Hence, Michigan uses presumptive sentencing under an indeterminate system. The guidelines in Michigan have three explicit goals: (1) increase consistency in sentencing so that similarly situated offenders receive similar sentences; (2) eliminate discrimination in sentencing outcomes; and (3) provide a platform for forecasting the number of offenders that will be coming into prison each year. It was anticipated that the Michigan Sentencing Commission would make changes to "fine tune" the guidelines on a regular basis. However, the Commission never met after the guidelines were implemented (1999) and was ultimately dissolved the following year (2000).

[25] The guidelines apply to offenses committed after January 1, 1999.
[26] The guidelines apply to felony offenses that carry an indeterminate sentence and the judge retains the discretion in imposing the sentence. The guidelines do not apply to offenses carrying a mandatory determinate penalty or a mandatory life imprisonment.

Sentencing Grid

The Michigan guidelines explicitly incorporate three dimensions into the grid that is used to evaluate convicted offenders: offense class, prior criminal record, and offender conduct. The Michigan grid is presented in Table 3-7. The shaded cells are referred to as "straddle" grid cells in the Michigan guidelines system.

Table 3-7: Michigan Sentencing Guidelines

Murder	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
2nd	I	90-150	144-240	162-270	180-300	225-375	270-450
	II	144-240	162-270	180-300	225-375	270-450	315-525
	III	162-270	180-300	225-375	270-450	315-525	365-600

A	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	21-35	27-45	42-70	51-85	81-135	108-180
	II	27-45	42-70	51-85	81-135	108-180	126-210
	III	42-70	51-85	81-135	108-180	126-210	135-225
	IV	51-85	81-135	108-180	126-210	135-225	171-285
	V	81-135	108-180	126-210	135-225	171-285	225-375
	VI	108-180	126-210	135-225	171-285	225-375	270-450

B	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0-18	12-20	24-40	36-60	51-85	72-120
	II	12-20	15-25	30-50	51-85	72-120	78-130
	III	15-25	21-35	36-60	57-95	78-130	84-140
	IV	21-35	24-40	45-75	72-120	84-140	87-145
	V	24-40	36-60	51-85	78-130	87-145	99-160
	VI	36-60	45-75	57-95	84-140	99-160	117-160

C	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0-11	0-17	10-19	12-24	19-38	29-57
	II	0-17	5-17	12-24	19-38	29-57	36-71
	III	10-19	12-24	19-38	29-57	36-71	43-86
	IV	12-24	19-38	29-57	36-71	43-86	50-100
	V	19-38	29-57	36-71	43-86	50-100	58-114
	VI	29-57	36-71	43-86	50-100	58-114	62-114

D	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0-6	0-9	0-11	0-17	5-23	10-23
	II	0-9	0-11	0-17	5-23	10-23	19-38
	III	0-11	0-17	5-23	10-23	19-38	29-57
	IV	0-17	5-23	10-23	19-38	29-57	34-67
	V	5-23	10-23	19-38	29-57	34-67	38-76
	VI	10-23	19-38	29-57	34-67	38-76	43-76

E	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0-3	0-6	0-9	5-23	7-23	9-23
	II	0-6	0-9	0-11	7-23	10-23	12-24
	III	0-9	0-11	0-17	10-23	12-24	14-29
	IV	0-11	0-17	5-23	12-24	14-29	19-38
	V	0-14	5-23	7-23	14-29	19-38	22-38
	VI	0-17	7-23	12-24	19-38	22-38	24-38

F	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0-3	0-6	0-9	2-17	5-23	10-23
	II	0-6	0-9	0-17	5-23	10-23	12-24
	III	0-9	0-17	2-17	10-23	12-24	14-29
	IV	0-17	2-17	5-23	12-24	14-29	17-30

G	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0-3	0-6	0-9	0-11	0-17	2-17
	II	0-6	0-9	0-11	0-17	2-17	5-23
	III	0-9	0-11	0-17	2-17	5-23	7-23

H	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0-1	0-3	0-6	0-9	0-11	0-17
	II	0-3	0-6	0-9	0-11	0-17	2-17
	III	0-6	0-9	0-11	0-17	2-17	5-17

Sentencing Mechanics

The seriousness of the offender's conviction offense is assessed via the placement of all guideline offenses into nine crime classes (i.e., Murder 2nd, A through H). An offense's crime class corresponds roughly to a maximum term of imprisonment for all offenses in the same class:

- Murder 2nd
- Class A – imprisonment for life or any term of years
- Class B – imprisonment for up to 20 years
- Class C – imprisonment for up to 15 years
- Class D – imprisonment for up to 10 years
- Class E – imprisonment for up to 5 years
- Class F – imprisonment for up to 4 years
- Class G – imprisonment for up to 2 years
- Class H – jail or any other intermediate sanction

There is a separate sentencing "sub-grid" for each crime class, as shown in Table 3-7. Differentiating all guideline offenses into a discrete set of crime classifications is similar to other guideline systems, including Minnesota and Virginia. A difference is that Minnesota arrays all crime classifications on the vertical axis of a single grid, while Michigan and Virginia use separate grids (worksheets) for each crime class. Using distinct grids or worksheets for each offense category allows for greater fine-tuning by incorporating specific relevant offense conduct and prior criminal activity.

Prior record. In Michigan, each crime class has a separate grid with prior record along the horizontal axis and factors related to offense conduct on the vertical axis. The extensiveness of the offender's criminal history is evaluated by reference to the seven prior record variables displayed in Table 3-8. The Michigan guidelines distinguish between high and low severity felonies and juvenile adjudications. They also consider prior misdemeanor convictions and the offender's relationship to the criminal justice system (e.g., on probation, parole). The seventh prior record variable is where the Michigan system diverges from other state guideline systems.

This variable focuses on subsequent and concurrent felony behavior and is similar to the federal sentencing system's inclusion of an offender's "relevant conduct." Prior record variable seven can include alleged criminal violations that go beyond the charge of conviction. All offenders, regardless of crime class, are evaluated using the same set of prior record factors. Scores on each of the seven prior record variables are summed and the offender is placed into one of six prior record levels (A through F). The threshold values for the prior record levels are also presented in Table 3-8. Note Prior Record Level A is reserved for offenders receiving no points for prior record and that no offender with a prior high severity conviction can be in Level B.

Table 3-8: Prior Record Variables – Michigan Sentencing Guidelines

PRV 1	**Prior High Severity Convictions**	
	75	3 or more prior high severity convictions
	50	2 prior high severity convictions
	25	1 prior high severity conviction
	0	no prior high severity convictions
PRV 2	**Prior Low Severity Convictions**	
	30	4 or more prior low severity convictions
	20	3 prior low severity convictions
	10	2 prior low severity convictions
	5	1 prior low severity conviction
	0	no prior low severity convictions
PRV 3	**Prior High Severity Juvenile Adjudications**	
	50	3 or more high severity juvenile adjudications
	25	2 high severity juvenile adjudications
	10	1 high severity juvenile adjudications
	0	no high severity juvenile adjudications
PRV 4	**Prior Low Severity Juvenile Adjudications**	
	20	6 or more low severity juvenile adjudications
	15	5 low severity juvenile adjudications
	10	3-4 low severity juvenile adjudications
	5	2 low severity juvenile adjudications
	2	1 low severity juvenile adjudications
	0	no low severity juvenile adjudications
PRV 5	**Prior Misdemeanor Convictions and Prior Misdemeanor Juvenile Adjudications**	
	20	7 or more prior misdemeanor/juvenile adjudications
	15	5 or 6 prior misdemeanor/juvenile adjudications
	10	3 or 4 prior misdemeanor/juvenile adjudications
	5	1 or 2 prior misdemeanor/juvenile adjudications
	0	no prior misdemeanor/juvenile adjudications
PRV 6	**Offender's relationship to the criminal justice system**	
	20	offender is serving a sentence prison or jail
	15	offender is incarcerated awaiting adjudication
	10	offender is on parole, probation, delayed sentencing
	5	offender is on probation for a misdemeanor
	0	no relationship to criminal justice system
PRV 7	**Subsequent or Concurrent Felony Convictions**	
	20	2 or more subsequent or concurrent convictions
	10	1 subsequent or concurrent felony conviction
	0	no subsequent or concurrent convictions
PRV Levels		
	A	0 points
	B	1-9 points
	C	10-24 points
	D	25-49 points
	E	50-74 points
	F	75+ points

Offense conduct. The Michigan guidelines assess the seriousness of the specific offense through an evaluation of up to 20 offense variables. The definition of each offense factor and the associated point values is shown in Table 3-9.

Table 3-9: Offense Seriousness Variables – Michigan Sentencing Guidelines

OV 1 Aggravated use of a weapon	**OV 12 Contemporaneous felonious criminal acts**
25 firearm discharged	**25** 3+ contemporaneous acts -- crimes against person
20 victim exposed to harmful biological substance	**10** 2+ person acts/3+ other acts
15 firearm pointed at or toward victim	**5** 1 person act / 2 other acts
10 victim touched by any other type of weapon	**1** one contemporaneous acts
5 weapon displayed or implied	**0** no contemporaneous acts
0 no aggravated use of a weapon	
	Continuing pattern of criminal behavior
	OV 13 (does not require conviction)
OV 2 Lethal potential of weapon possessed/used	**50** 3+ sexual penetrations
15 possessed or used harmful biological agent, incendiary device	**25** 3+ crimes against person
10 possessed or used a short-barrell rifle or shotgun	**10** combination of 3 person/other; gang-related
5 possessed or used a pistol, rifle, shotgun, or knife	**5** 3+ property offenses
1 possessed or used any other potentially lethal weapon	**0** no continuing pattern
0 possessed or used no weapon	
	OV 14 Offender's role
OV 3 Physical Injury to Victim	**10** leader in a multiple offender situation
100 a victim killed & homicide is not the sentencing offense	**0** not a leader in a multiple offender situation
50 a victim is killed	
25 life threatening or permanent incapacitating injury	**OV 15 Aggravated controlled substance offenses**
10 bodily injury requiring medical treatment	**100** manufacture/delivery 1,000+ grams schedule 1,2
5 bodily injury not requiring medical treatment	**75** manufacture/delivery 450-1000 grams schedule 1,2
0 no physical injury	**50** manufacture/delivery 50-450 grams schedule 1,2
	25 sale or delivery of con. Sub. Other than marijuana
OV 4 Psychological injury to victim	**10** sale or delivery of 45 kilos marijuana
10 serious psychological injury requiring professional treatment	**5** intent to deliver in amounts indicating trafficking
0 no serious psychological injury requiring professional treatment	**0** none of the above
OV 5 Psychological injury sustained by a member of victim's Family	**OV 16 Property obtained, damaged, lost, or destroyed**
10 serious psychological injury requiring professional treatment	**10** damage > $20,00; wanton or malicious damage
0 no serious psychological injury requiring professional treatment	**5** damage 1,000-20,000
	1 damage 200-1,000
OV 6 Intent to kill or injure another individual	**0** danage less than $200
50 premeditated intent to kill	
25 unpremeditated intent to kill	**OV 17 Degree of negligence involved**
10 intent to injure or extreme emotion	**10** offender shows wanton or reckless disregard
0 no intent to kill	**5** fails to show degree of care of a prudent person
	0 offender not negligent
OV 7 Aggravated Physical abuse	
50 victim treated with sadism, torture, excess brutality	**OV 18 Operator ability affected by alcohol or drugs**
0 no aggravated physical abuse	**20** body alcohol > .20
	15 body alcohol between .15 and .20
OV 8 Victim asportation or captivity	**10** body alcohol between .08 and .15
15 victim aspoted to place of greater danger or held captive	**5** visible impairment
0 no victim was asported or held captive	**0** not impaired
OV 9 Number of victims	**OV 19 Threat to the security of a penal institution**
100 multiple deaths	**25** threatened security of court or penal institution
25 10+ victims	**15** threats or force to interfere with police or fire
10 2-9 victims	**10** interfere with adminstration of justice
0 fewer than 2 victims	**0** did not threaten security
OV 10 Exploitation of a vulnerable victim	**OV 20 Terrorism**
15 predatory conduct was involved	**100** terrorism act or threat w/ biological, chemical, bomb
10 exploited victim's physical/mental disability, youth, agedness	**50** terrorism without the above
5 exploited victim by difference in size or strength	**25** support an act of terrorism or terrorist organization
0 no exploitation	**0** no applicable
OV 11 Criminal sexual penetration	
50 two or more criminal sexual penetrations	
25 one criminal sexual penetrations	
0 no criminal sexual penetrations	

Not all offense seriousness variables are evaluated for each offense.[27] The crime group designation of the conviction offense determines which offense variables are germane. The set of all guideline offenses is divided into six crime groups (Property, Person, Controlled Substance, Public Safety, Public Order, and Public Trust). For example, a felonious assault is a *Person* crime in Class F, while assault with intent to do great bodily harm is a *Person* crime in Class A (an attempted assault to do great bodily harm is in Class E). The primary impact of these six crime groups is that they determine which of the twenty possible offense seriousness variables will be evaluated for that offender.

Table 3-10: Crime Group Determination of Relevant Offense Factors

	Crime Group						
Offense Factors	Person	Property	Controlled Substance	Public Safety	Public Order	Public Trust	# Times factor used
Aggravated Use of Firearm	X	X	X	X	X	X	6
Lethal potential of weapon possessed/used	X	X	X				3
Physical Injury to Victim	X	X	X	X	X	X	6
Psychological Injury to Victim	X	X		X	X	X	5
Psychological Injury Sustained by Member of Victims Family							0
Intent to Kill or Injure Another Individual							0
Aggravated Physical Abuse	X						1
Victim Asportation or Captivity	X						1
Number of Victims	X	X		X	X	X	5
Exploitation of Vulnerable Victim	X	X		X	X	X	5
Criminal Sexual Penetration	X						1
Contemporaneous Felonious Criminal Acts	X	X	X	X	X	X	6
Continuing Pattern of Criminal Behavior	X	X	X	X	X	X	6
Offender's Role	X	X	X	X	X	X	6
Aggravated Controlled Substance Offenses			X				1
Property Obtained, Damaged, Lost, or Destroyed	X	X		X	X	X	5
Degree of Negligence Involved							0
Operator Ability Affected by Alcohol or Drugs							0
Threat to the Security of a Penal Institution	X	X	X	X	X	X	6
Terrorism	X	X	X	X	X	X	6
Total Factors on Worksheet	15	12	9	11	11	11	

[27] The intent to kill or injure only is scored when a victim dies. Also, the sexual penetration variable is only scored if sexual penetration is not one of the elements of the conviction offense.

Once the offense variables are scored and summed, the offense severity level is determined through reference to the threshold values in Table 3-11. The number of offense seriousness levels varies from 3 to 4 to 6 depending upon the classification of the conviction offense.

Table 3-11: Offense Seriousness Levels

Crime Class Murder 2nd	
I	0-49
II	50-99
III	100+
Crime Class A	
I	0-19
II	20-39
III	40-59
IV	60-79
V	80-99
VI	100+
Crime Classes B, C, D, and E	
I	0-9
II	10-24
III	25-34
IV	35-49
V	50-74
VI	75+
Crime Class F	
I	0-9
II	10-34
III	55-74
IV	35-49
Crime Classes G and H	
I	0-9
II	10-15
III	16+

Locating the Sentence Recommendation

Michigan employs nine separate sentencing grids, one for each crime class. Five of the grids are 6x6, three are 3x6, and one is 4x6. Together these individual grids provide 258 individual grid cells identifying classes of similarly situated offenders.[28] The recommended sentences for each of the grid cells are presented in Table 3-7.

As can be seen, each of the 258 grid cells contains a sentence range (including a minimum and a maximum).[29] There is no explicit single sentence recommendation (i.e., midpoint) such as used in Minnesota and Virginia. The grid cell also provides a judge with information on the recommended "location" of the sanction. There are three possible types of location information contained within a given cell. First, if the maximum of the cell range is less than or equal to 18 months, the presumption is that a judge will sentence the offender to a locally administered set of sanctions (referred to as a *Lockout* type of grid cell). Second, if the minimum of the grid cell range is greater than 12 months, the presumption is that a judge will sentence the offender to the state prison (referred to as a *Prison* type of grid cell). Finally, if the minimum of the grid cell is 12 months or less and the maximum is greater than 18 months, there is no presumptive sentence (referred to as a *Straddle* type grid cells).

As a consequence of the Straddle Cells, Michigan's guidelines do not have a "bright line" separating non-prison and prison recommendations. As can be seen in Table 3-7, there are in excess of 40 Straddle Cells in the guidelines.[30] This is noteworthy because these cells give a sentencing judge total control over the location of the sentence. During their deliberations, the

[28] Compare this to the 77 grid cells in Minnesota and North Carolina.
[29] Since the guidelines only apply to the minimum sentence, the guideline range provides the judge with a range of recommended minimum sentences.
[30] This is approximately 17% of all grid cells; in 2004 approximately 23% of all offenders fell into a Straddle Cell.

Michigan Sentencing Commission (MSC) expressed the belief these grid cells would likely be a 50/50 split of prison/no prison.

Habitual Offender

The recommended sentence ranges are affected by application of the state's habitual offender law. The impact of the habitual offender enhancement occurs in the maximum of the recommended sentence range in each cell. If the offender is convicted of Habitual 2nd, the cell maximum is enhanced by 25%; it is enhanced by 50% and 100% for Habitual 3rd and 4th respectively. The application of the habitual offender increment also can create additional straddle cells.[31] The Habitual Offender modifier works in the opposite direction of the Conspiracy/Attempt modifiers in Minnesota. The former increase the acceptable sentences while the latter reduce them.

Proportionality

The MSC chose to preserve considerable judicial discretion within the Michigan sentencing guidelines and kept the sentence recommendations tied to past practice. The sentence ranges in each grid cell represent the range within which approximately 75% of all prison sentences fell in 1995. In this way, the extreme sentences were trimmed and the majority of current practice remained unchanged. There was no attempt on the part of the MSC to change sentencing practice with the guidelines; rather the intent was to minimize the exceptional outliers. When compared to the Minnesota guidelines, the Michigan guidelines are more descriptive than prescriptive.

As noted previously, the Michigan guidelines do not calculate and present a grid cell midpoint. However, to make the relevant comparisons, the midpoint for each range is calculated.

[31] Consider the E grid cell IV B; this is a Lockout type grid cell with a recommended range of 0-17. If the offender is also convicted of Habitual 2nd the new guideline range is 0-21 thus creating a Straddle type grid cell.

Using these midpoints, it is possible to calculate the width of the range as a percentage of the implicit midpoint. There are only four grid cells where the width of the range is below 50% as is shown in Table 3-12 for all Straddle and Prison grid cells. The vast majority are in the range of 50%-70%, with the range size much higher in the Straddle Cells. Comparing these results to those from Minnesota, the relative magnitude of the ranges is five to six times greater than those in Minnesota.

Turning to the degree of overlap, the increase in the magnitude of the recommended ranges translates into considerably more overlap. As a case in point consider the Straddle and Prison grid cells from Class E Offenses. There are 23 such cells with recommended sentences ranging from 5 to 38 months. As can be seen, a sentence of 23 months is within 22 of the 23 recommended ranges while 19 and 20 month sentences are in 20 of the 23 ranges. These results stand in marked contrast to those from Minnesota – a Class E offender in Michigan can receive a 23 month sentence no matter what is the prior record or offense severity without necessitating a departure.

Table 3-12: Range Width as Percentage of "Implicit" Midpoint

Murder	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
2nd	I	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%
	II	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%
	III	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%

A	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%
	II	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%
	III	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%
	IV	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%
	V	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%
	VI	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%

B	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I		50%	50%	50%	50%	50%
	II	50%	50%	50%	50%	50%	50%
	III	50%	50%	50%	50%	50%	50%
	IV	50%	50%	50%	50%	50%	50%
	V	50%	50%	50%	50%	50%	47%
	VI	50%	50%	50%	50%	47%	31%

C	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I			62%	67%	67%	65%
	II			67%	67%	65%	65%
	III	62%	67%	67%	65%	65%	67%
	IV	67%	67%	65%	65%	67%	67%
	V	67%	65%	65%	67%	67%	65%
	VI	65%	65%	67%	67%	65%	59%

D	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I					129%	79%
	II				129%	79%	67%
	III			129%	79%	67%	65%
	IV		129%	79%	67%	65%	65%
	V	129%	79%	79%	65%	65%	67%
	VI	79%	67%	67%	65%	67%	55%

E	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I				129%	107%	88%
	II				107%	79%	67%
	III				79%	67%	70%
	IV			129%	67%	70%	67%
	V		129%	107%	70%	67%	53%
	VI		107%	67%	67%	53%	45%

F	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I					129%	79%
	II				129%	79%	67%
	III				79%	67%	70%
	IV			129%	67%	70%	55%

G	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I						
	II						129%
	III					129%	107%

H	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I						
	II						
	III						

Departure Policy and Appellate Review

If the imposed sentence is within the appropriate guidelines sentence range, the sentence is not subject to appellate review unless there is an error in scoring the guidelines or inaccurate information relied upon in determining the defendant's sentence. According to the enabling legislation, a judge may depart from a guidelines sentence range where there are "substantial and compelling" reasons to do so. The statute forbids the use of factors such as race, gender, or ethnicity. In addition, a departure cannot be based upon an offense or offender characteristic already used to determine the appropriate sentence range. If, upon a review of the record, the Michigan Court of Appeals finds the sentencing judge did not have a substantial and compelling reason for departing from the guideline sentence range, the sentence is remanded to the trial court for re-sentencing. For all departures, the court must state on the record the reasons for the departure. The defendant has the right to appeal upward departures.

Unlike Minnesota and Virginia, Michigan does not have a functioning sentencing commission. Consequently, there is no body monitoring guideline activity/compliance or issuing statistical reports. Historically, the departure rate for Michigan's guidelines has been rather low; not surprising given the large bandwidth and cell overlap. Table 3-13 presents the departure rates for 2004 by crime classification. As can be seen, the compliance rate for Murder 2nd , Class A, and Class B is very much like Minnesota – the compliance rate is close to 60% with a very large percentage of downward departures. Given the wide bandwidth, this level of downward departure sends a message that Michigan judges believe that the recommended sentences are too high. The compliance rate for the remaining crime classes is much higher.

Table 3-13: Departure Rates by Crime Classification -- 2004

Crime Class	Departure Profile 2004		
	Depart Below	Compliance	Depart Above
M2	34.6%	57.7%	7.7%
A	39.9%	55.6%	4.4%
B	40.1%	56.4%	3.4%
C	15.5%	81.7%	2.8%
D	3.6%	94.5%	1.8%
E	0.6%	98.2%	1.2%
F	0.4%	98.8%	0.8%
G	0.0%	99.4%	0.6%
H	0.0%	99.1%	0.9%

Basic Descriptive Statistics – 2004

Table 3-14 presents the number of offenders that fell into each of the 258 grid cells during 2004. As can be seen, there are relatively few offenders in the top three classifications. Nearly one-third of all offenders are in Crime Class E. It is also clear that 60% of all offenders are in Offense seriousness levels I or II.

Table 3-14: Number of Offenders by Grid Cell -- 2004

Murder 2nd	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)	Total
	I	4	1	3	3	2	0	13
	II	10	6	10	8	2	1	37
	III	5	4	7	4	1	6	27
	Total	19	11	20	15	5	7	77

A	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)	Total
	I	22	13	24	17	7	9	92
	II	34	35	42	33	18	15	177
	III	21	13	26	24	11	13	108
	IV	23	5	21	16	16	8	89
	V	7	6	9	9	5	6	42
	VI	20	5	22	17	14	7	85
	Total	127	77	144	116	71	58	593

B	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)	Total
	I	64	44	39	31	22	7	207
	II	58	29	48	48	28	23	234
	III	20	13	20	16	6	13	88
	IV	17	15	32	19	8	5	96
	V	35	19	41	29	16	11	151
	VI	17	12	15	6	8	1	59
	Total	211	132	195	149	88	60	835

C	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)	Total
	I	139	102	103	64	41	33	482
	II	130	66	105	80	46	48	475
	III	32	26	37	34	22	22	173
	IV	71	26	40	41	13	18	209
	V	53	19	20	31	12	8	143
	VI	10	12	29	16	5	4	76
	Total	435	251	334	266	139	133	1,558

D	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)	Total
	I	342	282	397	418	192	177	1,808
	II	191	125	213	254	126	132	1,041
	III	32	27	46	46	33	33	217
	IV	39	31	41	37	22	18	188
	V	38	23	36	43	14	13	167
	VI	15	16	14	19	10	2	76
	Total	657	504	747	817	397	375	3,497

E	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)	Total
	I	1,743	971	1,275	875	396	257	5,517
	II	690	739	1,152	865	436	271	4,153
	III	122	111	200	144	123	99	799
	IV	70	47	70	70	47	35	339
	V	54	28	41	34	16	10	183
	VI	24	7	24	8	2	2	67
	Total	2,703	1,903	2,762	1,996	1,020	674	11,058

F	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)	Total
	I	535	364	435	284	97	62	1,777
	II	351	228	310	236	109	56	1,290
	III	92	63	101	80	50	40	426
	IV	23	9	10	12	5	2	61
	Total	1,001	664	856	612	261	160	3,554

G	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)	Total
	I	1,120	767	1,008	802	425	273	4,395
	II	208	185	316	280	172	102	1,263
	III	294	170	246	265	123	90	1,188
	Total	1,622	1,122	1,570	1,347	720	465	6,846

In 2004, 17% of Michigan offenders convicted of a felony that fell under the auspices of sentencing guidelines received a prison sentence.[32] The imprisonment rate for each grid cell reveals two interesting patterns, as shown in Table 3-15. First, as expected, the imprisonment rate for the Prison grid cells is uniformly quite high (over 80%) while that for the Lockout grid cells is very low (less than 5%). Second, there is "confusion" about the in/out directions for Straddle Cells. The imprisonment rates range from 10%-63% with an average of 35%. Again, if the MSC were in existence and reviewing these data, the number of Straddle cells would likely be reduced in number.

[32] It is important to remember that Michigan's guidelines only cover 70% of those sentenced in a given year. The Commission exempted probation violations from the guidelines with the promise to address them after the guidelines were implemented. The Commission never met again and hence these offenders are not covered by guidelines. In addition, there are many offenses that have been added since 1999 and are not covered by the guidelines.

Table 3-15: Percent to Prison by Grid Cell -- 2004

A	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.727	0.769	0.917	0.941	1.000	1.000
	II	0.941	0.857	0.952	1.000	1.000	1.000
	III	0.905	0.769	0.923	1.000	1.000	1.000
	IV	1.000	1.000	0.952	1.000	1.000	1.000
	V	1.000	1.000	0.889	0.889	1.000	1.000
	VI	1.000	0.600	1.000	1.000	1.000	1.000

B	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.094	0.068	0.513	0.806	0.955	1.000
	II	0.224	0.586	0.646	0.938	0.964	1.000
	III	0.450	0.615	0.850	1.000	0.833	1.000
	IV	0.882	0.933	0.844	1.000	1.000	1.000
	V	0.743	0.737	0.951	0.966	0.938	0.909
	VI	0.824	0.833	0.800	1.000	1.000	1.000

C	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.050	0.020	0.117	0.375	0.780	0.909
	II	0.038	0.030	0.248	0.713	0.913	0.917
	III	0.156	0.269	0.622	0.765	0.818	0.864
	IV	0.169	0.538	0.600	0.805	0.769	0.944
	V	0.528	0.684	0.750	0.903	0.917	0.875
	VI	0.500	0.833	0.655	0.875	0.800	1.000

D	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.041	0.018	0.023	0.136	0.474	0.565
	II	0.010	0.008	0.052	0.350	0.516	0.795
	III	0.125	0.148	0.370	0.478	0.727	0.939
	IV	0.077	0.290	0.341	0.730	0.773	0.944
	V	0.184	0.304	0.694	0.884	0.643	0.846
	VI	0.267	0.750	0.714	0.947	1.000	0.500

E	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.007	0.001	0.013	0.155	0.338	0.490
	II	0.003	0.004	0.027	0.287	0.495	0.587
	III	0.008	0.009	0.065	0.451	0.626	0.838
	IV	0.014	0.043	0.171	0.471	0.787	0.886
	V	0.056	0.107	0.366	0.588	0.938	1.000
	VI	0.208	0.143	0.250	1.000	1.000	1.000

F	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.013	0.000	0.014	0.081	0.247	0.387
	II	0.006	0.000	0.016	0.186	0.394	0.429
	III	0.043	0.032	0.089	0.425	0.620	0.775
	IV	0.087	0.000	0.300	0.417	0.600	0.500

G	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.013	0.000	0.007	0.054	0.141	0.223
	II	0.000	0.005	0.016	0.093	0.302	0.373
	III	0.007	0.018	0.057	0.143	0.407	0.511

H	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.002	0.000	0.003	0.023	0.121	0.109
	II	0.000	0.000	0.006	0.032	0.250	0.257
	III	0.000	0.028	0.016	0.095	0.194	0.412

For those sentenced to prison under guidelines, the average uttered sentence was 40.4 months. The averages range from 260 months in Murder 2nd to 102 months in Class A to 60 months in Class B to 30 months in Classes C and D to 16 months in the remaining four crime classifications. The average sentence for each grid cell in the guidelines surfaces three interesting relationships, as shown in Table 3-16. First, there is considerable variation across the top five crime classifications. Second, within these top five grids a semblance of proportionality is manifested as sentences increase as prior record and offense serious increase. Third, there is very little variation across the grid cells in Class E as expected because of the degree of overlap between various grid cells.

Table 3-16: Average Prison Sentence by Grid Cell -- 2004

	OV	PRV Level					
A	Level	A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	51.8	27.5	51.7	66.9	88.3	127.7
	II	43.3	43.9	52.7	90.1	117.3	104.7
	III	51.0	46.3	83.2	116.7	147.8	154.8
	IV	69.8	98.4	131.9	162.5	202.2	188.6
	V	108.4	117.0	84.8	148.8	199.8	285.6
	VI	119.0	118.0	181.7	211.2	302.1	240.0

	OV	PRV Level					
B	Level	A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	41.8	23.0	26.9	39.7	61.7	40.1
	II	15.8	23.9	36.0	55.6	72.4	92.5
	III	23.0	32.3	52.5	78.9	57.6	103.1
	IV	26.7	35.1	52.2	65.8	79.1	125.6
	V	30.7	37.7	58.0	78.8	83.8	107.8
	VI	44.4	64.0	72.3	173.8	165.5	24.0

	OV	PRV Level					
C	Level	A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	48.7	11.0	15.1	24.4	28.7	41.4
	II	14.8	23.5	24.0	30.2	37.9	50.6
	III	19.4	18.7	26.9	43.2	47.3	64.0
	IV	31.0	30.4	38.8	54.5	68.5	73.5
	V	31.4	52.8	53.6	72.6	86.5	75.4
	VI	57.6	56.4	69.8	89.1	107.3	106.5

	OV	PRV Level					
D	Level	A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	32.8	11.4	14.7	16.1	19.0	20.0
	II	16.5	30.0	14.5	19.8	21.1	31.1
	III	19.5	13.5	22.4	23.0	28.8	44.0
	IV	31.0	17.2	18.1	29.1	42.0	45.0
	V	33.4	19.9	30.0	40.7	63.4	45.4
	VI	29.0	32.8	39.2	55.4	76.8	36.0

	OV	PRV Level					
E	Level	A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	24.0	5.0	12.6	15.5	17.9	16.2
	II	8.0	20.0	16.4	17.8	18.9	19.6
	III	12.0	9.0	15.7	18.1	18.9	22.3
	IV	24.0	15.0	18.5	20.1	23.8	28.9
	V	17.7	18.0	20.3	23.2	32.7	43.6
	VI	27.6	23.0	19.3	38.1	24.0	109.0

	OV	PRV Level					
F	Level	A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	18.9	.	13.8	14.0	16.3	18.3
	II	9.0	.	14.6	20.7	18.5	20.3
	III	12.0	8.5	18.7	19.9	21.6	24.7
	IV	18.0	.	19.3	22.6	22.7	24.0

	OV	PRV Level					
G	Level	A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	14.8	.	14.1	12.5	14.4	16.3
	II	.	12.0	9.6	15.3	15.2	15.3
	III	15.0	15.3	15.1	15.5	16.3	18.9

	OV	PRV Level					
	Level	A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
H	I	19.0	.	11.0	11.8	14.8	16.3
	II	.	.	23.0	10.3	13.6	18.1
	III	.	9.3	14.5	13.8	16.5	19.4

VIRGINIA SENTENCING GUIDELINES

Background

Virginia has been actively involved in sentencing research and reform since the early 1980s. Initially driven by concern over sentencing disparity, Virginia has been an innovator and proponent of the sentencing guideline concept. The current Truth in Sentencing (TIS) guideline structure is best understood when presented in the context of earlier reform efforts (Ostrom et al., 1999).

In April of 1986, the Chief Justice of the Virginia Supreme Court appointed the Judicial Sentencing Oversight Committee to oversee a statewide study of judicial sentencing practices within the Commonwealth. The study uncovered evidence of unwarranted sentencing disparity influenced by a variety of extra-legal factors including offender race and gender, type of criminal defense attorney, jury versus bench trial, and level of offender education.[33]

To address the perceived disparity, a separate committee, the Judicial Sentencing Guidelines Committee (JSGC) was created and made responsible for the development of pilot sentencing guidelines. The JSGC determined the sentencing guidelines ranges would encompass the middle 50% of historical sentence lengths and a judicially imposed sentence was defined as appropriate if it fell within this range and "inconsistent" (and possibly disparate) if it fell below or above this mid-range. Therefore, the highest 25% and the lowest 25% of all historical sentences fell outside the guidelines ranges. The basic characteristics of Virginia's first set of descriptive sentencing guidelines (that still remain in place) include:

- Use of a judicial sentencing worksheet as opposed to a sentencing grid;
- Specific offense groups (i.e., assault, burglary, drugs, fraud, homicide, larceny, robbery, sexual assault) with individual sets of scoring factors and worksheets;

[33] See Judicial Sentencing Guidelines Oversight Committee, (October, 1987) working papers presented to committee.

- A bifurcated worksheet design beginning with an in/out decision (prison v. no prison), followed by length of incarceration, if appropriate;
- Presence on the worksheets of only legally relevant offense- and offender-related factors found to be statistically significant in the analysis of historical sentencing practices;
- Recommendation of "effective time sentences" defined as the length of the judicially imposed sentence minus any suspended time; and,
- Strictly voluntary sentencing guidelines where judicial compliance would not be mandated and there would be no opportunity for appellate review based on a challenge to the guidelines.

The pilot guidelines were developed based on a comprehensive statistical analysis of all felony cases sentenced between February 1985 and June 1987 resulting in probation and/or a suspended sentence, a jail term, or a prison term.

Current Virginia Sentencing Guidelines

At the time of Governor George Allen's election in November 1993, judges in Virginia were using judicially controlled voluntary sentencing guidelines with an average compliance rate of 76%. (Virginia Sentencing Commission, 1995) Rising public concern about significant differences between judicially imposed sentences and the amount of time an offender actually served in prison led Governor Allen to make parole abolition and truth-in-sentencing his primary public safety theme. In January 1994, the Governor created the Commission on Parole Abolition and Sentencing Reform as part of his anti-crime package (News Release, 1994). Allen charged the commission with "developing a plan to abolish parole, establish truth-in-sentencing, and ensure that violent and repeat criminals stay in prison for much longer periods of time"(Final Report 1994).

This round of sentencing reform led to significant sentence enhancements for violent offenders and for repeat offenders with violent records. Increases came in the form of "bump-

ups" that, for violent offenders, doubled or quadrupled historic time served amounts depending on prior record. For example, historical time served was increased from 2.7 to 6.3 years for persons convicted of robbery with no prior record, and from 4.1 to 18 years for convicted robbers with a serious prior record. Expected time served for those convicted of murder with no prior record increased from 12.4 to 36 years. Expressed as percentages, offenders with a prior violent offense faced an increase of 300 percent; for a prior serious violent offense the increase was 500 percent. On January 1, 1995, Virginia's new discretionary sentencing guidelines became effective.

The guideline worksheet factors and scores are re-evaluated each year by the Virginia Criminal Sentencing Commission. New analysis of recent sentencing practices by offense group (not every offense group is revisited each year) may lead to changes in worksheet factors or scores, or to changes in guideline thresholds and sentence length recommendations. The Commission publishes all guideline revisions in a comprehensive annual report, which lists compliance rates by offense and by judicial circuit, and provides a listing of the reasons judges cite when departing from guidelines recommendations. Departure information is used to determine areas of judicial concern, if any, and to focus commission attention on potential areas of revision.

Sentencing Mechanics

Virginia's sentencing guidelines framework distinguishes 15 separate offense categories:

1. Assault
2. Burglary/Dwelling
3. Burglary/Other
4. Drug/Other
5. Drug/Schedule I/II
6. Fraud
7. Kidnapping
8. Larceny

9. Miscellaneous
10. Murder/Homicide
11. Other Sexual Assault
12. Rape
13. Robbery
14. Traffic/Felony
15. Weapon/Firearm

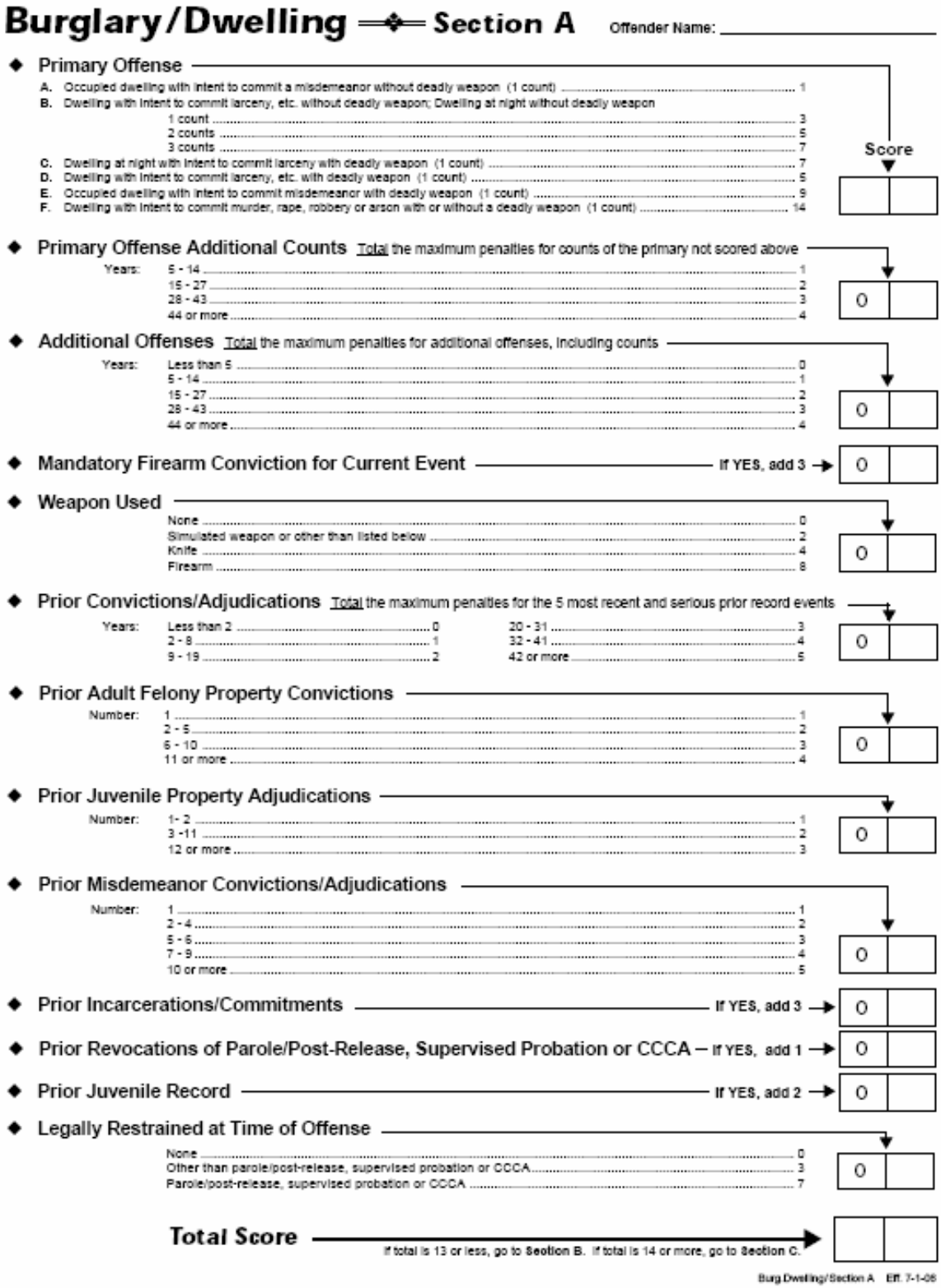
For each offense category, there are three distinct worksheets (called sections):

- *Section A:* used to determine whether a person would receive a prison or a non-prison sentence;
- *Section B*: used to determine whether a person would receive probation or jail (if nonprison sentence indicated on Section A);
- *Section C*: used to determine the length of a prison sentence (if prison sentence indicated on Section A).

Probation officers complete the relevant section worksheets along with a pre-sentence investigation report (PSI). In cases with no PSI, such as some guilty-plea cases, the prosecutor may fill out the pertinent worksheets with consent from the accused or a judge may direct a probation officer to complete a worksheet.

The following two worksheets are shown for illustrative purposes for Burglary Sections A (Table 3-17) & C (Table 3-18):

Figure 3-1 Virginia



Burglary/Dwelling — Section A

Offender Name: _____

Primary Offense — Score

- A. Occupied dwelling with intent to commit a misdemeanor without deadly weapon (1 count) 1
- B. Dwelling with intent to commit larceny, etc. without deadly weapon; Dwelling at night without deadly weapon
  - 1 count 3
  - 2 counts 6
  - 3 counts 7
- C. Dwelling at night with intent to commit larceny with deadly weapon (1 count) 7
- D. Dwelling with intent to commit larceny, etc. with deadly weapon (1 count) 6
- E. Occupied dwelling with intent to commit misdemeanor with deadly weapon (1 count) 9
- F. Dwelling with intent to commit murder, rape, robbery or arson with or without a deadly weapon (1 count) 14

Primary Offense Additional Counts Total the maximum penalties for counts of the primary not scored above

Years:
- 5 - 14 1
- 15 - 27 2
- 28 - 43 3
- 44 or more 4

0

Additional Offenses Total the maximum penalties for additional offenses, including counts

Years:
- Less than 5 0
- 5 - 14 1
- 15 - 27 2
- 28 - 43 3
- 44 or more 4

0

Mandatory Firearm Conviction for Current Event — If YES, add 3 → 0

Weapon Used

- None 0
- Simulated weapon or other than listed below 2
- Knife 4
- Firearm 8

0

Prior Convictions/Adjudications Total the maximum penalties for the 5 most recent and serious prior record events

Years:
- Less than 2 0
- 2 - 8 1
- 9 - 19 2
- 20 - 31 3
- 32 - 41 4
- 42 or more 5

0

Prior Adult Felony Property Convictions

Number:
- 1 1
- 2 - 5 2
- 6 - 10 3
- 11 or more 4

0

Prior Juvenile Property Adjudications

Number:
- 1- 2 1
- 3 -11 2
- 12 or more 3

0

Prior Misdemeanor Convictions/Adjudications

Number:
- 1 1
- 2 - 4 2
- 5 - 6 3
- 7 - 9 4
- 10 or more 5

0

Prior Incarcerations/Commitments — If YES, add 3 → 0

Prior Revocations of Parole/Post-Release, Supervised Probation or CCCA — If YES, add 1 → 0

Prior Juvenile Record — If YES, add 2 → 0

Legally Restrained at Time of Offense

- None 0
- Other than parole/post-release, supervised probation or CCCA 3
- Parole/post-release, supervised probation or CCCA 7

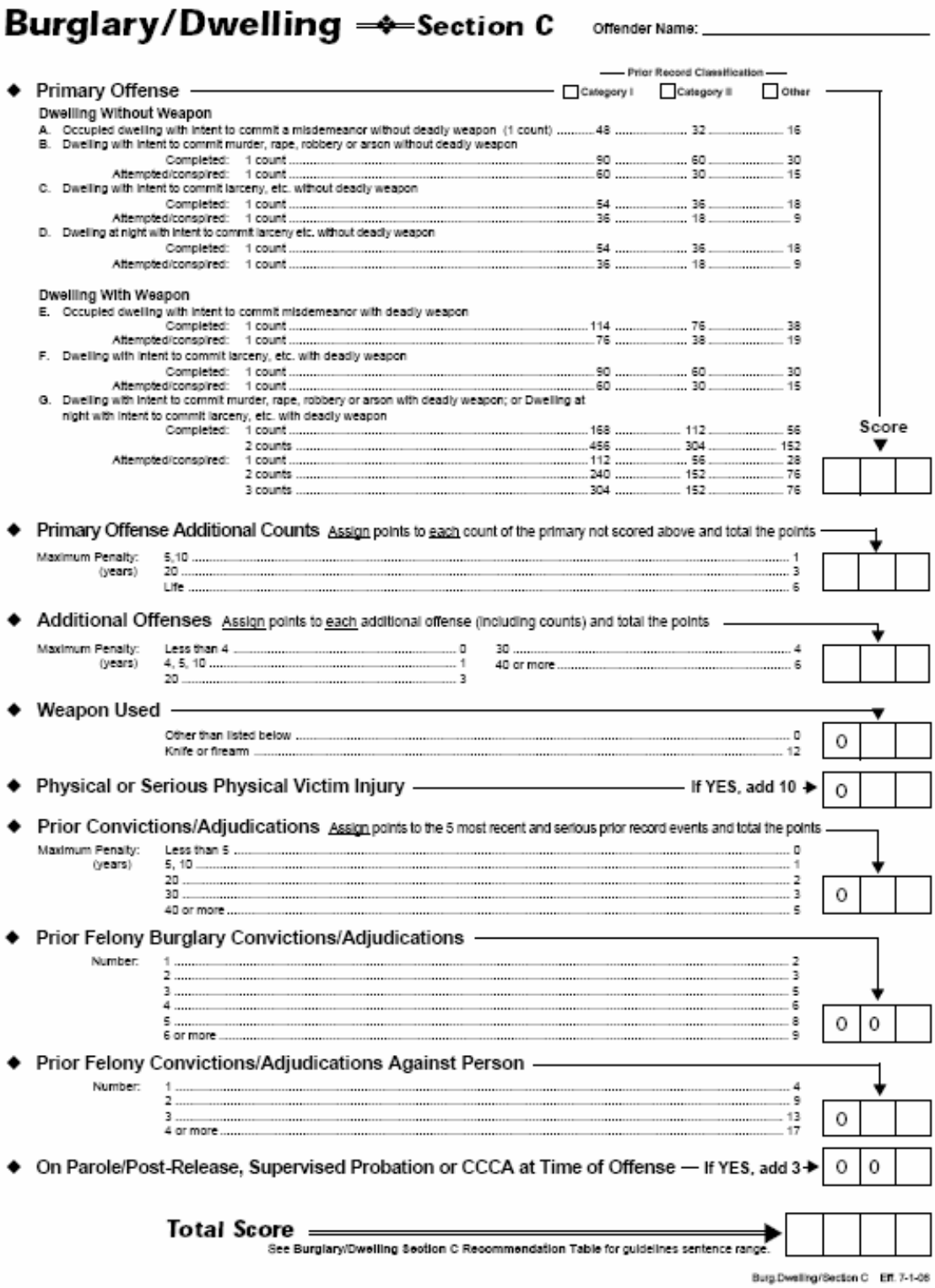
0

Total Score

If total is 13 or less, go to Section B. If total is 14 or more, go to Section C.

Burg Dwelling/Section A Eff. 7-1-08

Figure 3-2 Virginia



Burglary/Dwelling — Section C

Offender Name: _____

◆ **Primary Offense** — Prior Record Classification: ☐ Category I ☐ Category II ☐ Other

Dwelling Without Weapon

		Category I	Category II	Other
A.	Occupied dwelling with intent to commit a misdemeanor without deadly weapon (1 count)	48	32	16
B.	Dwelling with intent to commit murder, rape, robbery or arson without deadly weapon			
	Completed: 1 count	90	60	30
	Attempted/conspired: 1 count	60	30	15
C.	Dwelling with intent to commit larceny, etc. without deadly weapon			
	Completed: 1 count	54	36	18
	Attempted/conspired: 1 count	36	18	9
D.	Dwelling at night with intent to commit larceny etc. without deadly weapon			
	Completed: 1 count	54	36	18
	Attempted/conspired: 1 count	36	18	9

Dwelling With Weapon

E.	Occupied dwelling with intent to commit misdemeanor with deadly weapon			
	Completed: 1 count	114	76	38
	Attempted/conspired: 1 count	76	38	19
F.	Dwelling with intent to commit larceny, etc. with deadly weapon			
	Completed: 1 count	90	60	30
	Attempted/conspired: 1 count	60	30	15
G.	Dwelling with intent to commit murder, rape, robbery or arson with deadly weapon; or Dwelling at night with intent to commit larceny, etc. with deadly weapon			
	Completed: 1 count	168	112	56
	2 counts	456	304	152
	Attempted/conspired: 1 count	112	56	28
	2 counts	240	152	76
	3 counts	304	152	76

Score: ☐☐☐

◆ **Primary Offense Additional Counts** Assign points to each count of the primary not scored above and total the points

Maximum Penalty (years)		
5,10	1	
20	3	
Life	6	

☐☐☐

◆ **Additional Offenses** Assign points to each additional offense (including counts) and total the points

Maximum Penalty (years)				
Less than 4	0	30	4	
4, 5, 10	1	40 or more	6	
20	3			

☐☐☐

◆ **Weapon Used**

Other than listed below	0
Knife or firearm	12

0 ☐☐

◆ **Physical or Serious Physical Victim Injury** — If YES, add 10 → 0 ☐☐

◆ **Prior Convictions/Adjudications** Assign points to the 5 most recent and serious prior record events and total the points

Maximum Penalty (years)	
Less than 5	0
5, 10	1
20	2
30	3
40 or more	5

0 ☐☐

◆ **Prior Felony Burglary Convictions/Adjudications**

Number	
1	2
2	3
3	5
4	6
5	8
6 or more	9

0 0 ☐

◆ **Prior Felony Convictions/Adjudications Against Person**

Number	
1	4
2	9
3	13
4 or more	17

0 ☐☐

◆ **On Parole/Post-Release, Supervised Probation or CCCA at Time of Offense** — If YES, add 3 → 0 0 ☐

Total Score → ☐☐☐☐

See Burglary/Dwelling Section C Recommendation Table for guidelines sentence range.

Burg.Dwelling/Section C Eff. 7-1-08

The current research examines Section A (prison in/out decision) and Section C (prison sentence length decision) for 6 of the 15 offense categories eligible for worksheet scoring: Assault, Larceny, Burglary, Fraud, Drugs, and Robbery. All section worksheets score multiple aspects of offense conduct and elements of the offender's prior record. The following two tables list all factors that are scored for the six offense groups analyzed.

Particular factors, for example, "Prior Felony Drug Convictions" only appear on one offense worksheet (Drugs Section A). In this way, all worksheet factors scored are specifically tailored to each offense category, and the score of each factor can vary depending on their relationship to the instant offense. The structure of Virginia's guidelines, comprising roughly 45 individual section worksheets (15 offenses for 3 separate decision points), is one of the nation's most detailed guidelines scoring schemes. Tables 3-19 and 3-20 display the variables that apply to the Worksheet A and C evaluations for the six crime types in this study.

Table 3-19: Worksheet A Variables by Crime Group

Worksheet A Factors

	Assault	Burglary	Drug	Larceny	Fraud	Robbery	# Times Factor Used
Primary Offense	x	x	x	x	x	x	0
Additional Counts	x	x	x	x	x	x	0
Additional Offenses	x	x	x	x	x	x	0
Mandatory Firearm Conviction		x	x				0
Weapon	x	x				x	0
Serious Physical Injury	x						0
Knife or Firearm Possession			x				0
Prior Felony Convictions	x	x	x	x	x	x	0
Prior Incarcerations	x	x	x	x	x	x	0
Legally Restrained	x	x	x	x	x	x	0
Prior Juvenile Record	x	x	x	x	x	x	0
Assualt and Battery (only)	x						0
Prior Felony Property		x		x	x		0
Prior Juvenile Property		x					0
Prior Misdemeanor		x		x	x		0
Prior Revocations		x			x		0
Two or More Prior Fel			x				0
Prior Felony Drug			x				0
Prior Felony Larceny				x			0
Other Felony Person				x			0
Amount of Embezzlement				x			0
Victim Injury						x	0
Total Factors on Worksheet	10	13	11	12	10	9	

Table 3-20: Worksheet C Variables by Crime Group

Worksheet C Factors

	Assault	Burglary	Drug	Larceny	Fraud	Robbery	# Times Factor Used
Primary Offense	x	x	x	x	x	x	0
Additional Counts	x	x	x	x	x	x	0
Additional Offenses	x	x	x	x	x	x	0
Firearm in Possession			x				0
Weapon Used	x	x				x	0
Victims Receiving Injury/Victim Injury	x	x				x	0
Physical or serious Injury							0
Prior Convictions	x	x	x	x	x	x	0
Prior Felony Burglary/Drug/Larceny/Fraud		x	x	x	x		0
Prior Felony Person Convictions	x	x	x	x		x	0
Felony Property			x	x			0
Prior Juvenile			x	x	x	x	0
Parole/Post Release Supervision		x			x		0
Legally Restrained	x		x	x		x	0
Prior Incarceration						x	0
Sale/Quantity Cocaine			x				0
Amount of Embezzelment				x			0
Kidnapping						x	0
Total Factors on Worksheet	8	9	11	10	7	11	

Locating the Recommended Sentence

The sentencing process for Burglary/Dwelling is reviewed to illustrate how the guidelines are completed and what offense conduct and offender characteristics are scored.

Burglary/Dwelling Section A:

Offense factors:

- Primary offense – 1 to 14 points are added for certain offense factors including: if the dwelling was occupied, intent of the burglary (e.g. larceny vs. murder, rape or robbery), and the presence of a deadly weapon

- Additional offenses – 1-4 points are added for additional offenses other than burglary of a dwelling. The number of points added depends on the seriousness of the additional offenses (seriousness is measured using he statutory maximum penalty)

- Mandatory firearm conviction for current event – 3 points are added if the defendant was convicted under a mandatory firearm statute.

- Weapon used – points are added if a simulated weapon (2 points), a knife (4 points), or a firearm (8 points) was used or brandished.

Offender prior record:

- Prior convictions/adjudications – points are added for the most recent and serious prior record events, with points depending on the seriousness of the prior offenses (seriousness is measured using the statutory maximum penalty).

- Prior adult felony property convictions – 1 to 4 points are added for prior Larceny, Burglary, and Fraud convictions (e.g., 2-5 priors = 2 points).

- Prior juvenile property adjudications – 1 to 3 points are added for prior Juvenile Larceny, Burglary, and Fraud adjudications (e.g., 3-11 priors = 2 points).

- Prior misdemeanor convictions/adjudications – 1-5 points are added for prior adult misdemeanor convictions or juvenile adjudications (other than traffic offenses).

- Prior incarcerations/commitments – 3 points are added if a defendant has ever been incarcerated as an adult or juvenile (other than for pre-trial time).

- Prior revocations of parole/post-release, supervised probation – 1 point is added if the defendant has a prior revocation resulting from post-release supervision, parole, probation, and other community based corrections programs.

- Prior juvenile record – 2 points are added if the offender has any prior adjudications for delinquency (status offenses are not included).

- Legally restrained at time of offense – 2 points are added if the offender was on probation, parole, or on pre-trial release at time of the offense. Scoring for other types of legal restraint may authorized by the sentencing judge.

If the point total on the Burglary/Dwelling Section A worksheet is 13 or less, a judge is directed to Section B and a recommendation of a non-prison sentence. If the point total is 14 or more, the judge goes to Section C to determine the length of the recommended prison sentence. This point threshold varies across the other offense groups, but the concept is always the same—defendants with offense and/or offender elements serious enough to cross a pre-determined point value will be scored next on the prison length worksheet. Those with less serious scores will be scored next on the probation jail worksheet (which is not the focus of the current study).

If the Section A point total exceeds the threshold, a judge turns to the sentencing recommendation of Section C. For example, on the Burglary/Dwelling Section C worksheet, the following factors are scored (see worksheet for exact factor definitions and point values):

Offense factors:

- Primary offense
    - Dwelling without weapon
    - Dwelling with weapon
- Primary offense additional counts
- Additional offenses
- Weapon used

- Physical or serious physical victim injury

Offender prior record:

- Prior convictions/adjudications
- Prior felony burglary convictions/adjudications
- Prior felony convictions/adjudications against person
- On parole/post-release, supervised probation or CCCA at time of offense

The total point score reached at the end of Section C translates directly into the recommended number of months of incarceration for the convicted offender. More specifically, the section score represents the recommended sentence midpoint of a sentencing range. The precise ranges are provided in Section C Recommendation Tables. For example, a score of 60 (months) on Burglary/Dwelling Section C will have a range of 4 years, 1 month (49 months) to 7 years, 3 months (87 months). A judge is viewed as complying with the guidelines if the sentence is anywhere within the range.

Proportionality

Unlike Minnesota and Michigan, the Virginia Guideline system does not have a grid structure that groups offender into sets of similarly situated offenders. Instead, for purposes of sentencing, all offenders with the same Worksheet C score – in a given crime group – are identical for the purposes of sentencing. To gauge the size of the recommended ranges as well as to be able to compare Virginia with the other guideline systems, Table 3-21 displays the recommended ranges for Assault and Burglary in six-month increments.

Table 3-21: Recommended Ranges in six month increments

Assault						Burglary					
Lower Bound	Midpoint	Upper Bound	% Below	Range/ Midpoint	% Above	Lower Bound	Midpoint	Upper Bound	% Below	Range/ Midpoint	% Above
7	12	21	42%	117%	75%	7	12	22	42%	125%	83%
9	18	30	50%	117%	67%	11	18	29	39%	100%	61%
11	24	39	54%	117%	63%	16	24	41	33%	104%	71%
16	30	45	47%	97%	50%	19	30	50	37%	103%	67%
19	36	53	47%	94%	47%	24	36	57	33%	92%	58%
22	42	62	48%	95%	48%	30	42	63	29%	79%	50%
24	48	70	50%	96%	46%	37	48	70	23%	69%	46%
29	54	73	46%	81%	35%	44	54	79	19%	65%	46%
31	60	76	48%	75%	27%	49	60	87	18%	63%	45%
35	66	80	47%	68%	21%	54	66	96	18%	64%	45%
38	72	86	47%	67%	19%	59	72	105	18%	64%	46%
42	78	93	46%	65%	19%	64	78	113	18%	63%	45%
45	84	100	46%	65%	19%	69	84	122	18%	63%	45%
48	90	108	47%	67%	20%	74	90	131	18%	63%	46%
51	96	115	47%	67%	20%	79	96	140	18%	64%	46%
55	102	122	46%	66%	20%	84	102	148	18%	63%	45%
58	108	129	46%	66%	19%	89	108	157	18%	63%	45%
61	114	136	46%	66%	19%	94	114	166	18%	63%	46%
64	120	144	47%	67%	20%	99	120	174	18%	63%	45%
68	126	151	46%	66%	20%	104	126	183	17%	63%	45%
71	132	158	46%	66%	20%	109	132	192	17%	63%	45%
74	138	165	46%	66%	20%	114	138	201	17%	63%	46%
77	144	172	47%	66%	19%	119	144	210	17%	63%	46%
81	150	180	46%	66%	20%	124	150	218	17%	63%	45%
84	156	187	46%	66%	20%	129	156	227	17%	63%	46%
87	162	194	46%	66%	20%	134	162	235	17%	62%	45%
90	168	201	46%	66%	20%	139	168	244	17%	63%	45%
93	174	208	47%	66%	20%	144	174	253	17%	63%	45%
97	180	216	46%	66%	20%	149	180	262	17%	63%	46%
100	186	223	46%	66%	20%	154	186	270	17%	62%	45%
103	192	230	46%	66%	20%	159	192	279	17%	63%	45%
106	198	238	46%	67%	20%	164	198	288	17%	63%	45%
110	204	245	46%	66%	20%	168	204	296	18%	63%	45%
113	210	252	46%	66%	20%	174	210	307	17%	63%	46%
116	216	259	46%	66%	20%	180	216	316	17%	63%	46%
119	222	266	46%	66%	20%	186	222	325	16%	63%	46%
123	228	274	46%	66%	20%	192	228	333	16%	62%	46%
126	234	281	46%	66%	20%	198	234	342	15%	62%	46%
129	240	288	46%	66%	20%	204	240	351	15%	61%	46%

As can be seen in Table 3-21, the typical size of the ranges is between 60 to 66 percent, which is much larger than Minnesota and similar in size to Michigan. What is unique about Virginia's recommended ranges are that they are not symmetric? In the Assault crime group, the preponderance of the range is below the midpoint while in the Burglary crime group the preponderance of the range is above the midpoint. Presumably, these choices reflect the historical record of sentencing in Virginia.

The matter of overlap is somewhat more difficult to conceptualize in Virginia. However, looking at Table 3-21 it is possible to gain some insights. For Worksheet C scores (i.e., midpoint), there is considerable overlap across a range of midpoints. For example, from 12 to 41, it is always permissible to give a sentence of 21 months; from 60 to 143, it is always permissible to give a sentence of 76 months. Clearly an identical sentence is deemed appropriate, within the Virginia guidelines, for a large number of different Worksheet C values. From a design point of view, this suggests that the principle of proportionality is threatened to a much greater extent than in Minnesota.

Mandatory Minimums

With respect to existing mandatory minimums, the TIS guidelines were constructed so that sentencing ranges usually encompass specific mandatory minimum penalties with some exceptions. For example, conviction of use of a firearm in the commission of a felony carries a mandatory penalty of 3 years. In certain cases where a mandatory firearm conviction occurs, the guidelines will recommend a sentence of less than 3 years and, in these instances, mandatory penalties supersede the guideline recommendation.

Departure Policy and Appellate Review

Virginia's system requires judges to consider the guidelines recommendation applicable in each case.[34] If a judge does not follow the guideline recommendation, the judge must briefly state the reason for departure in the "Departure Information" space on the bottom of the sentencing guideline form. Compliance with the Virginia guidelines ranges between 75 percent and 85 percent for most crime types. Nevertheless, if a judge chooses to depart because of aggravating or mitigating circumstances, as long as the defendant's sentence remains below the statutory maximum, an imposed sentence is not subject to appeal.

Parole Release and Good Time TIS reform eliminated parole with the establishment of time-served guidelines. Post-release supervision can be assigned at the discretion of judges. Earned sentence credit is limited to 54 days per year maximum accrual. Inmates must serve a minimum of 85 percent of their imposed sentences. Inmates over the age of 65 may petition the parole board for release after serving 5 years of a sentence; inmates over the age of 60 after ten years.

The overall compliance rate summarizes the extent to which Virginia's judges concur with recommendations provided by the sentencing guidelines, both in type of disposition and in length of incarceration. Between FY1995 and FY1998, the overall compliance rate hovered around 75 percent, increased steadily between FY1999 and FY2001, and then decreased slightly in FY2002. Over the past three fiscal years, the compliance rate has been increasing once again. For FY2005, the overall compliance rate was its highest ever, at 81.2 percent.

In FY 2005, 9.4 percent of offenders received a sentence above the recommended range, known as the "aggravation" rate. The "mitigation" rate, or the percent of offenders receiving

[34] Va. Code § 19.2-298.01

sentences below the guidelines recommendation, was also 9.4% for the fiscal year. Thus, of the FY2005 departures, 50% were cases of aggravation while 50% were cases of mitigation.

Table 3-22: Guidelines Compliance by Offense – FY 2005

Guidelines Compliance by Offense - FY 2005

	Compliance	Mitigation	Aggravation	Number of Cases
Fraud	86.8%	7.9%	5.4%	2,874
Traffic	85.1	5.0	9.8	1,944
Drug/Other	84.5	4.7	10.8	864
Larceny	83.7	7.8	8.5	4,942
Drug/Schedule I/II	83.1	7.9	9.0	6,593
Burg./Other Structure	78.2	13.1	8.7	551
Miscellaneous	76.0	7.9	16.1	571
Assault	74.7	14.2	11.2	1,263
Rape	69.5	23.0	7.5	200
Burglary/Dwelling	67.4	20.6	12.0	757
Sexual Assault	67.3	16.8	16.0	400
Kidnapping	66.1	11.9	22.0	109
Robbery	64.3	22.5	13.2	726
Murder/Homicide	59.8	19.2	20.9	234

Virginia is one of only five states that allow juries to determine sentence length in non-capital offenses. In FY2005, the Commission received 321 cases tried by juries, and as in previous years, a jury sentence was far more likely to exceed the guidelines recommendation than a judicially-imposed sentence in either guilty pleas or bench trials. While the judicial compliance rate was at 81% during the fiscal year, the compliance rate for sentences handed down by juries was only 49% of the time. In fact, jury sentences fell above the guidelines recommendation in 38% of the cases. This pattern of jury sentencing vis-à-vis the guidelines has been consistent since the TIS guidelines became effective in 1995.

Basic Descriptive Statistics -- 2002

The six crime groups used in the current research account for 75 percent of all the cases in 2002, as shown in Table 3-23, which presents the number of cases, the percentage to prison,

and the average prison sentence along with the overall statewide totals. However, while the overall incarceration rate for the state is similar to that of the six crime groups, the average sentence is somewhat higher because the current research omits Murder, Kidnapping, Escape, DWI, and Weapons offenses that, while not frequently occurring, are very serious.

Table 3-23: Descriptive Statistics for Six Crime Groups -- 2002

Crime Group	N	% Prison	Average Prison (months)
Assault	1,614	78.2%	57.21
Burglary	1,668	49.1%	48.45
Fraud	3,343	26.1%	23.93
Larceny	5,494	26.3%	26.91
Narcotics	7,404	26.9%	35.37
Robbery	928	85.8%	116.78
Six Group Total	20,451	32.9%	45.94
All Offenders	27,559	35.4%	53.62

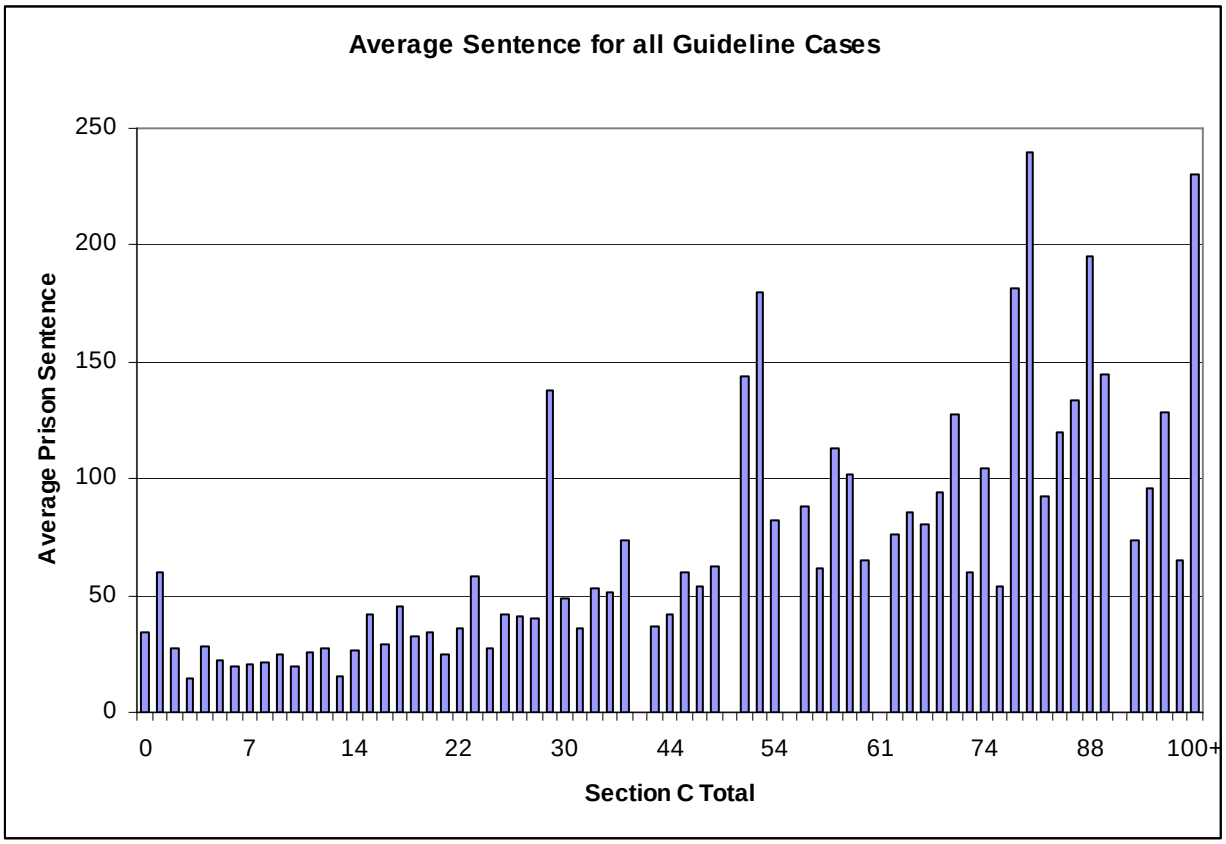
Turning to the incarceration rate, Table 3-24 shows the percentage of offenders who receive a prison sentence for all possible Worksheet A point totals. The shaded area in Table 3-24 represents those point values where the presumption is for a sentence other than prison. Looking at the point where the shading stops indicates the point values required for a recommended prison sentence. For Burglary, Larceny, Narcotics, and Robbery there are substantial jumps at the threshold, while for Assault and Fraud, the jumps are less pronounced.

Table 3-24: Rates of Prison for Worksheet A Point Totals

Worksheet A Total Points	Crime Groups					
	Assault	Burglary	Fraud	Larceny	Narcotics	Robbery
	% Prison	% Prison	% Prison	% Prison	% Prison	% Prison
1	5.6%	0.0%	4.2%	2.4%	0.8%	0.0%
2	5.7%	0.0%	0.8%	0.4%	0.8%	0.0%
3	16.7%	6.8%	0.0%	0.8%	2.8%	9.1%
4	6.8%	5.7%	1.4%	2.5%	2.1%	36.4%
5	5.2%	2.9%	1.5%	2.6%	3.5%	31.3%
6	25.6%	4.3%	0.8%	3.7%	3.5%	88.5%
7	35.0%	2.4%	0.7%	3.0%	4.5%	88.2%
8	41.9%	9.3%	1.4%	3.2%	7.5%	80.9%
9	45.7%	8.2%	1.0%	3.6%	7.0%	88.2%
10	56.3%	6.5%	3.0%	3.5%	7.4%	87.7%
11	52.3%	4.0%	15.6%	6.4%	53.6%	88.0%
12	62.7%	7.9%	14.7%	7.4%	30.3%	92.6%
13	59.8%	5.3%	23.9%	6.7%	47.6%	90.0%
14	63.6%	63.9%	17.6%	7.9%	45.9%	90.9%
15	71.8%	58.5%	24.8%	10.3%	51.8%	92.6%
16	76.5%	59.4%	34.9%	47.2%	50.0%	91.8%
17	91.3%	62.5%	44.1%	58.1%	65.7%	95.0%
18	86.8%	79.0%	37.8%	64.0%	66.4%	93.2%
19	96.0%	81.7%	42.0%	71.2%	72.2%	96.7%
20	91.3%	75.8%	40.2%	69.2%	77.8%	100.0%
21	92.9%	78.2%	54.2%	82.8%	81.5%	100.0%
22	93.8%	84.4%	47.2%	84.1%	79.4%	100.0%
23	100.0%	81.6%	49.4%	85.5%	92.7%	100.0%
24	100.0%	71.4%	65.4%	93.1%	91.7%	100.0%
25	100.0%	90.2%	47.3%	78.8%	87.9%	100.0%
26	100.0%	84.8%	71.2%	82.4%	94.7%	
27	50.0%	87.8%	70.2%	66.7%	92.6%	
28	100.0%	88.0%	63.3%	88.9%	94.1%	
29	100.0%	87.5%	76.0%	83.3%	100.0%	100.0%
30	100.0%	92.9%	83.8%	80.0%	87.5%	
31		100.0%	79.2%	100.0%	100.0%	
32		93.3%	77.8%	100.0%	100.0%	
33		91.7%	100.0%	100.0%	100.0%	
34		100.0%	87.5%	100.0%	100.0%	100.0%
35	100.0%	100.0%	84.6%		100.0%	
36		100.0%	66.7%	100.0%		
37		83.3%	66.7%	100.0%		
38		100.0%	75.0%	100.0%		
39			100.0%			
40		50.0%	75.0%	100.0%		100.0%
41	100.0%	100.0%		0.0%		
42		100.0%	100.0%	100.0%	100.0%	
43		100.0%				
44	100.0%		100.0%			100.0%
45						
46						
47						
48		100.0%				
49		100.0%				

Figure 3-2 provides a graphical representation of the average sentence for a range of Worksheet C point totals (the last bar combines all offenders who had 100 points or more on the worksheet). The relationship between Worksheet C points and the average imposed sentence remains fairly constant at the lower values and increases gradually once the total reaches 50.

Figure 3-2: Average Sentence for Offenders Convicted in 2002



SUMMARY

The varied approaches of the Minnesota, Michigan, and Virginia sentencing guideline systems illustrate the broad range of options available and currently being used by states to constrain judicial discretion. The discussion below summarizes basic similarities and differences in design features that must be accommodated in the theoretical and empirical work addressed in later chapters.

Dimensionality

A starting point for the developers of all sentencing guideline systems is how to construct the interaction among statutory crime severity, offender prior record, and specific offense conduct. The first step is the selection of crime types or crime classifications for inclusion in the guidelines (dimension #1). The Michigan grid system distinguishes 9 crime classifications based on statutory severity, the Minnesota grid focuses on 11 offense groups, and Virginia employs worksheets for 15 offense groups.

The second dimension focuses on the extensiveness of the prior record. Michigan (seven measures) and Minnesota (four measures) use a uniform and consistent set of indicators to assess prior record in all cases for all offense categories. Virginia has identified 10 possible prior record variables, but the precise selection, number and scoring varies by offense group and section worksheet. All offenders with equal point totals are deemed similar for the purposes of sentencing.

The third dimension focuses on the specifics of the instant offense and is the area where the greatest differences exist between the three systems. The Michigan guidelines evaluate each offender on up to 20 offense variables, including aggravated use of a weapon, physical and psychological injury to the victim, the intent to kill or injure, multiple victims, and victim

vulnerability among others. The crime group designation of the conviction offense determines which of the 20 offense variables are examined and scored. Minnesota incorporates specific offense conduct into the presumptive sentence by imposing mandatory minimum sentences for select cases involving weapons or second/subsequent offenses.

In Virginia, each offense group has a set of offense conduct variables that apply specifically to that offense (e.g., for Burglary/Dwelling there are six possible aspects of the offense singled out for scoring, such as dwelling occupied, crime occurred at night, intent to use a deadly weapon during the burglary). In addition, there are select elements of the offense (e.g., weapon type, mandatory firearm conviction) that may apply across many offense groups. In these instances, common factors typically have different scores that vary by crime group.

Despite differences in the choice of factors to be scored, the three states used similar criteria is selecting factors related to offense conduct and prior record:

- The variables are "non-prejudicial" to the extent that they do not include demographic and socioeconomic considerations that could be used as a basis for disparity.
- The variables are uniformly mitigating or aggravating. Excluded are factors such as the nature of the prior relationship between the offender and a victim which could be either aggravating or mitigating depending on the circumstances.
- The variables focus on matters that are frequently occurring. The guidelines are not cluttered with rare occurrences.
- The variables are related to the goals of sentencing (e.g., deterrence, punishment).
- The variables are "objective" to the extent that it is possible to write instructions that lead most people to the same categorical decisions. Consequently, there is no variable for "remorse" since there is no way to accurately judge regret.

Determining the Sentence

Once the offense group (crime class) is determined, scores are calculated for the relevant offense conduct and prior record factors and the guidelines direct the judge to a sentence

recommendation. The Michigan guidelines employ nine separate sentencing grids based on crime class, each with either three, four, or six offense levels and six prior record levels. All together, there are 258 different grid cells. Once the correct grid is identified, the sentence recommendation is determined by the intersection of the offense level and the prior record level for the individual offender. Sanction type is either non-prison (lockout), prison, or at the judge's discretion (straddle), and, for prison, the range for the minimum presumptive length is found in the grid cell.

Minnesota uses a single sentencing grid with the row determined by offense group and the column determined by prior record level. Eleven offense groups and seven prior record levels produce a grid with 77 cells. The presumptive term sentence is identified by the intersection of the correct row and column. The sanction type is either non-prison (below solid line) or prison (above solid line); for prison, the presumptive length is shown in the grid cell.

Following determination of the correct offense group, the Virginia guidelines determine the recommended sanction type (non-prison or prison) by summing up the scores for the relevant offense conduct and prior record variables on the Section A worksheet. If the offender's score exceeds the threshold value listed on Section A, the length of prison sentence is determined on the Section C worksheet. Recommended prison length corresponds to the point total reached by summing up the values for all factors scored on Section C. This sentence recommendation is the midpoint of a range. The appropriate Section C Recommendation Table shows the full range of sentences deemed in compliance with the Virginia guidelines. In essence, there are as many discrete sentence recommendations within each offense group as there are possible point totals for the factors listed on the Section C worksheet.

Recommended Ranges/Proportionality

The recommended ranges available in each of the three states are based on extensive analysis of past sentencing practices. The Michigan guidelines– like the Virginia Sentencing Guidelines – are historically based with some relatively minor normative adjustments. Where possible, the ranges in Michigan were set to encompass 75% of the actual sentences and in anticipation that departures above and below would be of a similar magnitude. In Virginia, the sentence ranges were designed to include the middle 50% of past practice. Minnesota provides a narrow range of months based upon prescriptive interests associated with controlling correctional resources.

One striking difference among the guidelines systems is the relative width of the ranges and the degree of overlap. The Minnesota guidelines have very narrow ranges (10%) and almost no overlap between different grid cells. In Michigan and Virginia the ranges are 50%-70% of the midpoints, creating a great deal of overlap and potentially threatening the goal of proportionality.

Departure Policy and Appellate Review.

In Michigan, judges can "depart from the appropriate sentencing range established under the sentencing guidelines…if the court has a substantial and compelling reason for the departure…." If a judge imposes a sentence that is longer than the designated sentencing range, then the court must apprise the defendant (both orally and in writing) of his or her rights to appeal. In Minnesota, judges are required to give the sentence within the presumptive range. Judges can depart from the presumptive sentence if "there exist identifiable, substantial, and compelling circumstances…" The judge must disclose in writing or on the record the particular substantial and compelling circumstances. If the judge departs from the guidelines, the

defendant can appeal the sentence. In Virginia, judges are to be given the appropriate sentencing guideline worksheets and should "review and consider the suitability of the applicable discretionary sentencing guidelines…" In a felony case, if the court "imposes a sentence which is either greater or less than that indicated by the discretionary sentencing guidelines, the court shall file with the record of the case a written explanation of such departure." Unlike Michigan and Minnesota, sentencing departures in Virginia are not subject to appeal.

Time Served

In Michigan, offenders are required to serve at least 100% of their minimum imposed sentence. Good time has been abolished, but disciplinary credits ("bad time") can be given an offender to increase time served. Ultimately, the Michigan parole board determines the length of the final sentence between the judicially-imposed minimum and the statutory maximum. In Minnesota offenders are required to serve at least two-thirds of their sentence; the amount of time actually served may be extended if the offender violates disciplinary rules while in prison or violates conditions of supervised release (the extension could result in the offender serving the entire sentence). In Virginia, offenders must serve a minimum of 85% of their judicially-imposed sentence; that is, offenders are eligible for up to 15% good time credit. In practice, offenders in Virginia end up serving, on average, 90% of their terms. For those persons released from prison in 2001 (the year before the current study period began), the average time served was 3.7 years in Michigan, 3.6 years in Virginia and 1.9 years in Minnesota. (Criminal Justice Institute, 2002)

CHAPTER 4: METHODOLOGY FOR THE COMPARATIVE STATISTICAL ANALYSIS OF STATE GUIDELINE SYSTEMS

INTRODUCTION

Sentencing guidelines bring together characteristics of the offense and offender in a designed and structured format that determines both the disposition and severity of punishment. A primary rationale for the choice and weighting of selected factors is to create greater consistency and proportionality and to minimize discrimination in the sentencing process. To date, the relative success of alternative sentencing guideline designs in meeting these fundamental goals remains unresolved. To address this issue, the current research proposes to examine how well the Michigan, Minnesota and Virginia guideline systems promote these values.

Moving from constructing a descriptive profile of the design characteristics of these systems to an empirical assessment of their operation requires precise definitions and rigorous methods. Key terms are *consistency, proportionality and discrimination*. These organizing concepts are defined in terms of operational indicators for measurement purposes, and an analytical strategy is developed to examine the extent to which the alternative guideline structures and their sentencing mechanics achieve desired kinds of sentencing outcomes. Finally, statistical issues are identified pertinent to modeling sentencing outcomes at two fundamental decision points, whether to incarcerate (in state prison) and, if so, the length of incarceration. Two appendices contain detailed discussion of several statistical issues affecting interpretation of the models.

CONSISTENCY, PROPORTIONALITY AND DISCRIMINATION

Greater understanding of sentencing begins with refining the basic vocabulary that describes undesirable sentence outcomes more clearly. Traditionally, the words "disparity" and "discrimination" are used, sometimes interchangeably, in the sentencing literature. In a recent overview of the literature on the subject, Spohn (2000, 432) offers the following definitions:

> Disparity refers to a difference in treatment or outcome, but one that does not necessarily involve discrimination. As the Panel on Sentencing Research noted, "Disparity exists when 'like cases' with respect to case attributes—regardless of their legitimacy—are sentenced differently" (Blumstein et al., 1983, 72). Discrimination, on the other hand, is a difference that results from differential treatment based on illegitimate criteria, such as race, gender, social class, or sexual orientation. With respect to sentencing, discrimination "exists when some case attribute that is objectionable (typically on moral or legal grounds) can be shown to be associated with sentence outcomes after all other relevant variables are adequately controlled" (Blumstein et al, 1983, 72).

Despite the previous reliance on these notions, increased understanding of the sentencing decision requires a definition of the characteristics of a desirable sentencing outcome and, by exclusion, a delineation of undesirable outcomes. Clarifying a normatively acceptable sentence provides a solid base to identify more precisely what are unacceptable deviations. For this reason, the current research proposes that sentencing decisions be defined in terms of the essential characteristic of consistency.

Consistency in sentencing is comprised of three distinct elements. First, sentences are consistent to the extent similar offenders (with similar case attributes) receive similar sentences. Second, sentences are consistent to the degree individual offenders are placed into distinctive groups on the basis of a "legitimate" set of characteristics/case attributes. Third, sentences are consistent to the extent that they are proportional; that is, dissimilar offenders receive dissimilar sentences in rough proportion to their degree of dissimilarity.

Consistency grounds an analytic framework for examining sentencing outcomes because of its applicability to every sentencing guideline system. Commentators describe guidelines in terms of how they promote one or more of the three elements of consistency. For example, Frase (2005b, p. 76) asserts state sentencing guideline systems are predicated on "some form of what Norval Morris called "limiting retributivism" (1990) (also known as modified just deserts). An offender's desert defines the range of morally justified punishment, setting upper and lower limits on the severity of penalties that may fairly be imposed on a given offender." Just deserts imply that a system of fair and consistent sentencing requires similarly situated offenders receive similar sentences. It must also be proportional. As stated by (Barkow 2005, 129), "[u]nder a just deserts theory of punishment, the goal is to make sure more blameworthy crimes receive more severe punishments." Another way to make this point comes from a former Director of the Michigan Department of Corrections who said it is important to distinguish those that "we are mad at from those we are afraid of." Those we are afraid of deserve proportionally more severe punishments.

The primary task of sentencing guideline designers is to make concepts like "similarly situated," "range of justified punishment," and "more blameworthy" precise and measurable. In operation, guideline structures (say a given combination of offense seriousness and prior record on the Minnesota guideline grid) locate and define a set of offenders deemed to be similarly situated. Being in the same grid cell carries the expectation that offenders are of comparable blameworthiness and should receive similar penalties.

Likewise, successive steps up or down the offense seriousness and prior record scales identify dissimilar offenders, as well as the extent to which they are dissimilar. In Minnesota, for example, if two offenders are convicted of the same offense, the offender with a higher level of

prior record score will be recommended for a more serious sentence. Guidelines define a series of thresholds that represent jumps from one level of blameworthiness to another. Because crossing a threshold carries an increase in the severity of penalty, one aspect of consistency is that adjacent levels should be formally and meaningfully distinct from one another. If not, proportionality is violated.

Inconsistency is distinguished from discrimination by whether the source of sentence variation is due to legitimate or illegitimate factors. On the most general level, discrimination refers to sentences that are different, with the difference tied to specific characteristics of the defendant. As Rich Sutton et al (1980, 109) noted:

> *As a general proposition, we may state that differences in offenses and offenders justify differences in relationship to the state's legitimate purposes in punishing criminals, so long as those differences do not involve classifications that are prohibited by our fundamental constitutional law. Those classifications that appear to conflict with constitutional values are race, ethnicity, gender, wealth, and the exercise or waiver of fundamental rights (e.g., trial).*

A discriminatory sentence is one where one of the suspect classifications makes a difference in the sentencing outcome once the "legitimate" factors relating to the offender and the offense have been taken into account.

Inconsistency may arise when judges disagree on how legitimate factors related to the offense conduct and offender characteristics should be integrated and weighted in the sentencing decision. For example, (Alshuler 2005, 88) makes the point that judges may *not* seek to "treat everyone who commits the same crime alike. They might [try] to treat offenders of equal moral culpability alike or offenders of equal dangerousness alike or offenders with equal rehabilitative prospects alike." If some judges pursue different goals in conflict with the authors of the guidelines as to what constitutes similarly situated offenders, the result will be lower measured

consistency but not increased discrimination unless the differences in sentences are systematically tied to factors such as age, race or gender.

Given the distinction between inconsistency and discrimination, (Alshuler 2005, 95) suggests, "[t]here is a useful way for dispassionate social scientists to study sentencing [discrimination]—assess the influence on sentencing of clearly *in*appropriate circumstances." Following this advice, the current research focuses on the kinds of dicrimination guidelines are designed to prevent—those resulting from the offender's race, age, or gender, the region of the state in which an offender is sentenced,[35] and the manner of disposition. Reducing, if not eliminating, these sources of potential discrimination is an explicit goal in all three systems examined.

In summary, three general questions related to consistency, proportionality, and discrimination guide the current evaluation of whether more voluntary guidelines perform differently than more presumptive ones.

- Do similarly situated offenders as defined by the guidelines receive similar sentences?
- Do the guidelines in operation provide meaningful and proportional distinctions between more serious and less serious offenders?
- Is there evidence of discrimination distinct from inconsistency in sentencing?

Sentencing guideline structure exemplifies the relevant factors policy makers believe should influence the punishment of convicted felony offenders. The combination and weighting of these factors determine offenders deemed similarly situated (and dissimilar) and result in the recommendation of appropriate punishment through the two sentencing decisions. For each group of similarly situated offenders, the guidelines define a range of allowable sentences.

[35] The key question with regional variation is whether there are distinct sentencing "regimes" operating under the banner of a single sentencing guidelines structure.

Sentence ranges can be tighter or wider in line with policy makers' views on the extent to which judicial discretion should be constrained. In addition to the "width" of the range is the question of *overlap* between the ranges of adjacent grid cells. If there is considerable overlap, then the same sentence could be given to different sets of similarly situated offenders and raises the question as to whether the two sets of offenders are truly different.

Judicial authority to deviate from a guideline recommendation is defined by a state's departure policy. As discussed in Chapter 2, departure policy varies from relaxed (e.g., "judges are not required to give any reason for departure") to more rigid criteria (e.g., "a substantial and compelling reason is required"). A further constraint on judicial discretion to depart is the possibility and prospect of appellate review. Drawing on Reitz's (2005) insight, a more controlled departure policy shows the ascent of the rule makers (e.g., the legislature) and a corresponding decline in individual judicial discretion. One expected result is that guideline systems employing tighter ranges, a more restrictive departure policy, and vigorous appellate review should demonstrate greater consistency in sentencing. A second expected result is that guideline systems with tighter sentencing ranges will have higher departure rates as judges find defensible ways to avoid the "one size fits all" implications of the guidelines.

Because the dual sentencing decisions of: (1) whether to incarcerate and, (2) if so, for how long are being investigated with a two-stage statistical model, it is necessary to distinguish two basic types of departure: locational and durational. A locational departure occurs when the guidelines recommend a prison sentence and the judge does not sentence the offender to prison (or vice versa).[36] A durational departure occurs when a judge utters a prison sentence that is

[36] Locational depatures are not investigated in this analysis because this variable has no variation: all people who receive a locational departure of no prison do not go to prison, while all people who receive a locational depature of prison go to prison.

either above or below the prescribed guideline range. These departure distinctions add further refinement to the evaluation of consistency:

- Does the evidence suggest consistency is relatively greater in more presumptive systems (e.g**.,** Michigan and Minnesota) than in more voluntary systems (e.g., Virginia)?
- Is there any relationship between guideline structure and the frequency and magnitude of departures?

BUILDING A STATISTICAL MODEL OF SENTENCING GUIDELINES

There are two separate, though likely related, judicial decisions built into each sentencing guideline system: the prison versus no prison, and the prison length, decisions. An accurate assessment of consistency and discrimination requires that the dependent variables be appropriately defined for the two sentencing stages. The first of these is straightforward – a categorical variable for the in/out decision where 1 indicates the individual receives a state prison sanction and 0 means a non-custodial sentence, such as fine or probation.

The choice of how to measure the second stage, the length of the state prison sanction, is less straightforward. In the current research, the natural logarithm of the imposed sentence is used to assess the magnitude of the state prison sentence. An alternative that is widely used measures severity in terms of the actual number of months (or years) of the offender's sentence.[37] A perceived advantage of this measure is that it appears on the individual's record, and it is (ignoring the issues of pretrial time served, good time, and parole) the length of time the individual must serve. Many observers see this as the natural dependent variable for describing

[37] See, for example, Chiricos and Waldo, 1975; Kelly, 1976; Clarke and Koch, 1977; Lizzotte, 1978; Zalman, Ostrom, et. al, 1979; Thompson and Zingraff, 1981; Miethe and Moore, 1986; and Crew, 1991.

the severity of prison sentences. However, using actual months or years as a measure of sentence severity is problematic.

A difficulty in using the actual number of months as the dependent variable arises from the inherent design of guidelines themselves. Sentences obviously increase with an increase in the severity of the offense. However, an examination of guideline systems reveals recommended sentences increase at an increasing rate, as offense severity rises.[38]

Judges tend to abide by these uneven intervals because they engage in a form of "psychological discounting."[39] They presume offenders experience disutility for each year they are incarcerated, and that a primary goal of sentencing is to achieve a particular level of *total* disutility for each offender. In doing so, judges act as if they discount the future when evaluating possible punishments. An offender's disutility diminishes with successive years of imprisonment. Polinsky and Shavell (1999) suggest, that from the offender's perspective, disutility declines:

> [b]ecause an offender becomes accustomed to prison life or because he ceases to care as much about those he knew from the outside. Also, the disutility associated with the first year of prison might be particularly great compared to that of later years . . . [because the] stigmatization of the prisoner (which lowers earning capacity an status) may be primarily due to being in prison at all, and it may not increase much with the number of years spent there.

Likewise, judges, who do not, of course, serve the sentence themselves, might fail to view the distant future as vividly and forcefully as the immediate future. According to one

[38] It is worthwhile considering the issues raised by Engen and Gainey (2000, 1209) concerning the analysis of sentencing data (especially that gleaned from a sentencing guidelines state). They begin their argument by suggesting ". . . most analyses predicting sentence length under guidelines fail because they incorrectly assume linear, additive relationships between the principal legally relevant factors and the sentence length." They base their conclusion – in part – on the observation that "sentencing guidelines typically increase the severity of sentences more sharply for more serious offenses and for offenders with extensive criminal histories." From this they argue "the joint influence of offense seriousness and criminal history on sentencing ranges is not additive." In summarizing their findings, Engen and Gainey (2000, 1209) conclude that "the legally prescribed effects of offense seriousness and criminal history are, by definition, nonlinear, and there is an interaction between offense seriousness and prior history built into most sentencing guideline systems (emphasis added)."

[39] See Ostrom and Ostrom (2002). Also, Abelson and Levi, 1985, p. 276

interpretation, judges act as if the disutility per year falls with each additional year of incarceration, so that total disutility does not rise in proportion to sentence length.[40] To the extent judges engage in discounting, they are thinking in percentage terms when deciding upon the final sentence. As a consequence, the logarithm of the actual number of months is called for to capture this aspect of sentencing appropriately.

In summary, the measurement of sentence length should incorporate the concept that the interval between prominent *sentences increases at an increasing rate*. By basing the metric of the dependent variable in accordance with this view of judicial sentencing practices, the statistical model is in a firmer position to produce reliable statistical coefficients and thereby enhance the likelihood of drawing valid conclusions about sentencing consistency and discrimination.[41]

Joint estimation of the sentence type and the sentence magnitude decisions raises the issue of sample selection bias, a concern related to possible correlation of error terms in the two equations.[42] Addressing sample selection bias (via the Heckman procedure) is recognized as best practice in studies of sentencing[43] and a more complete overview of the sample selection model and its interpretation is provided in Appendix 4-A. As Ulmer and Kramer (1996, 388) note, "for sentence length models, we correct for potential selection bias as described by Berk (1983), Peterson and Hagan (1984), and others (e.g., Spohn, 1990)." Therefore, Ulmer (2000, 1236**)** also states "using the two-step hazard method . . . is now commonplace in the sentencing literature."

[40] This view also meshes with that of many criminologists. See, for example, James Q. Wilson and Richard Herrnstein, (1985).
[41] Bushway, et al (2007 171) note that the use of the natural logarithm of the sentence length increases the chances of satisfying the normality assumption.
[42] Zatz and Hagan (1985) provide an important survey and discussion of the problem of selection bias in sentencing research (see also Klepper et al, 1983).
[43] See, for example, Engen and Gainey 2000b; Myers and Talarico 1986; Peterson and Hagan, 1984; Steffensmeier et al., 1998; Ulmer, 1997; and Wooldredge, 1998.

Even though it is commonplace, the Heckman approach requires careful consideration before it is employed. [44] Bushway, et al (2007) raise several technical issues related to the appropriate application of Heckman's two-step correction, including the recommended use of probit analysis for the selection equation, incorporating the inverse Mills ratio rather than the probability from the selection equation, and correcting the estimated standard errors. As in the current research, employing the maximum likelihood version of the Heckman type estimation algorithm with robust standard errors accommodates each of these recommendations.[45]

The current research incorporates exclusion restrictions by identifying the habitual offender (Michigan), modifier (Minnesota), and departure variables (all three states) as appropriate for exclusion from the selection equation to avoid problems with multicollinearity (Bushway et al, 2007).[46] These exclusion restrictions make sense because these factors affect sentence length after the decision to incarcerate has been made. Exclusion restrictions are less of a problem in Virginia because there is not a uniformity of factors on the Section A and Section C worksheets.

MEASURING CONSISTENCYAND PROPORTIONALITY

Statistical analysis provides the means to focus on both a macro and micro assessment of consistency and proportionality. Consistency, from a macro perspective, occurs when there are discernible patterns in sentencing outcomes such that similarly situated offenders are treated in a similar fashion, both in terms of location and duration. Macro-level consistency is evaluated

[44] Bushway et al (2007 166) note when talking about the choice of an appropriate selection model – that it is necessary to differentiate between explicit and incidental selection. Explicit selection occurs when "judges are sentencing on a continuum that includes probation and incarceration"; when coupled with censoring this leads to the selection of a single equation tobit model. Incidental selection occurs when "judges decide whether or not to incarcerate and then they decide the length of the sentence for those receiving incarceration." We have chosen to model the sentencing process as if there were incidental selection and hence use two equations.

[45] Stata 9.2 heckman command with robust standard errors have been used.

[46] Including the inverse Mills' ratio in the prison length equation without exclusion restrictions raises the likelihood of substantial multicollinearity and mis-identification of the model. Bushway et al (2007) recommend calculating the condition number for the substantive equation as a check on possible collinearity problems.

using "goodness" of fit measures such as percent correctly predicted and proportional reduction in error for the in/out decision and variance explained for the sentence length decision.[47]

Consistency, from a micro perspective, occurs when the sentencing guidelines system works in the way it was intended to work. Statistical models for each of the sentencing guideline systems are designed to capture the "moving parts" of each sentencing system without imposing any specific "weights" or "values" to the variables. To accomplish this objective, categorical variables are used that specify a baseline offender for each guideline system**.**

To illustrate the approach, consider the four basic elements of the Minnesota guideline system**:** Conviction Offense Severity Level, Prior Criminal History, In/Out Line, and Departures. The baseline offender for Minnesota is Severity Level II and Prior Criminal History Score 0 (with no departure).

To determine the impact of the 11 levels of conviction offense severity, 10 separate dichotomous categories are created without any a priori notion of severity. The coefficients for these variables indicate the change from Severity Level II. There are six categorical variables used to assess the impact of Prior Criminal History; the numerical values of the estimated coefficients measure the impact of change from a score of 0. There is a single dichotomous variable to indicate whether the offender is on the left of the in/out line (presumptive stayed sentence) or to the right (a presumption execution of sentence). Finally, there are two variables to measure the impact of departures (above or below). Together, these 19 variables make it possible to model the workings of the Minnesota guideline system.

Micro-level consistency, assessing whether the sentencing guidelines are working as designed, is evaluated in three steps. First, each block of elements (e.g., prior record) is

[47] We follow a procedure suggested by Wooldridge (2002 208-9) to compute the R^2. This is the squared correlation between actual and predicted sentences (in months) for those who receive a prison sentence. Wooldridge outlines a four-step procedure to translate the predictions in logarithms into actual months.

examined to see if it plays a statistically significant role in the sentencing decision – the expectation is that all blocks of variables (i.e., dimensions) will play a significant role in the sentence decision. Second, each individual factor within a given block is assessed for statistical significance in each sentencing decision—the expectation is that all included factors should matter. Finally, when there are multiple levels/categories (along a dimension), a test is performed as to whether there is a statistically significant difference between categories. That test provides information on whether sentencing achieves proportionality.

As an illustration of determining the third type of micro level consistency, consider the Minnesota system, which suggests that the coefficients – within each block of variables – should have the following order:

- Conviction Severity Level ➔ XI > X > IX > VIII > VII > VI > V > IV > III > II > I
- Criminal History ➔ 6+ > 5 > 4 > 3 > 2 > 1 > 0
- Cell Type ➔ Presumptive Executed prison sentence> Presumptive Stayed sentence

The correspondence between the anticipated and actual results is a basis on which to conclude whether Minnesota's guidelines are working in the prescribed manner. Similar patterns are expected for relevant blocks in Michigan and Virginia.

The final level of evaluation examines the coefficients to see if the estimated impact "makes sense" in the felony sentencing context. To accomplish this, there are important issues associated with the substantive interpretation of the coefficients in each of the two equations. For the "in/out" equation, the coefficients represent the impact of an independent variable on the cumulative normal distribution (represented by a z-score). To interpret the impact of each variable in probability terms, it is necessary to make some a priori assumptions about the values of the remaining variables in the model. Following statistical convention, the determination of

how much each individual factor influences the change in probability of a prison sentence holds all other variables at their mean value.

In the sentence length equation, the use of a logarithmic dependent variable with non-logged independent variables means the coefficients are interpretable in percentage terms. Each coefficient measures the percentage change in the dependent variable caused by a one-unit change in the independent variable as long as the values of the coefficients are less that .25 in absolute value. For coefficients with absolute values in excess of .25, Wooldridge (2002, 188) shows that the calculation e^{β}-1 transforms the coefficient to produce the exact percentage change. A more detailed discussion surrounding the interpretation of coefficients under this modeling strategy is provided in Appendix 4-B.

VARIABLE CONTRIBUTING TO DISCRIMINATION

The current research is designed to examine the extent to which any observed inconsistency in sentencing can also be called discriminatory. There is a rich and extensive scholarly literature on discrimination in sentencing. This section reviews primary findings related to personal, geographical, and procedural types of disparities that guidelines are designed to prevent. These factors are then incorporated into the statistical assessment of sentencing outcomes.

Discrimination is a particularly troubling type of inconsistency as it implies offenders are treated differently based largely on morally questionable criteria such as race, age, and gender. A potential confounding factor is that sentencing outcomes may vary by region around a state. One implication of the "similarly situated" concept under statewide guidelines is that similarly situated offenders are treated similarly in all parts of the state. Therefore, geographic variation is

also examined as a source of unwarranted disparity. Finally, the impact of choosing to exercise or waive the constitutional right to trial is factored into the analysis.

Race, Age and Gender

One explanation for the presence of discrimination is that it arises as judges seek to reduce uncertainty by relying on attributions linked to visible characteristics, most notably the defendant's race. Steffensmeier and Demuth (2001, p.152) state that the "lack of resources coupled with attributions that associate black offenders with a stable, enduring predisposition to future criminal activity or dangerousness, is thought to increase sentence severity for black defendants." Despite these claims, research over the past 40 years has produced both inconsistent and contradictory findings regarding the effect of race on sentencing.

Some studies have shown that racial/ethnic minorities are sentenced more harshly than whites (Holmes et al. 1996; Kramer and Ulmer 1996; Petersilia 1983; Spohn, Gruhl, and Welch 1981-82; Zatz 1984), even after crime seriousness, prior criminal record, and other legal variables are taken into account. Other studies have found either no significant racial differences (Klein, Petersilia, and Turner 1990) or that blacks are treated more leniently than whites (Bernstein, Kelly, and Doyle 1997; Gibson 1978; Levin 1972). Still other research has concluded that race influences sentence severity indirectly through its effects on variables such as bail status (LaFree 1985b; Levin 1972), type of attorney (Spohn, Gruhl, and Welch 1981-82), or type of disposition (LaFree, 1985a, Spohn 1992; Uhlman and Walker 1980), or that race interacts with other variables and affects sentence severity only in some types of cases (Barnett 1985; Spohn and Cederblom 1991), in some types of settings (Chiricos and Crawford 1995; Hawkins 1987; Kleck 1981; Myers and Talarico 1986), or for some types of defendants (Chiricos and Bales 1991; LaFree 1989; Nobiling, Spohn, DeLone 1998; Peterson and Hagan

1984; Spohn 1994; Walsh 1987). Consequently, previous research on discrimination in sentencing has produced a wide range of conflicting conclusions.

Steffensmeier et al. (1998, 768) point out that while defendant characteristics might have an effect in isolation, there are also possible interaction effects. Specifically, they assert: "our main premise is that race, age, and gender will interact to influence sentencing because of images or attributions relating these statuses to membership in social groups thought to be dangerous and crime prone." As a consequence, the current analysis will investigate the individual and joint impact of race, gender, and age on the two sentencing outcomes.

With respect to age, Seffensmeier et al. (1995) find a nonlinear or inverted U shape when a full range of adult ages is included. Youthful offenders (18-20 years) receive more lenient sentences than young adult offenders (21-29) and comparable sentences of offenders in their 30's. Offenders aged 50 and over receive the most lenient sentences. Steffensmeier et al. (1997, 765-766) state that "[i]t appears that judges see youthful offenders as more impressionable and more likely to be harmed by imprisonment than young 'adult' offenders, while they see older offenders as more dangerous and less risky prospects for release into the community. Consistent with this theory, Blumstein, Cohen, and Miller (1980) note offenders between the ages of 20 and 30 have the highest rates of incarceration of any group. Similar to other studies that treat age as subgroups of old and young offenders,[48] the current research explores the curvilinear effect of age.

A persistent finding in the literature is that female defendants are treated more leniently than male counterparts (see reviews in Bickle and Peterson 1991; Daly and Bordt 1995; Steffensmeier et al. 1993, 1998). Several reasons have been posited to account for the difference in sentencing patterns resulting from gender. Albonetti (1991) suggests judges view female

[48] See, for example, Spohn and Holleran 2000; Klein et al. 1990; and Zatz 1984

defendants as having a lower probability of future criminal behavior and that this judicial "rule of thumb" leads to a reduction in sentence severity. Furthermore, Steffensmeier, Kramer, and Streifel (1993) state previous studies have substantiated the "widely held belief that female defendants receive more lenient treatment (apparently) because of judicial paternalism, the social costs to children and families of sending women to prison, or the view that female defendants are less dangerous and more amenable to rehabilitation than male defendants." Finally, Kruttschnitt and Green (1984) argue that females whose social attributes satisfy sex-role expectations are insulated from harsher sanctions (e.g., being mothers and economically dependent; possessing characteristics in accord with their conventional role). In accord with previous literature, the analysis addresses the expectation that women receive less severe sanctions.

Geographic Region

State guidelines are designed to apply equally statewide. A source of possible discrimination arises when judges in one part of a state prescribe sentences that are either much harsher or more lenient than judges in another part of the state. Differences can be viewed as discrimination if based on race, age or gender. However, differences may also reflect more pragmatic issues.

The criminal justice system has limited resources and manpower. As leaders in the local justice community, judges are expected to organize their operations to get the job done as efficiently and cost-effectively as possible. Hence, local courts should be viewed as communities with their own culture, politics, and organizational arrangements. In their study of "Court Communities" and sentencing, Ulmer and Kramer (1996, 384-85) observe: "local courts are policy arenas (see Hall 1995) in which two sets of standards meet—the logically formal rational ones articulated by guidelines (offense severity, prior record) and the substantive, extralegal criteria deemed relevant by local court actors." Therefore, as Myers (1989, p. 313) argues "[i]t

has become abundantly clear that an understanding of sentencing requires a consideration of both the community and the court where sentencing occurs."

Guidelines exert a strong force for uniformity, but it must also be acknowledged that judges and attorneys become socialized in their local court culture and with local norms related to right and wrong and the severity of punishment. People working in large urban centers tend to have different cultures than people working in smaller jurisdictions. One result may be observed differences in the number and scope of plea bargains, departure rates, and the severity of punishment. This study explores the possibility that sentencing outcomes vary among individual trial courts in the same state.

Pleading Guilty

Closely related to the culture of the trial court are policies and norms concerning pleading guilty versus going to trial. There is a widely held view that conviction by guilty pleas result in less punishment than conviction by trial. Albonetti (1991, 255) states that "it is hypothesized that net of other variables in the model, offenders pleading guilty will receive less severe sanctions than comparable offenders insisting on a trial disposition. Defendant cooperation exemplified by a willingness to plead guilty is viewed, by the sentencing judge, as an indication of the defendant's willingness to 'play the game' in a routine, system defined manner." Offenders who do not play the game are met with trial penalties (Hagan et al. 1979; Uhlman and Walker 1980; Spohn 1990). Pleas are viewed as a mechanism that saves the court both time and resources (LaFree 1985).

Potentially Discriminatory Factors

Therefore, to assess the possibility of discrimination in sentencing, the analysis controls for the impact of age, race, sex, geographic region, and plea bargaining individually and in

concert with one another. To capture the impact of age, the interval measure of age and its square are used to capture the hypothesized curvilinear relationship between age and severity of sanction. In addition to this version of the age variable, a categorical variable takes on the value of one for those offenders 18 years old or younger.[49] The race variable breaks the population into White and non-white (coded 1) while the sex variable breaks the population into male and female (coded 1). Another variable captures the impact of being young (19-29), nonwhite and male. Geographic variation is assessed through a variable that takes on the value of 1 for large urban courts and 0 elsewhere. Finally, a separate categorical variable indicates whether the offender was convicted at either a bench or jury trial.

TESTING FOR DISCRIMINATION

It is noteworthy that previous research into the question of discrimination in sentencing has produced a wide range of conclusions. On the basis of a "meta analysis" of racial discrimination Pratt (1998) notes that empirical research provides evidentiary support for the following three conclusions: race does not play a role in sentencing, it plays a direct role, or that it plays an indirect role. Similar conclusions can be found for all of the factors discussed in the previous section. Consequently, it is important that the analysis strategy be multifaceted.

On the basis of his analysis, Pratt identifies three distinct perspectives/hypotheses concerning the determinants of racial discrimination that can be generalized to all forms of sentencing discrimination. First, a differential involvement perspective, suggests that different subgroups are over (under) represented in prison based upon variations in the legitimate sentencing relevant factors (e.g., prior record). Second, a direct impact perspective says that the

[49] Steffensmeier et al. (1997) state that "[i]t appears that judges see youthful offenders as more impressionable and more likely to be harmed by imprisonment than young 'adult' offenders, while they see older offenders as more dangerous and less risky prospects for release into the community" (765-766).

individual variables for the potentially discriminatory factors will have a statistically significant impact even after controlling for all sentencing relevant factors. [50] Third, an interactionist perspective suggests that discriminatory factors play a role in sentencing only through their interaction with each other or with contextual conditions. Each perspective is investigated sequentially culminating with a consideration of a full interactionist model that divides the population of offenders into two groups and estimates separate models for each. Using the results from the two models, it is possible to adopt a methodological perspective introduced by Blinder (1973)-Oaxaca (1973).

The Blinder-Oaxaca technique enables one to sort between the extent to which differences in sentencing outcomes is due to differences in endowments (mean values on sentencing relevant variables) or of differences in treatment (or discrimination) due to different weights being given to the sentencing relevant characteristics.[51] The procedure isolates the extent of the difference in the estimated values of the constant term and the coefficients across the separate models. Thus, the Blinder-Oaxaca decomposition identifies the presence of discrimination when there are "palpable differences" in the estimated structural equations producing sentencing outcomes for the two groups (Darity and Mason, 1998).

SUMMARY

The explicit guideline design decisions made by policy makers define what it means to be similarly situated under any particular guideline system. The intent is to compare sentencing

[50] Pratt also notes that race may interact with other extralegal factors such as offender's age, sex, socioeconomic status, etc. While it is true that this is an interactionist perspective, it seems more appropriate to include these factors under the direct impact perspective. For example, if young black males are "targeted" for differential treatment (Steffensmeier, Ulmer, Kramer 1998), this is more likely evidence of institutionalized discrimination than it is of the interactionist perspective.

[51] The Blinder and Oaxaca decomposition is detailed in Greene (2000, 251-53). Utilizing a STATA 9.2 module (DECOMP by Ian Watson), it is possible to calculate the Blinder/Oaxaca decomposition using the full sample selection model.

outcomes across three distinct guideline systems each representing different decisions on the choice and weighting of the factors to be used in the sentencing decision. Two primary research questions arise: To what extent do differences in design affect consistency, proportionality, and discrimination? Do more presumptive systems differ from more voluntary systems?

This chapter defines and develops a comprehensive means to examine many facets of consistency and proportionality– both macro and micro. Attention is given to operational distinctions between similar and dissimilar offenders, legitimate and illegitimate factors, and inconsistent and discriminatory outcomes. General hypotheses are developed and associated analytical methods used to test the hypotheses.

APPENDIX 4-A: THE HECKMAN SELECTION MODEL

The Basic Model

Greene (1997, 978) and Breen (1996, 34) characterize the sample selection model as:

$$z_i^* = \gamma' w_i + \mu_i$$

$$y_i^* = \beta' x_i + \varepsilon_i$$

where z* is a latent scale reflecting the likelihood of receiving a prison sentence for offender i and y* is a latent scale reflecting the seriousness of the punishment for the offender. The latent nature of z* or y* means that the two scales cannot be directly observed. What is seen is connected to these latent scales in the following manner:[52]

$$z_i = 1 \text{ if } z_i^* > 0$$

$$z_i = 0 \text{ if } z_i^* < 0$$

$$y_i = y_i^* \text{ if } z_i = 1$$

that is, y_i is observed only when the individual receives a prison sentence. Therefore, the model to be estimated can be written as (Greene, 1997, 978):

$$z_i^* = \gamma' w_i + \mu_I$$

$$y_i = \beta' x_i + \varepsilon_I$$

$$(\varepsilon_I \mu_I) \notin [0,0,1, \sigma_\varepsilon, \rho]$$

$$\text{Prob}(z_i = 0) = 1 - \Phi(\gamma' w_i)$$

$$\text{Prob}(z_i = 1) = \Phi(\gamma' w_i)$$

This model assumes that the two disturbance terms have a bivariate normal distribution (Berk 1983, 393).

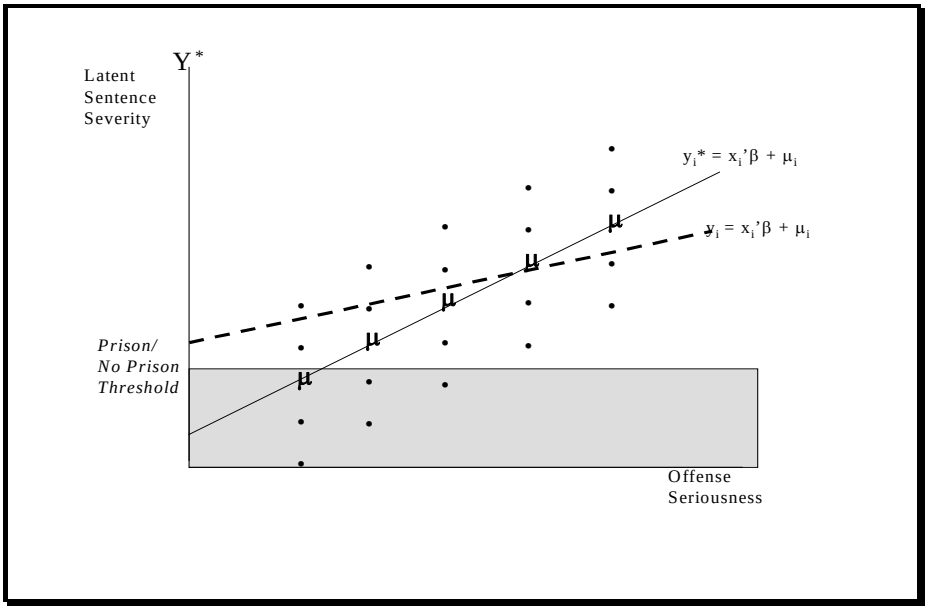
[52] The present characterization of the selection equation is just one of many possible forms it can take (Breen, 1996, 50-54).

An Omitted Variable

To clarify this issue, Figure 4A-1 shows a sample scatterplot for the latent severity variable and a measure of offense seriousness. It is assumed that the data are a random sample drawn from a population of convictions so that each person has received some sort of sentence. However, it is only possible to measure the severity of the sanction, for those individuals that receive a prison sentence. In Figure 4A-1, the observations in the shaded area are "missing" because they did not receive a prison sentence. The means for each value of offense seriousness are represented by μ. As can be seen, the true regression line (i.e., $y_i^* = \beta' x_i + \varepsilon_i$) goes through the mean values. When the observations that do not receive prison are excluded, the new regression line (dotted line) overestimates the sentence at the low end and underestimates the sentence at the high end.[53] Thus, y is observed only if the person is sentenced to prison and as such is an incidentally truncated random variable (Breen, 1996, 4; Greene, 1997, 974-5).

[53] Berk (1983, 387) notes that in this case the relationship between sentence severity and offense seriousness is no longer linear; the slope becomes steeper as offense seriousness increases

Figure 4A-1: Hypothetical Scatterplot



Berk (1983) notes three implications that follow. First, external validity is undermined since the estimated regression line will systematically misrepresent the relationship between the two variables. Second, internal validity is also jeopardized even if one restricts the inferences to those who receive a prison sentence because the regression line (dotted) falls above the expected sentence for offenders of lesser seriousness and below the expected sentence for more serious offenders. This suggests the possibility that the disturbance term and offense seriousness are correlated with one another and, if so, violates an important regression assumption and leads to biased and inconsistent estimates. Berk (1983, 388) concludes:

> By excluding some observations in a systematic manner, one has inadvertently introduced the need for an additional regressor that the usual least squares procedures ignore (Heckman, 1976; 1979); in effect, one has produced the traditional specification error that results when an omitted regressor is correlated with an included regressor (e.g., Kmenta, 1971, 392-95).

The presence of an omitted variable leads to the third problem – the expected value of the disturbances is no longer zero. The following examples illustrate this problem.

When an individual with low offense severity is given a prison sentence, it is likely that the selection equation predicts no prison although a prison sentence was imposed. This will show up as an error in the z* equation. Given that the prison/no prison and sentence severity decisions are made by the same person, in the same location, at the same time, we can expect to find one of two possible scenarios. In the first scenario, it is likely that sentence length will be greater than the model for y* predicts. For some reason – outside the purview of the model – a judge gives a harsher sentence to an individual than the model predicts. The harshness will be reflected in both equations – first the offender will go to prison and second the prison sentence will be above some minimum threshold. As Berk (1983, 392) notes: "under these conditions, random perturbations will have a significant opportunity to affect jointly the selection and the substantive outcomes." Whatever reasons the judge had for sentencing a person to prison increased their position on the unobservable z* scale--and will likely affect the individual's placement on y*. Thus, errors in the two equations will be correlated. In the econometric jargon, the selection and substantive equations are thus seemingly unrelated.[54] It is also worth noting that the correlation between the error terms is not always significant.[55]

A second scenario arises, especially in the context of sentencing guidelines, and leads to the conclusion that the convicted offender who is sent to prison will receive a lower than expected prison sentence. Consider a sentencing guideline system that includes a large number of

[54] As Greene (1997, 676) notes: the equations are only linked by the correlation between their disturbances and hence the name seemingly unrelated regression model.

[55] Hagan and Parker (1985), in their study of white collar crime, find that the addition of the hazard rate to the equation led to the change in sign of some coefficients although none became significant. Furthermore, the coefficient for the hazard rate was not significant. In a discussion of these results, Breen (1996, 44-5) suggests that in addition to the possibility that there are not selection effects, the selection equation could have been modeled incorrectly.

"variables" relating to offense and prior record factors. In many instances the guidelines lead to a prison recommendation. While the judge agrees with the prison sentence, s/he might feel that the factors do not warrant the mean length of time. In such instances, the judge will give a sentence that is below the expected value.

The Hazard Rate (or Inverse Mills Ratio)

The key to understanding and modeling the process is to obtain an estimate of the non-zero expectations in the disturbance term. This can be done from an examination of the selection equation. A model is needed that applies to the observations in the sample rather than to the population from which the non-random sample of prison sentences evolves. This can be characterized as follows:

$$\begin{aligned} E[y|y-observed] &= E[y_i|z_i^* > 0] \\ &= E[y_i|u_i > -\gamma' w_i] \\ &= \beta' x_i + E[\varepsilon_i|u_i > \gamma' w_i] \\ &= \beta' x_i + \rho\sigma_e\lambda_i(\alpha_u) \\ &= \beta' x_i + \beta_k\lambda_i(\alpha_u) \end{aligned}$$

where $\alpha(u) = -\gamma' w_i/\sigma_u$ and $\lambda(\alpha) = \phi(-\gamma' w_i/\sigma_u)/\Phi(-\gamma' w_i/\sigma_u)$.[56] This, in turn, suggests

$$\begin{aligned} y_i|z_i^* > 0 &= E[y_i|z_i^* > 0] + v_i \\ &= \beta' x + \beta_\lambda\lambda_i(\alpha_u) + v_i \end{aligned}$$

where λ_i is referred to as the hazard rate.

[56] One striking feature of the sentencing severity literature is the use of logit for the first stage equation. The usual citation is to Berk (1993) who in his example uses probit along with linear probability and logit models to construct a hazard rate. The hazard rate for the linear probability model is equal to the predicted probability of non response minus 1.0. The hazard rate from the logit model is simply the predicted probability of nonresponse. Berk (1983, 394) reports that the three rates are correlated at .98 or better. Berk (1983, 394-5) concludes: "clearly it would not matter (and in fact does not matter) which version of the "hazard rate" is used. There is, however, no reason to believe that this is a general result and may be a consequence of the small amount of variance explained in each of the three selection equations; all three constructed hazard rates may be insufficiently variable to reveal properly their different forms."

The selection equation models the probability that the offender will receive a prison sentence. As can be seen, the predicted value – γ' w_i – is multiplied by –1; thus capturing the probability that the individual will not receive a prison sentence. The predicted value from a probit equation is a normally distributed random variable with a mean of 0 and a standard deviation of 1.0. The negative of this random variable is then used to compute the hazard rate – the numerator is the density and the denominator is one minus the cumulative probability. As Berk (1983, 391) notes: "this ratio . . . represents the instantaneous probability of being excluded from the sample conditional on being in the pool at risk." Berk (1983, 391) goes on to assert:

> equally important, the hazard rate captures the expected values of the disturbances in the substantive equation after the nonrandom selection has occurred. It was precisely these expected values that are the source of the biased estimates. By including the hazard rate as an additional variable, one is necessarily controlling for these nonzero expectations. Alternatively stated, the deviations of the expected values from the regression line result from an omitted variable that has now been included. The key, then, to consistent parameter estimates is to construct a hazard rate for each observation. And it cannot be overemphasized that it is the selection process that introduces the need for a new variable.

One must be aware of the possibility of this kind of bias/inconsistency in modeling the severity of prison sentences.[57]

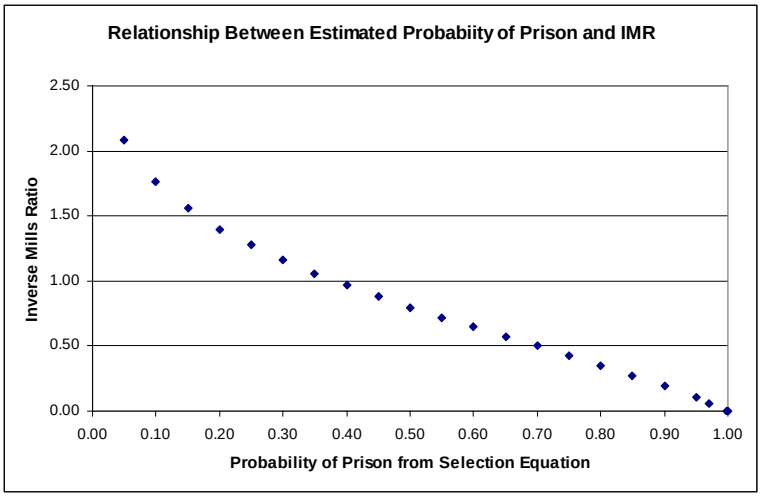
[57] Berk (1983, 392) also adds the following observations. "There is also the problem of infinite regress. Even if one has a random sample from a defined population, that population is almost certainly a nonrandom subset from a more general population. . . . In principle, therefore, there exists an almost infinite regress for any data set in which at some point sample selection bias becomes a potential problem. As for traditional specification errors and measurement errors, the question is not typically whether one has biased (or even consistent) estimates. The question is whether the bias is small enough to be safely ignored.

To further clarify the hazard rate, consider that probit is used to estimate the selection equation. Using the estimated model, it is possible to construct an estimated probability of prison for each of the offenders in the sample. Table 4A-1 provides the selection equation predicted z-core, the associated normal density and cumulative probability functions, and the inverse Mills' ratio. Figure 4A-2 provides a graphical representation of the relationship between the estimated probability of prison from the selection equation along with the corresponding value of the inverse Mills ratio.

Table 4A-1: Values of Inverse Mills Ratio for Selection Equation z-scores

Selection Equation z-score	Normal Density Function	Cumulative Probability	Inverse Mills Ratio
-1.64	0.104	0.05	2.080
-1.28	0.176	0.10	1.760
-1.04	0.234	0.15	1.560
-0.84	0.280	0.20	1.400
-0.68	0.320	0.25	1.280
-0.53	0.350	0.30	1.167
-0.38	0.370	0.35	1.057
-0.25	0.387	0.40	0.968
-0.12	0.396	0.45	0.880
0.00	0.399	0.50	0.798
0.12	0.396	0.55	0.720
0.25	0.387	0.60	0.645
0.38	0.370	0.65	0.569
0.53	0.350	0.70	0.500
0.68	0.320	0.75	0.427
0.84	0.280	0.80	0.350
1.04	0.234	0.85	0.275
1.28	0.176	0.90	0.196
1.64	0.104	0.95	0.109
2.00	0.054	0.97	0.056
3.00	0.004	1.00	0.004
4.00	0.000	1.00	0.000

Figure 4A-2: Relationship Between Estimated Probability Of Prison And IMR



As can be seen in both the table and the figure, the lower the probability of receiving a prison sentence, the higher the value of the Inverse Mills Ratio. Remember that the additional variable only affects those offenders who actually receive a prison sentence. To interpret, recall the estimated model includes an additional term:

$$\beta' x + \beta_\lambda \lambda_i(\alpha_u) + v_i$$

Note that when the values of the independent variables result in a low estimate of the probability of prison, the hazard rate becomes larger. In the present instance, the goal is to account for the severity of sentences—the substantive equation. All that can be observed (or measured) is the sentences for those who go to prison. We know (or at least suspect) that the decision concerning who goes to prison is not random. Since the same judge is making the sentence type and sentence severity decisions, it is likely that the disturbances in the two equations will be correlated. Individuals with a low probability of being given a prison sentence but who in fact receive a prison sentence, will likely get a different sentence than the model suggests. This

"adjustment" to the sentence is captured by $\beta_\lambda \lambda(\alpha_u)$. Note that by construction $\lambda(\alpha_u)$ is always positive and that β_λ places the addition or subtraction into the appropriate metric.

APPENDIX 4-B: INTERPRETATION AND ADVANTAGES OF USING LOG MONTHS

Having constructed an argument in favor of using the natural logarithm of months of incarceration, it is also worth noting that there are advantages in interpretation that result. There are two different aspects of interpretation depending upon whether the independent variables are in conventional form or whether they are also transformed using the natural log.

The model being estimated has the following form:

$$\text{Log } Y = \beta_0 + \beta_1 X$$

One way to interpret the coefficients of this model derives from the following exponential version of the equation:

$$Y = \alpha e^{bX}$$

Taking natural logarithms and letting $c = \log \alpha$, puts the model into the following form:

$$\text{Log } Y = c + bX$$

As Tufte (1974, 125) notes, in this model "bx100 is approximately equal to the percent increase in Y per unit increase in X, if b is small (say, less than .25)." For the general case, it is first necessary to obtain the series expansion of e^X :

$$e^x = 1 + \frac{x}{1!} + \frac{x^2}{2!} + \frac{x^3}{3!} + \ldots = \sum_{n=0}^{\infty} \frac{x^n}{n!}$$

To obtain a formula for the percentage increase in Y per unit increase in X Tufte (1974, 124) offers the following logic:

$$
\begin{aligned}
&= \frac{\frac{\Delta Y}{Y}}{\Delta X} \\
&= \frac{Y_2 - Y_1}{Y_1} (\text{since } \Delta X = X_2 - X_1 = 1) \\
&= \frac{ae^{bx_2} - ae^{bx_1}}{ae^{bx_1}} \\
&= e^{(bX_2 - bX_1)} - 1 \\
&= e^b - 1 \quad (\text{since } X_2 - X_1 = 1)
\end{aligned}
$$

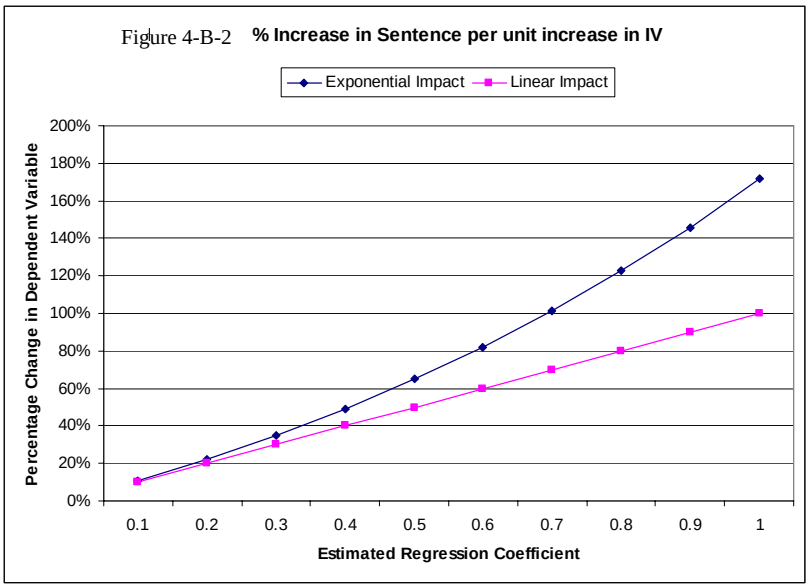
Combining the two results yields the following formula for determining the percentage change in Y for a unit change in X:

$$e^b - 1 = \sum_{n=0}^{\infty} \frac{b^n}{n!} - 1$$

In a logarithmic scale, the distance between each unit of distance reflects an equal percentage change. The distance between 20 to 40 and 40 to 80 would be identical, because each change is a 100 percent increase. Using this characteristic of logarithms, it is possible to generate empirical results that are more plausible than in the level-level realm.

Figure B-1 provides a graphical display of the percentage increase in Y for a unit change in X for a semilog model. As many have noted, as long as b < .25, the coefficient can be thought of as an estimate of the percentage impact. As b becomes larger, there is a divergence between the semilog impact and the percentage implied by the estimated coefficient.

Figure 4-B-2 **% Increase in Sentence per unit increase in IV**

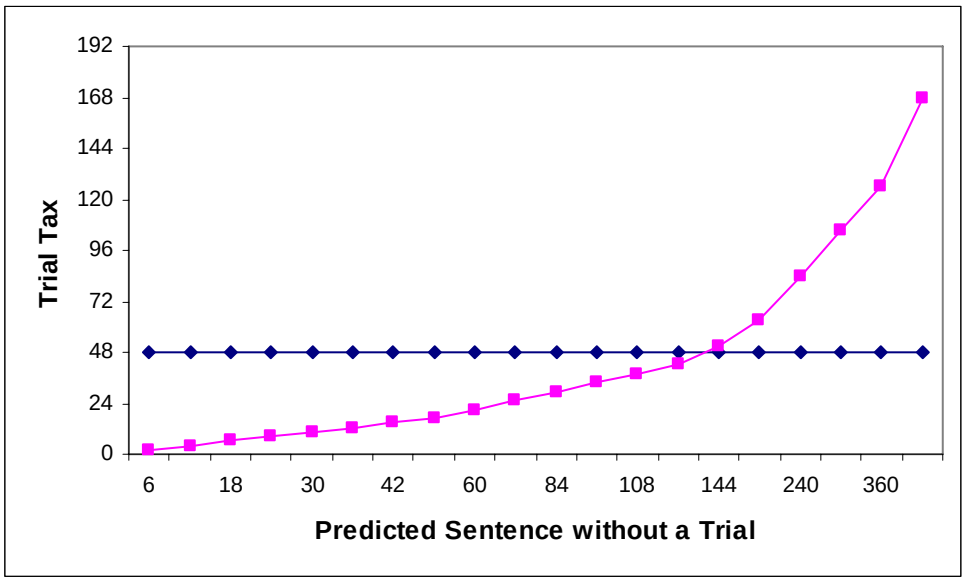


Having presented a way to interpret the estimated coefficients from the model, it is important to illustrate how the estimates from a semilog model differ from those from a model that uses the actual prison months as a dependent variable. For purposes of illustration, consider an example using the impact of trial on the individual's prison sentence. The criminal justice literature distinguishes two primary types of plea bargain. The first, the explicit plea bargain, refers to overt negotiations between the prosecutor and the defendant that result in an agreement on the terms of the bargain. The second type, the implicit plea bargain, describes an understanding on the part of the defendant that he will receive a longer sentence if convicted at trial than a similarly situated defendant who pleads guilty without trial. This sentencing differential, based solely on the manner of disposition--one sentence if the defendant pleads guilty, another, higher sentence if the defendant is found guilty at trial--is sometimes, following Newman (1966), referred to as a "trial tax."

To illustrate the usefulness of this interpretation, consider a fully specified legal model that also includes whether the individual was convicted at trial or pled guilty. In a model using actual months, one might determine that the coefficient is 48; suggesting that being convicted at

a trial – holding other factors constant – leads to an increase of 48 months in the uttered sentence. Using the semi log formulation, suppose that the estimated coefficient for being convicted at trial is .30. Using the above result ($e^b - 1$), this means that if the individual is convicted at trial, the predicted increase will be approximately 35% over what the sentence would have been in the absence of a trial.

Figure 4-B-3: Comparing Two Versions Of Trial Tax



As can be seen in the above figure, the semilog model provides a much more plausible role for the impact of variables – their impact is proportional to the size of the sentence. In the above example, the level-level model suggests that all offenders convicted at trial receive a tax of 48 months; in the semilog model, the prediction is that the offender's sentence will be increased by 35%. The 48 month estimate is an average that overestimates the impact at low sentences and underestimates the impact for high sentences.

CHAPTER 5: EMPIRICAL EVALUATION OF THE MICHIGAN AND MINNESOTA SENTENCING GUIDELINES

INTRODUCTION

Examining key propositions concerning the guideline structure and sentencing outcomes in Michigan and Minnesota is the subject of this chapter. Based on statistical models utilizing the information received and available to a judge, research results cast light both on the extent to which the in/out and length of prison decisions are consistent and the punishment is proportional. Additional evidence is presented on the degree of discrimination in sentencing. Finally, the critical interrelationships among consistency, proportionality and non-discrimination under sentencing guidelines are discussed.

This chapter is of some length as it addresses a series of questions and corresponding statistical tools in uncovering an intriguing pattern among the three values. Each value is an independent goal in structured sentencing systems and believed to contribute to the overall quality of sentencing decisions, but they are interdependent. Because the values build (in a real sense) on one another, they call for a combined examination to see them in their entirety with an explication of how they are related. For expository purposes, the conceptual interrelationships among these critical ideas deserve discussion at the outset of this chapter with the body of the text providing evidence verifying their conception.

Consistency is a bedrock value because without it a sentencing guideline system is not sufficiently organized (or functioning) to promote the policy values driving its institutional design and role. As a result, consistency is essential to demonstrate. Moreover, it bears a particular relationship to proportionality. A guideline system might be consistent and not proportional, but a system achieving proportionality must be relatively consistent. Consequently,

proportionality must be explored even if a system exhibits consistency. Finally, in a system both consistent and proportional, discrimination is less likely to be significant because legitimate policy goals embedded into the guideline structure are producing their intended effects and leaving little room for extra-guideline factors to intrude on the sentencing process. Thus, a single and comprehensive look at consistency, proportionality and discrimination is the chosen format.

A qualification to this approach is that alternative guideline systems vary in design and therefore the three crucial values might be related in different ways in other states. In an affirmative manner, the results presented in this Chapter are more applicable to states sharing the grid-type arrangement of Michigan and Minnesota, which are the states under study. This context is not the only one in which basic conceptual linkages among the three critical values are possible. In the subsequent Chapter, Virginia is shown to employ a different style of classifying offenders, but also a viable route, to achieving harmony among the same key values.

MODELING THE GUIDELINE FRAMEWORK

To capture the many types of factors shaping an offender's ultimate guideline grid cell, the current research employs a standardized set of independent variables to measure the elements of judicial decision making. The question directing both the specification and measurement processes is, when a judge is on the bench and preparing to impose sentence, what information is provided, how is it aggregated, and how is it presented?

Addressing this question requires attention to detail because the decision-making setting is different in different states. For example, in Michigan there are three dimensions to the guidelines. A judge obtains the sentencing recommendation by first selecting the appropriate grid (based on offense severity) and then locating the intersection of offender's offense level (vertical axis) and prior record level (horizontal axis). In contrast, in Minnesota guidelines are two-

dimensional. Using a single grid, a judge identifies where the row with the correct offense severity intersects the column with offender's total criminal history score to determine the correct grid cell.

A second set of independent variables focuses on extra-guideline factors with a potential influence on sentencing, according to previous research. These offender characteristics are combined with the sentencing relevant factors to assess the nature and extent of discrimination in the sentencing process under these two alternative guideline systems.

Key elements constraining judicial decision-making under guidelines are classified into the broad categories of conviction offense severity, prior record, offense seriousness, grid cell type, habitual/modifiers, departure, and extra guideline variables. The first three variable-types capture the information available to a judge by the guidelines; the fourth and fifth variable-types capture possible ways to refine the precise range of the guideline recommendation; and the sixth variable-type notes whether the judge followed the recommendation. The measurement strategy follows.

Offense Severity

To capture the nine classifications of offenses, according to their general amount of severity in the Michigan guidelines (the nine separate grids), seven categorical variables are created to capture the possible differences in offenses from the baseline Class E offense.[58] Because there are 11 levels of offense severity in the Minnesota guidelines, 10 separate categories are created to assess differences from the baseline Level II offense.

[58] Due to the very small number of Murder 2nd offenses that are sentenced each year under the guidelines and since they carry the same statutory maximum as Class A, we have folded the Murder 2nd offenders in with the Class A offenders.

Prior Record

In Michigan, scores on seven possible individual variables (see Table 3-8) in an offender's prior record are added to locate every offender in one of six prior record levels (A through F). Because the Minnesota guidelines also consider a set of prior record characteristics for each offender to determine an overall criminal history score and placement into one of seven categories (0 through 6+), the influence of prior record is determined by measuring five prior record variables in Michigan (baseline is Level A) and six categorical variables in Minnesota (baseline is level 0).

Offense Seriousness

The Michigan guidelines incorporate up to 20 individual offense variables of the seriousness of the instant offense (see Table 3-9). Scores assigned to these variables are summed and the total number used to place an offender in one of six offense levels (See Table 3-10). For the current research, five Offense Seriousness variables are created to capture the differences in the seriousness of the instant offense from the baseline Offense Severity Level I. In contrast, because Minnesota employs no systematic assessment of offense severity beyond the overall severity of the conviction offense, this variable-type does not play a role in the Minnesota analysis.

Additional Guideline Considerations

After conviction severity, prior record, and offense seriousness information is made available to the judge for of sentencing and direct the placement of offenders into a sentencing guideline grid cell, three other considerations affect the sentencing decision. First, the *type* of grid cell is important. In Michigan, variables are created to account for the Straddle and Prison type grid cells (Lockout is baseline), while in Minnesota a distinction is made between

presumptive commitment to state prison and presumptive stayed sentence (baseline). The grid cell location variables indicate the nature of the "locational" presumption (i.e., prison versus no prison) contained in each guideline system.

In addition, the sentence recommendation depends on *habitual* level (if any) in Michigan and whether an attempt or conspiracy *modifier* is in play in Minnesota.[59] Finally, whether a judge *departs* in the particular case is taken into account by indicating if the sentence is above the top of the sentencing guideline range or below the bottom of the range. [60] Each of these possibilities is also taken into account by an appropriate variable.

Data

Data assembled to measure the independent variables come from State governmental agencies. The Michigan data set, provided by the OMNI system of Michigan's Department of Corrections, contains sentencing guideline data for 32,754 individual offenders sentenced during calendar year 2004. The Minnesota Sentencing Commission provided data for 12,978 individual offenders sentenced in calendar year 2002. Every variable and their average (mean) values are displayed in Tables 5-1a and 5-1b**.**

[59] The presumptive disposition for an attempt or a conspiracy is the same as for the completed offense while the presumptive duration is half of the recommended sentence.

[60] The focus is on "durational" departures rather than on "locational" departures. The latter occurs when a judge gives a prison sentence to an offender when the guidelines recommend no prison and the former refers to instances in which the judge gives a sentence that is outside – either below or above – the guideline range. Locational departures cannot be included in a statistical model because they are perfect predictors of whether an individual goes to prison.

Table 5-1a: Mean Values – Michigan

Variable		Definition	Variable Means All	Variable Means Prison Only
Dependent Variables				
	Prison	**Offender receives a prison sentence**	0.161	
	Lprison	**natural log of length of prison sentence**		3.269
	Length	**Length of uttered prison sentence (in months)**		40.460
Prior Record				
	Prior Level A	Offender's Prior Record Score in Level A (suppressed)	0.256	0.077
	Prior Level B	Offender's Prior Record Score in Level B	0.173	0.046
	Prior Level C	Offender's Prior Record Score in Level C	0.234	0.126
	Prior Level D	Offender's Prior Record Score in Level D	0.183	0.279
	Prior Level E	Offender's Prior Record Score in Level E	0.090	0.243
	Prior Level F	Offender's Prior Record Score in Level F	0.064	0.229
Offense Seriousness				
	Offense Level I	Offender's Offense Seriousness in Level I (suppressed)	0.532	0.249
	Offense Level II	Offender's Offense Seriousness in Level I	0.295	0.336
	Offense Level III	Offender's Offense Seriousness in Level I	0.110	0.183
	Offense Level IV	Offender's Offense Seriousness in Level I	0.031	0.097
	Offense Level V	Offender's Offense Seriousness in Level I	0.021	0.080
	Offense Level VI	Offender's Offense Seriousness in Level I	0.011	0.055
Conviction Offense Severity				
	Class A	Conviction Offense in Class A	0.021	0.123
	Class B	Conviction Offense in Class B	0.026	0.116
	Class C	Conviction Offense in Class C	0.049	0.134
	Class D	Conviction Offense in Class D	0.109	0.182
	Class E	Conviction Offense in Class E (suppressed)	0.347	0.266
	Class F	Conviction Offense in Class F	0.111	0.073
	Class G	Conviction Offense in Class G	0.213	0.093
	Class H	Conviction Offense in Class H	0.124	0.014
Grid Cell Type				
	Lockout Cell	Offender presumptive intermediate sanction (suppressed)	0.709	0.110
	Straddle Cell	Offender's grid cell is a straddle cell	0.204	0.451
	Prison Cell	Offender presumptive prison sentence	0.086	0.438
Habitual Level				
	No Habitual	No habitual offender conviction (suppressed)	0.895	0.732
	Habitual 2nd	Habitual offender 2nd conviction	0.051	0.107
	Habitual 3rd	Habitual offender 3rd conviction	0.026	0.072
	Habitual 4th	Habitual offender 4th conviction	0.029	0.089
Departure				
	Above	Judge gives prison sentence greater than rang maximum	0.013	0.082
	Below	Judge gives prison sentence less than range minimum	0.017	0.099
Extra Guideline Variables				
	Trial	Person is convicted at trial	0.035	0.155
	Age (in years)	Age (in years)	31.085	32.639
	Age squared	Age squared	1084.718	1170.038
	Race	Black	0.429	0.470
	Sex	Female	0.166	0.055
	Young Offender	Offender 18 or younger	0.036	0.018
	Young Black Male	Black Male 19-29	0.184	0.186
	SE Michigan	Sentenced in SE Michigan	0.436	0.357

Table 5-1b: Mean Values -- Minnesota

Variable		Definition	Variable Means All	Variable Means Prison Only
Dependent Variables				
	Prison	Offender receives a prison sentence	0.236	
	Pris Length	Length of prison sentence		45.540
Criminal History				
	0 points		0.433	0.175
	1 point		0.163	0.101
	2 points		0.131	0.124
	3 points		0.088	0.118
	4 points		0.067	0.129
	5 points		0.043	0.098
	6 points		0.076	0.254
Severity of Conviction Offense				
	Level XI		0.001	0.002
	Level X		0.002	0.008
	Level IX		0.002	0.007
	Level VIII		0.053	0.160
	Level VII		0.060	0.158
	Level VI		0.117	0.159
	Level V		0.051	0.043
	Level IV		0.161	0.123
	Level III		0.141	0.115
	Level II		0.342	0.184
	Level 1		0.072	0.040
Grid Cell Type				
	Presumptive Commit		0.204	0.643
Modifiers				
	Conspiracy	Convicted of conspiracy	0.003	0.006
	Attempt	Convicted of attempted felony	0.034	0.091
Departure				
	Above	prison sentence greater than rang maximum	0.040	0.090
	Below	prison sentence less than range minimum	0.114	0.296
Extra Guideline				
	Trial	Person is convicted at trial	0.043	0.097
	Age	Age (in years)	30.353	31.362
	Agesq	Age squared	1019.716	1069.625
	Race	Black	0.399	0.472
	Sex	Female	0.179	0.081
	Young	Offender 18 or younger	0.039	0.024
	YBM	Black Male 19-29	0.193	0.220
	Hennepin	Sentenced in Hennepin	0.230	0.247

INVESTIGATING CONSISTENCY AND PROPORTIONALITY

Organizing Questions

Despite the primacy of sentence guideline systems in many states, fundamental questions concerning how well alternative guideline systems achieve desired goals of consistency, proportionality, and non-discrimination remain unsettled, if not virtually unaddressed. Certainly existing state guideline systems are feasible, operational, manageable, and they are products of conscious policy choices. Yet, little empirical investigation has been directed at how these systems compare in operation. Even the most general question – whether the evidence suggests consistency is relatively greater in more presumptive systems (e.g., Minnesota) than in more voluntary systems (e.g., Virginia) – remains unanswered. In response, the current research is dedicated to clarifying three essential policy issues each involving multiple questions.

Issue 1: Do the basic design features of the guidelines serve to locate similarly situated offenders? The specific criteria used by the guideline designers to define the concept of similarly situated are used to evaluate the internal workings of each guideline system. The analysis examines whether sentence outcomes follow in a direct and predictable manner from the combination of offense and offender characteristics built into the guideline system. Are offenders sentenced on the basis of the set of elements provided for in the guidelines? In statistical terms, the question is: do the sentencing guideline factors account for the observed variation on sentencing? To this end, several statistical measures of overall model fit are used to assess overall consistency among guideline systems.

In addition, a statistical test is used to determine whether each primary set (or block) of elements (i.e., crime classification, prior record, offense seriousness) has a statistically significant impact on the sentencing decision. Whether each one makes a contribution to

explaining the sentencing outcomes is assessed through a set of variable block tests.[61]

Issue 2: Do the guidelines in operation provide clear-cut and proportional distinctions between more serious and less serious offenders? This issue is addressed in three steps. The first step is examining whether *each* individual element within *each* block has a distinct impact on the determination of who is similarly situated. A block of variables is coherent and integrated if each element contributes to the sentencing outcome along the lines articulated in the guideline design principles. For example, while the group of prior record variables as a whole may be significant, this question focuses on whether each of the prior record levels is contributing to the explanation in the expected way.

The second step focuses on whether the individual elements have a distinct and proportional impact on sentencing. For example, there are six levels of offense seriousness in the Michigan guidelines: Is the impact of each level distinct – in a statistical sense – from the adjacent levels? A movement between levels carries direct consequences for convicted offenders in terms of exposure to prison time. Because guideline designers elected to make these distinctions, an empirical question is whether the individual intended differences in sentencing outcomes correspond to actual judicial choice. Answers to this question are addressed by looking "inside" the blocks of variables related to conviction offense severity, offense seriousness, and prior record and observing if the coefficients within each grouping are significantly distinct and operating according to their relative degree of policy severity. Therefore, it is anticipated that the coefficients increase the probability of receiving a prison sentence and the length of a prison sentence in the following manner for Michigan:

- Crime Class ➔ A > B > C > D > E > F > G > H

[61] For the in/out decision, the block tests focus on crime classification, prior record, offense seriousness, and grid cell type. Because the model of the sentence length decision is augmented to include habitual/modifier and departure factors, the block tests are also expanded to include these additional variable sets.

- Prior Record ➔ F > E > D > C > B > A
- Offense Seriousness ➔ VI > V > IV > III > II > I

And for Minnesota:

- Conviction Severity Level ➔ XI > X > IX > VIII > VII > VI > V > IV > III > II > I
- Criminal History ➔ 6+ > 5 > 4 > 3 > 2 > 1 > 0

Evidence that the elements are not significantly different than their adjacent counterparts suggest the guideline distinctions are not sufficiently powerful cues to the sentencing judges (or that there are insufficient cases to warrant making the distinction).

The third step focuses on looking at the *combined impact* of all of the sentencing guideline elements. To see how the variables work together, it is possible to derive estimated probabilities for each of the grid cells in Minnesota and Michigan.[62] Once estimated, it is possible to assess the combined impact of changes in each of the variables, to compare the estimated probabilities to the actual incarceration percentages, and to view the degree of proportionality visually as one moves "diagonally" in the grid. A similar procedure is followed for the estimated length for each grid cell.

Issue 3: Is there evidence of discrimination distinct from inconsistency in sentencing?

Guidelines are created to provide a clear and comprehensive set of criteria for determining offender punishment. However, inconsistency occurs as sentencing outcomes are found to depend on differential application of the explicit guideline criteria and/or more on extra-guideline or unmeasured factors. In a later section of this chapter, the extent to which inconsistency is in fact discriminatory is examined in detail.

[62] The probabilities are calculated using the constant term along with the following sets of variables: conviction offense severity, prior criminal history, offense seriousness (for Michigan) and cell type. Using the coefficients, we calculate the z-score for each of the grid cells and then transform the z-score using the cumulative normal probability distribution.

Assessing the In/Out Decision

Estimation results for the first equation – prison versus no prison—in both the Michigan and Minnesota statistical models are presented in Table 5-2.

Table 5-2: Estimated Selection Equation

	Michigan Selection Equation					Minnesota Selection Equation				
		Robust					Robust			
Variable	**β**	**s.e.**	**z**	**p**	**Variable**	**β**	**s.e.**	**z**	**p**
Prior Record					**Criminal History**				
Prior Record Level B	-0.196	0.052	-3.790	0.000	1 point	0.42	0.05	8.83	0.00
Prior Record Level C	0.189	0.043	4.380	0.000	2 points	0.84	0.05	17.77	0.00
Prior Record Level D	0.793	0.047	16.980	0.000	3 points	0.95	0.06	16.03	0.00
Prior Record Level E	1.259	0.053	23.920	0.000	4 points	1.20	0.07	16.79	0.00
Prior Record Level F	1.487	0.058	25.730	0.000	5 points	1.44	0.08	18.32	0.00
Offense Seriousness					6 points	1.81	0.10	18.85	0.00
Offense Level II	0.200	0.027	7.480	0.000	**Severity of Conviction Offense**				
Offense Level III	0.521	0.036	14.590	0.000	Level XI	7.47	0.16	45.81	0.00
Offense Level IV	0.563	0.059	9.620	0.000	Level X	7.80	0.14	57.47	0.00
Offense Level V	0.675	0.072	9.330	0.000	Level IX	7.83	0.11	73.18	0.00
Offense Level VI	0.782	0.095	8.240	0.000	Level VIII	1.40	0.10	13.50	0.00
Conviction Offense Severity					Level VII	1.83	0.07	26.42	0.00
Class A/Murder 2nd	1.496	0.100	15.020	0.000	Level VI	0.77	0.06	13.83	0.00
Class B	0.703	0.060	11.770	0.000	Level V	0.33	0.07	4.44	0.00
Class C	0.358	0.050	7.180	0.000	Level IV	0.19	0.05	3.84	0.00
Class D	0.149	0.034	4.380	0.000	Level III	0.11	0.05	2.11	0.04
Class F	-0.142	0.039	-3.650	0.000	Level I	0.10	0.07	1.55	0.12
Class G	-0.267	0.037	-7.280	0.000					
Class H	-0.281	0.069	-4.080	0.000					
Grid Cell Type					**Grid Cell Type**				
Straddle Cell	0.747	0.035	21.290	0.000	Presumptive Commit	0.87	0.07	12.15	0.00
Prison Cell	1.607	0.061	26.520	0.000					
Habitual Level					**Modifiers**				
Habitual 2nd					Attempt				
Habitual 3rd					Conspiracy				
Habitual 4th									
Departure					**Departure**				
Above					Above				
Below					Below				
Constant	-2.334	0.043	-54.660	0.000	**Constant**	-2.09	0.04	-47.19	0.00
Number of Cases	32,754				**Number of Cases**	12,978			

Wald Block Tests			
Sets of Variables	**Chi Sq.**	**df**	**p-value**
Prior Record	1110.65	5	0.000
Offense Severity	294.57	5	0.000
Conviction Category	350.74	7	0.000
Grid Cell Type	751.70	2	0.000

Wald Block Tests			
Sets of Variables	**Chi Sq.**	**df**	**p-value**
Prior Record	629.10	6	0.000
Conviction Category	11351.50	10	0.000
Grid Cell Type	147.54	1	0.000

Percent Correctly Predicted	
Null Model	81.4%
Augmented Model	89.9%
PRE	45.8%
% correct no prison	99.0%
% correct prison	54.0%

Percent Correctly Predicted	
Null Model	70.7%
Augmented Model	87.0%
PRE	55.8%
% correct no prison	92.5%
% correct prison	69.5%

Condition Number	11.14	**Condition Number**	5.71

Issue 1. One measure of overall consistency is provided by how well the model as a whole distinguishes offenders who receive a prison sentence from those who do not. The proportional reduction in error refers to the increased accuracy in predicting a prison sentence achieved by knowing essential characteristics of the guidelines, compared with not knowing the basic design features. For example, in Michigan, 17 percent of convicted offenders receive a prison sentence. Knowing only this fact, one can predict that there is a chance of about four in five that any offender in the sample will not receive a prison sentence. However, if the guidelines are operating as envisioned, the chances of error in the prediction should be reduced appreciably by also knowing where the offender falls on the guideline grid.

The evidence indicates, in fact, a close overall fit between predictions based on the guideline elements and reality. A model of the In/Out decision in Michigan predicts 89.9% of the cases correctly with a 45.8% proportional reduction in error, as summarized at the bottom of Table 5-2. The predictive power of the model is not uniform over the two elements of the choice set as 99% of the non-prison sentences (such as jail and probation) are predicted correctly compared to 54% of the sentences where prison is imposed. The Minnesota model predicts 87% of the cases correctly with a 55.8% proportional reduction in error. The model does reasonably well on both the prediction of non-incarceration (92%) and incarceration (69%). As can be seen, there is a drop-off in predictability for those who actually go to prison.

While both models suggest the overall guideline framework is operating to constrain judicial choice, the next step is to examine whether the major structural elements of the guidelines (i.e., offense severity, prior record, and offenses seriousness) significantly shape offender punishment. Each group of variables is assessed as a block to determine the relative affect on the in/out decision. In addition, grid cell type is included as an interaction term

controlling for placement on the grid. As a consequence, there are four distinct variable blocks in Michigan and three in Minnesota. All blocks are found to be strongly significant in both states, as can be seen at the bottom of Table 5-2. As can be seen the prior record variables are the most important influence in Michigan while the severity of conviction offense category is the most important in Minnesota.

A distinguishing design feature between the two systems is that the Michigan guidelines explicitly incorporate factors relating to the instant offense. Each offender is scored from among 20 distinct offense factors and placed into one of six offense seriousness levels. Results confirm the set of seriousness variables has a significant, though relatively minor, impact on the in/out decision.

An interesting aspect of sentencing guidelines is the in/out line that, in effect, summarizes and adds to the impact of the other variables. As can be seen in Table 5-2, the grid cell type for Minnesota is a distant third in terms of overall impact on the sentencing decision. The opposite is the case for Michigan. Instead of the standard in/out distinction, the Michigan guidelines employ a middle category (straddle cell) where judges are not given a recommendation on the prison decision.[63] Somewhat surprisingly, the two cell type variables have a significant impact on the in/out decision that exceeds that of all other variables except prior record. This suggests that the conviction offense severity classifications (A through H) are not as important to the sentencing judge as where in a particular sub-grid the offender falls.

Issue 2. A key aspect of consistency under guidelines is that similarly situated offenders receive similar sentences. Conversely, dissimilar offenders should be treated differently. Proportionality is a value that functions as a principle in determining what "different" means.

[63] There are over 40 straddle cells out of a total of 258—approximately 22% of all offenders find themselves in a straddle cell.

Simply stated, proportionality entails a balance between the severity of the offense and the offender and the degree of punishment.

Hence, the current research undertakes a series of increasingly refined tests of the degree to which proportionality exists. This approach avoids boiling down the issue of proportionality to a single question, although this method requires multiple tests. A first test focuses on whether the individual factors that make up each block of variables are individually significant in assessing proportionality. For example, having found prior record as a block to be highly significant in Michigan, is each individual prior record level also significant? If so, this information indicates the formal levels are efficacious in drawing distinctions between similar and dissimilar offenders.

Additionally, a second and related test is used to determine whether there is a statistically significant difference between distinct levels in each block of variables. If so, this information indicates there is proximate proportionality in the effect of adjacent levels as desired by the guidelines. Together, these two statistical tests provide a means to assess whether explicit guideline design decisions are functioning as envisioned by policy makers. The results are summarized in Table 5-3.

Table 5-3: Change in Probability and Levels Test – Selection Equation

Michigan Selection (in/out)			Minnesota Selection (in/out)		
Variable	Change in Probability @ mean	levels test	Variable	Change in Probability @ mean	levels test
Prior Record			**Criminal History**		
Prior Record Level A	suppressed		0 points	suppressed	
Prior Record Level B	**-0.017**	A/B	1 point	**0.15**	**0/1**
Prior Record Level C	**0.019**	**B/C**	2 points	**0.32**	**1/2**
Prior Record Level D	**0.123**	**C/D**	3 points	**0.36**	**2/3**
Prior Record Level E	**0.283**	**D/E**	4 points	**0.45**	**3/4**
Prior Record Level F	**0.378**	**E/F**	5 points	**0.53**	**4/5**
Offense Seriousness			6 points	**0.67**	**5/6**
Offense Level I	suppressed		**Severity of Conviction Offense**		
Offense Level II	**0.019**	**I/II**	Level XI	**0.84**	**x/xi**
Offense Level III	**0.078**	**II/III**	Level X	**0.84**	
Offense Level IV	**0.098**	III/IV	Level IX	**0.84**	**viii/ix**
Offense Level V	**0.127**	IV/V	Level VIII	**0.53**	**vii/viii**
Offense Level VI	**0.159**	V/VI	Level VII	**0.67**	**vi/vii**
Conviction Offense Severity			Level VI	**0.29**	**v/vi**
Class A/Murder 2nd	**0.406**		Level V	**0.10**	iv/v
Class B	**0.133**	**B/A**	Level IV	**0.06**	iii/iv
Class C	**0.053**	**C/B**	Level III	**0.03**	ii/iii
Class D	**0.018**	**D/C**	Level III	suppressed	i/ii
Class E	suppressed	**E/D**	Level I	0.03	
Class F	**-0.014**	**F/E**	**Grid Cell Type**		
Class G	**-0.022**	**G/F**	Presumptive Commit	**0.36**	
Class H	**-0.024**	**H/G**	Presumptive Stay	suppressed	
Grid Cell Type					
Grid Lock Out	suppressed				
Straddle Cell	**0.109**	**Lockout/Straddle**			
Prison Cell	**0.408**	**Stradle/Prison**			

significant is bolded

The evaluation of the two guideline models begins by identifying a statistical version of a baseline offender. In essence, this offender is "modal man" because the baseline is comprised of the most frequently occurring categories within each of the blocks of variables. In Michigan, the baseline offender represents someone convicted in Crime Class E, at Offense Seriousness Level I, with Prior Record Level A, and falling into a Lockout grid cell.[64] An individual with this profile is estimated to have a .06 probability of receiving a prison sentence. In Minnesota, the baseline represents an offender in Conviction Offense Level II, with a Criminal History Score of

[64] From Table 5-1a, 35% of offenders are in Crime Class E, 53% in Offense Seriousness Level I, 26% with Prior Record Level A , and 71% falling into a Lockout grid cell. As can be seen in Table 3-14, the intersection of these categories contains 1,743 of the 32,754 offenders.

0, and consigned to a Presumptive Stayed grid cell.[65] Such an offender has an estimated .16 probability of receiving a prison sentence.

Thus, as the remaining features are examined, they are viewed in the context of a movement away from a particular baseline. For example, when Crime Class is examined in Michigan, the model estimates the increased probability of receiving a prison sentence when this aspect of the baseline offender is changed, say, from the base of Crime Class E to Crime Class C.

The influence of each coefficient is gauged in terms of the change in the probability of receiving a prison sentence when all other variables are held at their mean value (as discussed in Appendix A to Chapter Four). This approach is used because the interpretation of the individual coefficients from the prison/no prison equation (i.e., probit model) displayed in Table 5-2 is not straightforward. Examining the column labeled "Change in Probability at Mean" on Table 5-3 shows how each component within each variable block changes the estimated probability of receiving a prison sentence relative to the base offender profile. For example, in Minnesota, the baseline criminal history is 0 points. An offender who is similar in all respects to the baseline offender except with a criminal history score of 4 points has an expected 45% increase in the likelihood of receiving a prison sentence. Moreover, if the guidelines are operating as designed, the change in probability should be positively correlated with changing levels of seriousness. The guideline structure yields a direct prediction about the expected sign of the coefficient relative to the attributes of the baseline offender. More serious offenders, as measured by more extensive prior record or more serious conviction offense, should have a higher probability of prison.

[65] From Table 1b, 34% of offenders are in Conviction Offense Level II, 43% with a Criminal History Score of 0, and 80%consigned to a Presumptive Stayed grid cell. As can be seen in Table 3-4, the intersection of all of these categories includes 1,833 of the 12,978 offenders in 2002.

Therefore, the Change in Probability column provides three ways to evaluate each coefficient: the numerical value shows the change in probability, the sign of the coefficient shows whether the direction of change is positive or negative, and bolding indicates a statistically significant effect. The Michigan model shows all 19 separate variables (classified in 4 blocks) are significant, with 18 in the predicted direction. The exception is that prior record level B is found to be statistically significant in the opposite direction expected. In Minnesota, 16 of 17 individual coefficients are significant and in the predicted direction (the exception is no statistical difference between offense severity Levels I and II).[66] As a result, the guidelines generally demonstrate effectiveness in distinguishing more serious from less serious offenders and in leading judges to sentence offenders accordingly.[67]

Additional evidence for assessing proportionality is found in the results of the levels test, shown in Table 5-3. Policy makers institutionalize jumps in the recommended severity of punishment following changes in discrete offense or prior record thresholds. A measure of proportionality is whether a horizontal or vertical move between grid cells is reflected in observed differences between each pair of adjacent coefficients. This question is assessed through a levels test within each variable block.

Whereas the basic guideline elements exert considerable discipline on judicial choices, not all guideline distinctions appear to be used proportionally in the in/out decision, as shown in Table 5-3. For example, in Michigan, the difference between Class H/G and Class F/E severity levels are not statistically significant, while the Minnesota analysis shows no significant

[66] Note that the coefficients for Level I should be negative given that Level II is the base category.

[67] The Crime Class or Severity of Conviction Offense block of variables is by far the most significant determinant of in/out in Minnesota but they are a distant third in Michigan. This is reflected in a comparison of the coefficients as well. The coefficient (.33) for Level V (e.g., Residential Burglary, Simple Robbery) is similar to Crime Class C (e.g., Unarmed Robbery, Home Invasion 2nd). The coefficient (.70) for Level VI (e.g., Assault 2nd degree) is similar to Crime Class B (e.g., Home Invasion 1st degree). The coefficient for Level VIII is similar to that of the highest category in Michigan. Thereafter, there is a great deal more impact for the most serious crimes in Minnesota. It appears that the Severity of the Conviction Offense plays a more determinative role in Minnesota than in Michigan.

difference between the Level I/II, II/III, III/IV, IV/V, and IX/X comparisons. On the other hand, successive prior record levels exert a largely statistically significant effect on sentencing in Michigan and Minnesota. The only exception is at the low end of both prior record scales: the A/B level comparison in Michigan and the Level 1/2 comparison in Minnesota. At least for the in/out decision, results from both states suggest most, but not all, guideline parameters (e.g., offense severity and prior record) provide meaningful distinctions to judges in determining the severity of punishment. When the sentencing guidelines suggest an increase in the probability of incarceration, the judges behave accordingly.

A final and more refined test of proportionality examines the interplay of each of several blocks of variables by measuring derived probabilities for each of the grid cells, as shown in Tables 5-4a and 5-4b Because many elements operate simultaneously, their interconnection shows the joint impact of changing more than one variable.

Table 5-4a: Estimated Probability of Prison -- Minnesota

	TOTAL HISTORY						
Severity	**0**	**1**	**2**	**3**	**4**	**5**	**6**
11	1.000	1.000	1.000	1.000	1.000	1.000	1.000
10	1.000	1.000	1.000	1.000	1.000	1.000	1.000
9	1.000	1.000	1.000	1.000	1.000	1.000	1.000
8	0.574	0.727	0.848	0.872	0.918	0.948	0.977
7	0.397	0.562	0.719	0.940	0.965	0.980	0.992
6	0.095	0.185	0.318	0.693	0.776	0.840	0.914
5	0.039	0.090	0.180	0.524	0.624	0.709	0.821
4	0.029	0.070	0.146	0.172	0.571	0.661	0.783
3	0.024	0.059	0.127	0.151	0.537	0.628	0.757
2	0.018	0.048	0.106	0.128	0.188	0.259	0.722
1	0.024	0.059	0.126	0.150	0.218	0.293	0.756

Table 5-4b: Estimated Probability of Prison -- Michigan

	OV	PRV Level					
A	Level	A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.779	0.717	0.831	0.941	0.979	0.988
	II	0.834	0.780	0.877	0.961	0.987	0.993
	III	0.902	0.863	0.930	0.981	0.995	0.997
	IV	0.909	0.872	0.936	0.983	0.995	0.998
	V	0.926	0.894	0.949	0.987	0.997	0.998
	VI	0.940	0.912	0.959	0.990	0.998	0.999

	OV	PRV Level					
B	Level	A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.051	0.102	0.565	0.779	0.892	0.928
	II	0.191	0.492	0.642	0.834	0.924	0.952
	III	0.690	0.618	0.754	0.901	0.960	0.976
	IV	0.705	0.634	0.767	0.909	0.964	0.979
	V	0.743	0.676	0.800	0.926	0.972	0.984
	VI	0.776	0.713	0.828	0.940	0.978	0.988

	OV	PRV Level					
C	Level	A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.024	0.015	0.149	0.331	0.813	0.868
	II	0.038	0.024	0.200	0.734	0.862	0.906
	III	0.239	0.183	0.633	0.828	0.921	0.949
	IV	0.253	0.500	0.649	0.838	0.927	0.954
	V	0.620	0.544	0.690	0.864	0.941	0.964
	VI	0.660	0.586	0.726	0.886	0.953	0.971

	OV	PRV Level					
D	Level	A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.014	0.009	0.023	0.082	0.429	0.520
	II	0.024	0.015	0.036	0.328	0.508	0.866
	III	0.048	0.031	0.233	0.450	0.885	0.924
	IV	0.052	0.142	0.246	0.782	0.893	0.930
	V	0.223	0.169	0.613	0.813	0.912	0.943
	VI	0.256	0.503	0.653	0.841	0.928	0.955

	OV	PRV Level					
E	Level	A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.010	0.006	0.016	0.213	0.371	0.460
	II	0.016	0.010	0.026	0.276	0.449	0.540
	III	0.035	0.022	0.052	0.392	0.576	0.900
	IV	0.038	0.025	0.202	0.408	0.863	0.907
	V	0.049	0.134	0.235	0.771	0.886	0.924
	VI	0.060	0.158	0.269	0.802	0.906	0.939

	OV	PRV Level					
F	Level	A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.007	0.004	0.011	0.046	0.319	0.404
	II	0.011	0.007	0.018	0.231	0.393	0.483
	III	0.025	0.016	0.039	0.339	0.520	0.873
	IV	0.028	0.017	0.164	0.354	0.830	0.881

	OV	PRV Level					
G	Level	A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.005	0.003	0.008	0.035	0.090	0.133
	II	0.008	0.005	0.013	0.054	0.127	0.434
	III	0.019	0.011	0.029	0.099	0.470	0.561

	OV	PRV Level					
H	Level	A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.004	0.002	0.008	0.034	0.087	0.130
	II	0.008	0.005	0.013	0.052	0.124	0.177
	III	0.018	0.011	0.028	0.097	0.202	0.272

Looking first at joint impact for Minnesota, consider the grid cell V/2 for illustrative purposes. For severity level V, criminal history score of 2, a presumptive stayed grid cell, the estimated probability of prison equal to .180. Moving one grid cell to the right not only increases the probability in line with the criminal history increase, the offender moves into the presumptive executed sentence with the estimated increased probability of prison (.524.) This situation means a move of one grid cell, across the in/out line, increases the probability of prison by over 30%.

Alternatively, moving one grid cell up – thereby raising the Severity Level to VI but holding the criminal history constant at two points increases the probability of prison to .318. Furthermore, diagonal moves are also possible and indicate what results by raising offense severity, criminal history, and cell type. For example, moving from V/2 to VI/3, increases the probability of a prison sentence from .180 to .693; an increase of over 50%.

An indication of the degree of proportionality for the in/out decision implied by the estimated Minnesota model is inferable from Table 5-4a. There is a clear progression in the size of the estimated probabilities as one moves up and/or to the right. To provide a point of reference for these estimated probabilities, it is possible to compare them to the actual in/out percentages displayed in Table 3-5. Looking at the tables side by side, the estimated probabilities closely track the actual percentages. This finding increases confidence that the estimated model is effectively capturing the workings of the Minnesota guidelines.

The results for Michigan are presented in Table 5-4b**.** To see the joint impact of the various coefficients, consider grid cell II/D. In crime class G, it is a Lockout cell with a probability of prison of .054; in Class E it is a straddle cell with a probability of prison of .276; in Class D, it is also a straddle cell with a probability of .328; in Class C it is a prison cell with a

probability of .734; in Class A the probability of prison is .961. To understand how the Prior Record and Cell Type variables work in concert, consider next the change from II/E to II/F. In Class G, the probability moves from .127 to .434 with the increase in Prior Record Level as moving from Lockout to Straddle Cell. In class E, the change is a rather modest .449 to .540 as both are Straddle Cells. In Class D, the change is from .508 to .866 as the Prior Record level increases and the cell moves from Straddle to Prison.

It is also possible to make a proportionality assessment for the in/out decision in Michigan. As one moves from left to right and from top to bottom, there is a clear progression in the estimated probabilities. One interesting comparison is to look at the progression across sub-grids. Very little change occurs as one moves up the crime classifications unless the grid cells change from Lockout to Straddle or Straddle to Prison. For example an individual in III/F in Classes E through A has a change in probability of prison from .900 in Class E to .924 in D to .997 in Class A. There are other examples where the changes are quite marked however. Hence, the estimated in/out model captures the actual in/out percentages and demonstrates how the variables work together to generate these implicit estimates. While there is a great deal of proportionality within each sub-grid, there is less proportionality evident as one moves among sub-grids. This pattern raises questions about the need for the entire complement of crime classifications and offense serious levels.

Sentence Length Decision

Complete results for the Michigan and Minnesota models of the sentence length decision are shown in Table 5-5. The basic approach and rationale followed in assessing the in/out decision are adhered to in the analysis of sentence length.

Table 5-5: Estimated Length of Sentence Equation

Michigan -- Sentence Length Equation

Variable	β	Robust s.e.	z	p
Prior Record				
Prior Record Level B	-0.015	0.039	-0.390	0.696
Prior Record Level C	0.355	0.033	10.820	0.000
Prior Record Level D	0.671	0.033	20.410	0.000
Prior Record Level E	0.801	0.035	22.810	0.000
Prior Record Level F	0.859	0.037	23.210	0.000
Offense Seriousness				
Offense Level II	0.162	0.017	9.280	0.000
Offense Level III	0.320	0.021	15.080	0.000
Offense Level IV	0.471	0.027	17.500	0.000
Offense Level V	0.661	0.030	22.020	0.000
Offense Level VI	0.918	0.033	28.130	0.000
Conviction Offense Severity				
Class A/Murder 2nd	1.773	0.038	46.670	0.000
Class B	0.948	0.033	28.720	0.000
Class C	0.573	0.026	22.040	0.000
Class D	0.178	0.019	9.210	0.000
Class F	-0.003	0.024	-0.110	0.909
Class G	-0.170	0.025	-6.710	0.000
Class H	-0.209	0.045	-4.630	0.000
Grid Cell Type				
Straddle Cell	0.409	0.033	12.500	0.000
Prison Cell	0.893	0.051	17.450	0.000
Habitual Level				
Habitual 2nd	0.165	0.017	9.800	0.000
Habitual 3rd	0.291	0.023	12.550	0.000
Habitual 4th	0.335	0.027	12.600	0.000
Departure				
Above	0.793	0.027	29.850	0.000
Below	-0.664	0.025	-26.820	0.000
Constant	1.138	0.059	19.410	0.000
Lambda	0.244	0.021		
Number of Cases	5,223			
Condition Number	11.14			

Wald Block Tests

Sets of Variables	Chi Sq.	df	p-value
Prior Record	966.10	5	0.000
Offense Severity	954.77	5	0.000
Conviction Category	2412.33	7	0.000
Grid Cell Type	304.91	2	0.000
Habitual	315.94	2	0.000
Departure	155.07	7	0.000
R2	67.2%		

Minnesota -- Sentence Length Equation

Variable	β	Robust s.e.	z	p
Criminal History				
1 point	0.11	0.02	5.87	0.00
2 points	0.24	0.02	12.74	0.00
3 points	0.32	0.02	16.15	0.00
4 points	0.38	0.02	16.38	0.00
5 points	0.49	0.02	20.53	0.00
6 points	0.60	0.03	21.38	0.00
Severity of Conviction Offense				
Level XI	2.96	0.07	39.51	0.00
Level X	3.02	0.06	50.45	0.00
Level IX	2.43	0.04	58.00	0.00
Level VIII	1.93	0.03	75.54	0.00
Level VII	1.45	0.02	63.51	0.00
Level VI	0.90	0.02	45.30	0.00
Level V	0.66	0.02	29.41	0.00
Level IV	0.25	0.01	17.91	0.00
Level III	0.03	0.01	1.97	0.05
Level 1	-0.10	0.02	-4.39	0.00
Grid Cell Type				
Presumptive Commit	0.06	0.02	3.15	0.00
Modifiers				
Attempt	-0.54	0.06	-8.76	0.00
Conspiracy	-0.61	0.01	-49.13	0.00
Departure				
Above	0.39	0.02	19.49	0.00
Below	-0.34	0.01	-32.82	0.00
Constant	2.46	0.04	67.41	0.00
Lambda	0.01	0.02		
Number of Cases	3,057			
Condition Number	5.71			

Wald Block Tests

Sets of Variables	Chi Sq.	df	p-value
Prior Record	517.46	6	0.000
Conviction Category	8067.54	10	0.000
Grid Cell Type	9.95	1	0.002
Departure	1599.13	2	0.000
Modifiers	2449.96	2	0.000
R2	86.1%		

Very little difference exists between the average prison sentence for each state; 45 months in Minnesota and 40 months in Michigan, as shown in Tables 5-1a and 5-1b. Concerning statistical validity, the estimate of the coefficient for the inverse Mills' ratio (lambda) as well as the Wald X^2 test for interdependence between the two equations addresses the issue of sample selection bias. For Michigan, the estimate of lambda is .244 and the Wald X^2 test of 133 indicates that there is a statistically significant basis to reject the null hypothesis that the two equations are independent. In contrast, for Minnesota, the estimated coefficient for lambda is 0.01 and the Wald X^2 test of .30 indicates that it is not possible to reject the null hypothesis that the two equations are independent. Finally, condition numbers of 11.1 (Michigan) and 5.7 (Minnesota) suggest collinearity is not a problem in either model.

Issue 1. Consistency refers to how well an offender's placement on the guideline grid relates to the actual length of prison sentence received. In the standard regression model, the R^2 value is a useful summary statistic to describe how well the model fits the data. In the sentencing context, it describes the proportion of variance in observed sentence length (the dependent variable) that is 'explained' by the guideline factors (the independent variables).

The FIML estimation process does not produce an R^2 value as in ordinary least squares regression, but a related measure gauges how well the model fits: the squared correlation between the predicted sentences from the sentence length equation and the actual sentences.[68] For Michigan, the correlation is .67; indicating statistical model accounts for 67% of the variation in sentence length. In Minnesota, the squared correlation between the predicted sentences from the sentence length equation is 86.1%. Hence, overall consistency in sentence

[68] The procedure suggested by Wooldridge (2002 208-9) is used to compute the R^2. This is the squared correlation between actual and predicted sentences (in months) for those who receive a prison sentence. Wooldridge outlines a four-step procedure to translate the predictions in logarithms into actual months.

length is substantially greater in the more presumptive, tighter range Minnesota system. In fact, obtaining an R^2 as high as 86% in the sentencing context is extraordinary.

In addition, all major elements of the guideline framework are found to guide judicial choices. The sentence length models contain six distinct variable blocks for Michigan and five for Minnesota.[69] As summarized at the bottom of Table 5-5, all variable blocks are found to be highly significant in both states. As can be seen, the set of conviction offense severity variables appear to have the greatest impact on prison sentencing in both states. It is worth noting that the grid cell type plays a very small role in Minnesota.

Issue 2: Concerning proportionality in sentence length, this issue involves examining whether the coefficients of the components making up each variable block are significant in the predicted direction. The use of a logarithmic dependent variable means the coefficients on the independent variables are interpretable in percentage terms. Specifically, each coefficient measures the percentage change in estimated prison length caused by a one-unit change in an independent variable. This result holds for coefficients less than .25 in absolute value as discussed in Chapter 4.[70] For example, as shown in Table 5-5, the coefficient for Offense Severity Level IV in the Michigan model is .471. This suggests the move from Offense Severity Level I to Level IV, all else equal, translates into an estimated increase of 60% in the prison sentence (Table 5-6). The estimated percentage change in prison length associated with all variables in the sentence length models are summarized in the column titled *Percent Change in Prison Length* for both states on Table 5-6. These results reveal that the length of imposed

[69] Because of the exclusion restrictions used for the in/out model, the sentence length model is augmented to include habitual/modifier and departure variables.

[70] For coefficients with absolute value in excess of .25, the transformation e^{β}-1 is used to calculate the precise percentage change (Wooldridge (2002, 188)).

sentence tends to increase in an orderly and comprehensible fashion as the severity of offense conduct and offender characteristics increase.

Table 5-6: Percent Change and Levels Test

	Michigan			Minnesota	
	% Change in Prislen	levels test	Variable	% change in Prislen	levels test
Prior Record			**Criminal History**		
Prior Record Level A	suppressed		0 points	suppressed	
Prior Record Level B	-1.5%	A/B	1 point	**12.0%**	**0/1**
Prior Record Level C	**42.6%**	**B/C**	2 points	**27.0%**	**1/2**
Prior Record Level D	**95.5%**	**C/D**	3 points	**38.2%**	**2/3**
Prior Record Level E	**122.7%**	**D/E**	4 points	**46.8%**	**3/4**
Prior Record Level F	**136.2%**	**E/F**	5 points	**63.9%**	**4/5**
Offense Seriousness			6 points	**82.6%**	**5/6**
Offense Level I	suppressed		**Severity of Conviction Offense**		
Offense Level II	**17.6%**	**I/II**	Level XI	**1821.2%**	x/xi
Offense Level III	**37.8%**	**II/III**	Level X	**1956.5%**	**ix/x**
Offense Level IV	**60.2%**	**III/IV**	Level IX	**1034.0%**	**viii/ix**
Offense Level V	**93.7%**	**IV/V**	Level VIII	**588.1%**	**vii/viii**
Offense Level VI	**150.5%**	**V/VI**	Level VII	**324.3%**	**vi/vii**
Conviction Offense Severity			Level VI	**146.9%**	**v/vi**
Crime Class A	**489.0%**		Level V	**92.9%**	**iv/v**
Crime Class B	**158.0%**	**B/A**	Level IV	**28.2%**	**iii/iv**
Crime Class C	**77.4%**	**C/B**	Level III	**2.7%**	**ii/iii**
Crime Class D	**19.5%**	**D/C**	Level II	suppressed	**i/ii**
Crime Class E	suppressed	**E/D**	Level 1	**-9.1%**	
Crime Class F	-0.3%	F/E	**Grid Cell Type**		
Crime Class G	**-15.6%**	**G/F**	Presumptive Commit	**6.3%**	
Crime Class H	**-18.9%**	H/G	Presumptive Stay	suppressed	
Grid Cell Type			**Modifiers**		
Grid Lock Out	suppressed		None	suppressed	
Straddle Cell Type	**50.6%**	**Lock out/Straddle**	Attempt	**-42.0%**	
Prison Cell Type	**144.3%**	**Straddle/Prison**	Conspiracy	**-45.8%**	
Habitual			**Departure**		
None	suppressed		None	suppressed	
Habitual 2nd	**17.9%**	**None/2nd**	Above	**47.8%**	
Habitual 3rd	**33.7%**	**2nd/3rd**	Below	**-29.1%**	
Habitual 4th	**39.8%**	3rd/4th			
Departure					
None	suppressed				
Above	**121.1%**				
Below	**-48.5%**				

A baseline offender is used as a starting point to evaluate the estimated change in the length of a prison sentence by introducing offender characteristics different from the base. The same baseline offender is used as in the in/out decision analysis except for the addition of factors

related to a habitual/modifer charge and departure status.[71] For example, using the results of the Minnesota model, it is possible to see the change in the expected length of prison sentence when the Criminal History level moves from its base of level 0 to something higher.

The sentence length model for Michigan contains 24 separate components (in six distinct blocks), with 22 significant and in the predicted direction. The exceptions are Prior Record Level B (also insignificant in the in/out model) and Crime Class F. For Minnesota, all 21 separate components (classified in five blocks) are significant in the predicted direction. In addition, the size of the percentage change among factors in a given block aligns with the relative ordering of severity as specified by the guideline designers. For example, in Minnesota, the move from Criminal History Total of 0 points to 6 points corresponds to a steady increase in the estimated percentage change in prison length. Taking Offense Seriousness in Michigan as another example, the observed percentage change in sentence length (compared to Offense Level I) is both plausible and significant. Clearly the progression up through the offense seriousness levels has an increasing and substantial impact on the length of sentence. For example, the change from Level I to IV is 60% and the change from Level III to Level V is 56%.

The Minnesota guidelines distinguish between Attempts and Completed Offenses as well as between Conspiracies and Non Conspiracies when determining recommended sentence length. Conviction of an attempt or conspiracy serves to cut recommended prison length in half. Both coefficients are significant, with Attempts reducing the predicted sentence by 46% and the Conspiracies by 42% (Table 5-6). The finding that these two coefficients are so close to the

[71] Therefore, in Michigan, the baseline offender represents someone convicted in Crime Class E, at Offense Seriousness Level I, with Prior Record Level A, assigned to a Lockout grid cell, not charged as an Habitual Offender, and sentenced with No Departure. This set of offender characteristics is estimated to receive a sentence of 3.1 months. In comparison, the baseline offender in Minnesota is an individual in Conviction Offense Severity II, with Criminal History 0, falling into a stayed sentence type of Grid Cell, charged with a Completed Offense, with No Conspiracy, and sentenced with No Departure. Such an offender profile is estimated to receive an 11.7 month sentence.

mandated formula values (i.e., 50% reduction in guideline sentence) shows consistent application of these modifiers by Minnesota judges.[72]

Both the Michigan and Minnesota guidelines require a "substantial and compelling" reason to depart. Overall, Michigan judges depart in only 3% of all cases. However, when looking solely at the subset of offenders receiving a prison sentence, departures occur 18% of the time: 8.2% departures above and 9.9% departures below.[73]

In Michigan, a departure above the recommended range leads to 121% increase in the sentence. After controlling for all aspects of the guidelines, the fact that the judge departs above increases the sentence by over 121%. A departure below the recommended range leads to a decrease of 48.5% in the prison length. When an offender meets an internal judicial threshold for departure, the departure is substantial and significantly different from the recommended guideline sentence. For example, if the expected sentence before any departure is 48 months; a departure below would lower the sentence to 24 months and a departure above would raise the expected sentence to 117 months. The magnitude of departures is quite extensive.

While Minnesota judges depart in 15.4% of all cases, durational departures occur 39% of the time. In this subset of cases, 9.0% of the cases result in a departure above and 29.6% of the cases result in a departure below. Despite a more presumptive approach to sentencing guidelines, judges depart with greater frequency in the Minnesota system. A departure above the recommended range leads to 47.8% increase in the sentence; while a departure below the recommended range leads to a decrease of 29.1% in the prison length. For example, if the expected sentence before any departure is 48 months; a departure below would lower the

[72] Compare this to the estimates for Habitual in the Michigan model where the estimates are that the increase is 17.9%, 33.7%, and 39.8% for Habitual 2nd through Habitual 4th. The policy makers expanded the ranges 25%, 50%, and 100% for Habitual 2nd through Habitual 4th.

[73] These are "durational" departures—the offender is given a prison sentence outside the recommended sentencing range.

sentence to 34 months and a departure above would raise the expected sentence to 71 months. There are very substantial differences in the departure behavior of judges in Michigan versus those in Minnesota.

Results of the level tests between adjacent coefficients in each block of variables are also shown in Table 5-6. With the exception of the Class H/G and E/F comparison in Michigan and the Level X/XI comparison in Minnesota, there is a statistically significant difference between successive severity levels with respect to the sentence length decision in both states. The only other insignificant differences are between the prior record levels A/B and Habitual 3rd and 4th in Michigan. It appears, therefore, that the differences in the sentencing relevant variables in both Minnesota and Michigan show up as differences in the statistical model. As such, the alternative design characteristics have a palpable impact on sentence length in both states.

Having examined the differences within blocks of variables, the final analysis turns to an assessment of the estimated length of prison term for each of the grid cells. The estimated length of prison sentence for Minnesota and Michigan are presented in Tables 5-7a and 5-7b. [74]

[74] The expected sentences in Table 5-7a are based upon Conviction Offense Severity, Prior Criminal History, Grid Cell Type, and the hazard rate. The "logic" for combining the hazard rate is contained in Appendix 4-A. The sentences in the "Stayed" region do not include a departure above since the guidelines do provide a suggested prison sentence if the judge sentences those offenders to prison. The expected sentences in Table 5-7b are based upon Prior Record, Offense Seriousness, Conviction Offense Severity, Grid Cell Type, and hazard rate for each of the Grid cells in Class A through Class H. All sentences in Lockout cells are viewed as departures above and hence include the departure increment. For all sentences in the Lockout Cell Type, we have added in the departure above impact since Michigan's guidelines do not offer any guidance as for a prison sentence and hence the only way that a person in this cell type can receive a prison sentence. As a result, the predicted Lockout cell type prison sentences in Table 5-7b are often larger than those of the adjacent Straddle Cell sentences.

Table 5-7a: Estimated Sentence Length by Grid Cell – Minnesota

	TOTAL HISTORY						
Severity	**0**	**1**	**2**	**3**	**4**	**5**	**6**
xi	246.3	275.9	312.8	340.3	361.6	403.6	449.7
xi	263.6	295.3	334.8	364.3	387.1	432.0	481.4
ix	145.4	162.8	184.6	200.9	213.4	238.2	265.5
viii	88.8	99.2	112.3	122.2	129.7	144.7	161.2
vii	51.6	57.7	65.2	75.2	79.9	89.2	99.3
vi	44.8	33.8	38.2	44.0	46.7	52.0	57.9
v	35.1	26.5	29.9	34.4	36.5	40.7	45.3
iv	23.4	17.6	19.9	32.0	24.3	27.1	30.1
iii	18.7	14.1	16.0	25.7	19.5	21.7	24.1
ii	18.2	13.8	15.6	25.0	26.5	29.6	23.5
I	16.6	14.6	14.1	22.7	24.1	26.8	21.4

Table 5-7b: Estimate Prison Length by Grid Cell -- Michigan

A	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	58.4	58.8	81.8	107.4	120.1	126.7
	II	67.4	67.6	94.5	125.1	140.6	148.6
	III	76.9	76.9	108.4	145.1	164.0	173.6
	IV	89.1	89.1	125.7	168.5	190.6	201.8
	V	107.1	106.8	151.2	203.4	230.3	244.0
	VI	137.6	137.1	194.6	262.5	297.6	315.4

B	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	34.8	21.7	39.4	50.0	54.6	57.1
	II	23.9	32.9	45.1	57.7	63.4	66.5
	III	36.4	36.8	50.8	65.9	73.1	77.0
	IV	42.1	42.5	58.7	76.3	84.9	89.4
	V	50.2	50.7	70.2	91.7	102.3	107.8
	VI	64.2	64.6	89.8	117.8	131.8	139.1

C	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	25.8	26.5	20.6	25.2	38.7	40.2
	II	29.0	13.5	23.3	41.1	44.7	46.6
	III	18.7	19.1	36.4	46.6	51.2	53.6
	IV	21.6	30.7	42.1	53.9	59.3	62.2
	V	36.1	36.6	50.2	64.6	71.3	74.9
	VI	46.0	46.5	64.1	82.8	91.8	96.5

D	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	18.2	18.7	24.9	30.0	18.5	19.0
	II	20.4	21.0	28.0	20.0	21.1	31.9
	III	22.4	23.0	18.0	22.2	35.0	36.5
	IV	25.8	15.5	20.8	37.1	40.5	42.3
	V	17.9	18.3	34.8	44.4	48.6	50.9
	VI	22.7	32.3	44.3	56.8	62.5	65.5

E	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	15.7	16.2	21.5	15.2	15.9	16.2
	II	17.7	18.2	24.2	17.2	18.1	18.5
	III	19.3	19.8	26.5	19.1	20.2	37.7
	IV	22.3	22.9	17.9	22.0	42.7	43.5
	V	26.3	15.8	21.2	48.4	50.6	51.7
	VI	33.3	19.9	26.9	61.4	64.3	65.6

F	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	14.1	14.5	19.2	23.1	19.8	20.2
	II	15.8	16.3	21.6	21.5	22.5	23.0
	III	17.3	17.8	23.7	23.8	25.1	33.5
	IV	19.9	20.5	22.4	27.4	38.0	38.7

G	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	12.8	13.1	17.4	21.0	21.7	21.9
	II	14.3	14.8	19.6	23.6	24.5	20.7
	III	15.7	16.1	21.5	25.9	22.5	23.1

H	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	12.6	13.0	17.3	20.7	21.4	21.7
	II	14.2	14.6	19.4	23.4	24.2	24.5
	III	15.5	15.9	21.2	25.6	26.6	27.1

The joint impact of Conviction Offense Severity, Criminal History and Cell Type for Minnesota can be seen in Table 5-7a. Looking first at the grid cells where Prison sentences are presumed to be executed, there are a number of findings. First, as can be seen in Table 5-5, the coefficient for the Grid Cell variable in the Minnesota model has a very modest impact on sentencing in the range of 6%. This is borne out in the predicted prison sentences as there is no visible jump as one crosses the in/out threshold. Second, comparing this table to Table 3-6, it is clear that the estimated model closely reflects existing practices for Severity Levels I through IX. There are marked discrepancies in the top two levels but this is likely due to a very small sample size and presence of departures below. Third, considering the overall estimated grid, it is clear that there is a great deal of proportionality in the expected values.

Turning to Table 5-7b, it is possible to ascertain the joint impact of the guideline variables on the estimated prison sentence. As can be seen, there is a smooth progression within each of the grids. Furthermore, when compared to the actual average sentences in Table 3-16, it is clear that the model does an excellent job of replicating the 2004 experience. It is noteworthy that as one moves from subgrid to subgrid, say from Class E to Class D, there is not much difference in the predicted sentences. While there is proportionality within each of the grids, the same cannot be said as one moves from subgrid to subgrid.

*Unmeasured Factors***.** The modeling strategy focuses on measuring the contribution of explicit guideline criteria on judicial choice. The hazard rate provides an indication of the presence of unmeasured factors influencing the sentence length decision. When the coefficient of the inverse Mills' ratio (obtained from the in/out equation) is positive and significant, it implies the existence of unmeasured factors positively influencing a judge's decision both to send the offender to prison and to enhance what would otherwise be the baseline sentence.

The Heckman-style FIML estimation technique makes use of the hazard rate in the sentence length equation calculated from the selection equation as discussed in the Appendix 4-A. The hazard rate is highest for those offenders with a low predicted probability of prison but who nonetheless received a prison sentence. In Michigan, the coefficient for the hazard rate (often referred to as lambda) is .244. When this coefficient is multiplied by the inverse Mills' ratio from the selection equation, the result is an increase in the prison sentence due to the transformed probability of being sentenced to prison. The logic is as follows: if the selection equation is correctly specified, then some unmeasured factors influence the judge to sentence an offender to prison even though the guidelines recommend a non-prison sentence. This factor or set of factors will then have an impact on the prison sentence in inverse proportion to the probability of receiving a prison sentence. Table 4-A-1 shows the relationship between the inverse Mills' ratio and the estimated probability of prison as well as the predicted sentence enhancement introduced by the inclusion of the inverse Mills' ratio.

As an example, consider the offender who has a .25 probability of receiving a prison sentence. The inverse Mills' ratio is 1.28. When multiplied by lambda, the result is .34 that is added to the predicted sentence. Using the e^{β}-1 transformation to obtain the exact percentage change suggests that this offender would have their sentence enhanced by 40% (over what it would have been based upon the other variables in the model) due to the unmeasured factors that influenced the judge's in/out decision.

In Minnesota the coefficient for the hazard rate is .010 and insignificant. Substantive insignificance is illustrated using the same example as in Michigan. For an offender with a .25 probability of receiving a prison sentence, the inverse Mills' ratio multiplied by lambda estimates .013 is added to the predicted sentence. Transforming to the exact percentage change suggests

this offender receives a sentence enhanced by only 1.3%, ceteris paribus, due to unmeasured factors influencing the judge's in/out decision. Unmeasured factors do not play a significant role under the Minnesota guidelines.

A significant and positive hazard rate may indicate that when the sentencing ranges are wide, the rule makers have relatively less control in that judges exercise discretion outside the explicit guideline factors without requiring a departure. One of the reasons that the departure rate in Michigan is relatively low, might lie in the width of the ranges and the ability of the judges to respond to unmeasured factors within legally proscribed sentence ranges.

SUMMARY

Concerning the issue of *consistency*, under both the Minnesota and Michigan guidelines, the model incorporating the crucial guideline elements does well in predicting both who is sentenced to prison and the length of prison terms. The proportional reduction in error from knowing the design features of the guidelines system is appreciable for both states. Hence, despite differences between Michigan and Minnesota in how an offender ends up in particular sentencing grid, both sets of guidelines work effectively to guide judges in a predictable manner in making the basic in/out decision. However, concerning the sentence length decision, there are discernable differences between the two states. Minnesota's guideline elements more closely account for variation in sentence length (86.1% explained variation) than do Michigan's elements (67%). Minnesota's system achieves greater consistency.

The overall consistency reached by both sets of guidelines is corroborated by more specific information on the effects of the individual guideline elements ranging from prior record to specific conduct of the basic offense to grid cell type to departure from the guidelines. In both

Michigan and Minnesota, each group of elements has a statistically significant impact on both the in/out decision and the sentence length decision.

Concerning the issue of *proportionality*, the different elements of the guidelines contribute to achieving this value in both states. Different levels have a statistically significant impact and in the anticipated direction in terms of the in/out decision, with the exception of one variable in Michigan (the difference between offense severity levels I and II) and one in Minnesota (Prior record Level B). Similarly, adjacent pairs of guideline elements generally serve to differentiate offenders as demonstrated by the Percentage Change in Prison Length. As the components increase in their seriousness, the percentage change increases accordingly in both states**.**

INVESTIGATING DISCRIMINATION

Introduction

There is widespread agreement in the sentencing literature that discrimination exists when sentencing decisions are based on offender characteristics that violate fundamental constitutional rights. Key types of distinctions generally thought to be illegitimate involve those based on race, sex, and age. As noted in Chapter 1, minorities are disproportionately overrepresented in state prisons in the United States. The fact that black Americans make up 12% of the overall population and 43% of the prison population raises the specter of racial discrimination. However, research results on the extent of discrimination in sentencing remain largely inconclusive. How is it that there are so many minority offenders in prison, yet statistical analysis is unable to find consistent evidence demonstrating discrimination?

Not surprisingly, the role of race is both the most widely investigated and most widely debated aspect of discrimination in sentencing. On the basis of a meta-analysis, Pratt (1998) notes that empirical research provides evidentiary support for the following three conclusions: race does not play a role in sentencing, it plays a direct role, or that it plays an indirect role. Similar conclusions apply to age and gender, as discussed in Chapter 4. The current analysis draws on and extends a framework suggested by Pratt (1998, 514) to investigate three distinct perspectives concerning the determinants of discrimination.

- *Differential Involvement Perspective* suggests that different subgroups are over (under) represented in prison based upon variations in the legitimate sentencing relevant factors (e.g., prior record).

- *Direct-Impact Perspective* says that the individual characteristics for the potentially discriminatory factors will have a statistically significant impact even after controlling for all sentencing relevant factors.

- *Interactionist Perspective* suggests that discriminatory factors play a role in sentencing only through their interaction with each other or with contextual conditions.

The three perspectives provide a comprehensive and thoroughgoing strategy to fully explore the possibility of discriminatory sentencing practices. The results build on each other. The differential involvement perspective examines differences in the average values for each of the independent variables (both guideline and extra-guideline) between racial groups. The results indicate some interesting differences in the typical profile of white and non-white offenders. Consequently, drawing on the direct impact perspective, the in/out and sentence length models for both states are re-estimated including the complete set of extra-guideline factors. The primary purpose is to assess whether illegitimate factors, including race, sex, and age, directly affect sentencing outcomes. A prominent finding of this analysis is the substantial degree to which sentencing patterns vary between the major metropolitan area in each state and

the less urban areas. Therefore, the interactionist perspective uses the Blinder-Oaxaca decomposition technique to assess how sentencing outcomes vary between the largest urban settings and the rest of the state (also known as Outstate) and if offenders are treated differently based on potentially discriminatory characteristics. In this context, the Blinder-Oaxaca approach involves estimation of separate in/out and sentence length models for a reference group (i.e., urban court setting) and for a comparison group (i.e., all Outstate courts)

Michigan

Differential Involvement. Table 5-9 presents the mean values for each of the dependent and independent variables in the model and serves to clarify differences between racial groups. On average, blacks are sentenced to prison 17.5% of the time compared to 14.8% for while white offenders. With respect to the length of the sentence, there is no discernible difference in the actual average sentences given to the two groups.

Table 5-9: Mean Values by Race – Michigan

	Racial Breakdown					
	White Offenders		Black Offenders			
Variable	Obs	Mean	Obs	Mean	z-score	p-value
Prison/No Prison	18,708	0.148	14,046	0.175	-6.624	0.000
Prison Length	2,766	40.110	2,457	40.853	-0.490	0.312
Prior Record Level B	18,708	0.186	14,046	0.151	8.331	0.000
Prior Record Level C	18,708	0.254	14,046	0.207	10.078	0.000
Prior Record Level D	18,708	0.175	14,046	0.201	-6.039	0.000
Prior Record Level E	18,708	0.078	14,046	0.108	-9.287	0.000
Prior Record Level F	18,708	0.049	14,046	0.085	-12.945	0.000
Offense Level II	18,708	0.323	14,046	0.252	14.019	0.000
Offense Level III	18,708	0.120	14,046	0.101	5.407	0.000
Offense Level IV	18,708	0.033	14,046	0.026	3.558	0.000
Offense Level V	18,708	0.020	14,046	0.020	0.525	0.300
Offense Level VI	18,708	0.012	14,046	0.011	1.115	0.132
Crime Class A	18,708	0.017	14,046	0.030	-7.636	0.000
Crime Class B	18,708	0.038	14,046	0.026	6.117	0.000
Crime Class C	18,708	0.061	14,046	0.049	4.672	0.000
Crime Class D	18,708	0.119	14,046	0.174	-14.145	0.000
Crime Class F	18,708	0.159	14,046	0.151	1.960	0.025
Crime Class G	18,708	0.262	14,046	0.243	3.802	0.000
Crime Class H	18,708	0.046	14,046	0.037	4.357	0.000
Straddle Cell	18,708	0.191	14,046	0.229	-8.449	0.000
Prison Cell	18,708	0.079	14,046	0.091	-4.005	0.000
Habitual 2nd	18,708	0.049	14,046	0.052	-1.489	0.068
Habitual 3rd	18,708	0.023	14,046	0.031	-4.465	0.000
Habitual 4th	18,708	0.023	14,046	0.036	-6.982	0.000
Depart Above	18,708	0.013	14,046	0.014	-0.733	0.232
Depart Below	18,708	0.035	14,046	0.043	-3.605	0.000
Trial	18,708	0.030	14,046	0.040	-4.891	0.000
Age	18,708	31.176	14,046	30.964	1.749	0.960
Age squared	18,708	1091.980	14,046	1075.044	1.978	0.976
Race						
Sex	18,708	0.176	14,046	0.154	5.305	
Young Offender	18,708	0.035	14,046	0.038	-1.750	0.960
Young Black Male						
SE Michigan	18,708	0.136	14,046	0.595	-87.111	0.000

While the Black offender "profile" is somewhat different than the white offender "profile," the differences do not all point toward more frequent incarceration or longer sentences. Black offenders are more likely to be represented in Prior Record Levels D, E, and F, indicating more extensive prior records than their white counterparts, and more likely to be in Class

A/Murder 2nd. On the other hand, white offenders are more likely to be in every offense seriousness category except offense level I (approximately 60% of all black offenders can be found in the least serious category) and to receive a departure above. Black offenders are more likely to have the Habitual Offender supplemental conviction than are their white counterparts and this difference increases as the level of Habitual Offender increases. A potentially troubling factor is the over-representation of black offenders in Straddle Cells. The Straddle Cell was developed to give the judge the maximum possible leeway in determining the location of the sentence – if there is no location guidance from the guidelines, it is possible that race may be playing a role in the decision making. Finally, it is noteworthy that approximately 60% of offenders sentenced in the four SE Michigan circuits are black.

Variation in the average profile of white and black offenders is provocative and illustrates the need for the direct impact approach to see if these differences continue once the sentencing guideline factors are introduced as controls.

*Direct Impact Perspective***.** From a statistical point-of-view, the hallmark of the direct impact perspective is to examine whether extra-guideline factors (i.e., age, race, sex, court location, and plea bargaining) are statistically significant after controlling for the legally relevant factors. To capture the impact of age, the interval measure of age and its square are used to capture the hypothesized curvilinear relationship between age and severity of sanction. In addition, a categorical variable takes on the value of one for those offenders 18 years old or younger.[75] The race variable breaks the population into white and non-white (coded 1) while the sex variable breaks the population into male and female (coded 1). Geographic variation is assessed through a variable that takes on the value of 1 for large urban courts and 0 elsewhere.

[75] Steffensmeier et al. (1998) state that "[i]t appears that judges see youthful offenders as more impressionable and more likely to be harmed by imprisonment than young 'adult' offenders, while they see older offenders as more dangerous and less risky prospects for release into the community" (765-766).

Finally, a separate categorical variable indicates whether the offender was convicted at either a bench or jury trial.

Steffensmeier, Ulmer, and Kramer (1998, 763) argue that "race, gender, and age are important social statuses by which American society is stratified and differentiated." While many have looked at the three social statuses individually, Steffensmeier, Ulmer, and Kramer (1998, 763) note: "prior research has ignored the ways in which the three social statuses – race, gender, and age – might interrelate to influence the sentencing of criminal defendants." Their view is persuasive and a variable is included to assess the impact of being young (19-29), black and male.

Table 5-10 shows the joint effect is significant of adding these seven extra guideline independent variables in both the in/out and sentence length models.[76] With respect to the in/out decision, the results show young offenders are treated more leniently, while older offenders are marginally more likely to go to prison. The estimates for age and its square imply the impact of age peaks at 37 years old. There is a significant negative impact of the offender's sex on sentencing; females are less likely to receive a prison sentence all else being equal. Although the coefficient for the race variable is not significant, the coefficient for young, Black male is statistically significant and positive in its effect on the likelihood of receiving a prison sentence. Finally, offenders convicted in SE Michigan are less likely to receive a prison sentence.

[76] The overall X^2 for the seven variables is 234 (7 df) and 490 (5 df) for the in/out and sentence length equations respectively.

Table 5-10: Michigan Model with Extra Guideline Factors Included

	SELECTION EQUATION					SENTENCE LENGTH EQUATION (Log Months)				
	β	s.e.	z	p	Change in Probability @ mean	β	s.e.	z	p	% Change in Prislen
Prior Record										
Prior Record Level B	-0.250	0.053	-4.710	0.000	-0.020	-0.030	0.038	-0.790	0.43	-3.0%
Prior Record Level C	0.122	0.044	2.760	0.006	0.012	0.335	0.032	10.460	0.00	39.7%
Prior Record Level D	0.697	0.048	14.440	0.000	0.100	0.647	0.032	20.260	0.00	90.9%
Prior Record Level E	1.153	0.055	21.110	0.000	0.242	0.780	0.034	22.750	0.00	118.1%
Prior Record Level F	1.390	0.060	23.020	0.000	0.335	0.854	0.036	23.430	0.00	135.0%
Offense Seriousness										
Offense Level II	0.179	0.027	6.550	0.000	0.016	0.134	0.017	7.930	0.00	14.3%
Offense Level III	0.497	0.036	13.740	0.000	0.071	0.283	0.021	13.410	0.00	32.7%
Offense Level IV	0.528	0.059	8.900	0.000	0.086	0.425	0.026	16.090	0.00	53.0%
Offense Level V	0.628	0.073	8.550	0.000	0.111	0.602	0.030	20.140	0.00	82.7%
Offense Level VI	0.731	0.098	7.480	0.000	0.140	0.843	0.033	25.690	0.00	132.4%
Conviction Offense Severity										
Crime Class A	1.542	0.103	14.910	0.000	0.417	1.790	0.038	46.960	0.00	498.8%
Crime Class B	0.692	0.061	11.390	0.000	0.127	0.928	0.032	28.680	0.00	153.0%
Crime Class C	0.372	0.051	7.300	0.000	0.054	0.578	0.025	22.820	0.00	78.3%
Crime Class D	0.132	0.035	3.830	0.000	0.015	0.176	0.018	9.750	0.00	19.2%
Crime Class F	-0.168	0.039	-4.270	0.000	-0.015	-0.020	0.023	-0.860	0.39	-1.9%
Crime Class G	-0.290	0.037	-7.820	0.000	-0.022	-0.193	0.024	-7.900	0.00	-17.5%
Crime Class H	-0.278	0.071	-3.940	0.000	-0.023	-0.217	0.043	-5.010	0.00	-19.5%
Grid Cell Type										
Straddle Cell Type	0.761	0.036	21.330	0.000	0.109	0.396	0.033	12.120	0.00	48.7%
Prison Cell Type	1.633	0.062	26.540	0.000	0.410	0.872	0.052	16.720	0.00	139.2%
Habitual										
Habitual 2nd						0.072	0.018	4.050	0.00	7.4%
Habitual 3rd						0.221	0.024	9.180	0.00	24.7%
Habitual 4th						0.327	0.025	12.860	0.00	38.7%
Departure										
Above						0.793	0.026	30.920	0.00	120.9%
Below						-0.579	0.025	-22.920	0.00	-44.0%
Extra Guideline Factors										
Trial						0.163	0.019	8.530	0.00	17.7%
Age (in years)	0.035	0.007	5.070	0.00	0.00					
Age squared	-0.0005	0.000	-4.970	0.00	0.00					
Race	-0.004	0.029	-0.140	0.89	0.00	-0.062	0.015	-4.240	0.00	-6.0%
Sex	-0.315	0.041	-7.780	0.00	-0.03	-0.027	0.026	-1.040	0.30	-2.6%
Young Offender	-0.266	0.090	-2.960	0.00	-0.02					
Young Black Male	0.187	0.040	4.710	0.00	0.02	0.029	0.019	1.520	0.13	2.9%
SE Michigan	-0.287	0.025	-11.300	0.00	-0.03	-0.254	0.014	-17.570	0.00	-22.4%
Constant	-2.712	0.121	-22.370	0.00		1.308	0.060	21.810	0.00	
lambda						0.238	0.022			

**Probability change is calculated as the change from the baseline. The baseline is the constant plus the mean values of the points for all of the sentencing guideline variables (Baseline Probability of Prison = .06)*

Wald test of independent equations is X2 (1) = 110.52

Number of Cases 32,754 5,223

	Wald Block Tests			Wald Block Tests		
Sets of Variables	**Chi Sq.**	**df**	**p-value**	**Chi Sq.**	**df**	**p-value**
Prior Record	950.29	5	0.000	945.95	5	0.000
Offense Severity	255.42	5	0.000	795.51	5	0.000
Conviction Category	350.65	7	0.000	2401.93	7	0.000
Grid Cell Type	750.23	2	0.000	292.69	2	0.000
Habitual				211.43	3	0.000
Departure				1559.53	2	0.000
Extra Guideline	234.00	7	0.000	490.98	5	0.000

Percent Correctly Predicted	
Null Model	81.4%
Augmented Model	90.3%
PRE	47.5%

R2 66.7%

Condition Number 12.98

The following observations emerge from the analysis of the sentence length decision: conviction at trial increases the sentence by 17.7%, Black offenders receive a 6% decrease in their sentence; and those offenders sentenced in the four SE Michigan circuits receive sentences that are 22% lower than in the rest of state after all other factors have been controlled. Once the sentence length stage is reached, there is little evidence of racial, sex, or age discrimination. In contrast, trial and geographical location have very substantial impacts.

Across the two sentencing stages, extra guideline factors – especially age, race, and sex – have a mixture of positive and negative influences making interpretation difficult. However, a consistent finding is that sentencing practices are substantially different in the large urban courts. This result merits closer attention as the SE Michigan courts handle over 40% of all offenders and 60% of all Non-White offenders.

Minnesota

*Differential Involvement***.** The average values of the dependent and independent variables in the Minnesota model are presented in Table 5-11 and allow for a comparison between racial groups. In terms of basic sentencing outcomes, whites receive a prison sentence in 20.7% of cases, while Blacks are sentenced to prison 27.9% of the time. There is no discernible difference between the two groups in the average length of sentence.

Table 5-11: Mean Values by Race -- Minnesota

	White Offenders		Black Offenders			
Factor	**Obs**	**Mean**	**Obs**	**Mean**	**z-score**	**p-value**
Prison/No Prison	7804	0.207	5174	0.279	-9.432	0.000
Prison Length	1615	46.050	1442	44.965	0.657	0.255
Criminal History 1	7804	0.167	5174	0.156	1.689	0.046
Criminal History 2	7804	0.126	5174	0.137	-1.810	0.035
Criminal History 3	7804	0.075	5174	0.107	-6.283	0.000
Criminal History 4	7804	0.055	5174	0.085	-6.807	0.000
Criminal History 5	7804	0.033	5174	0.058	-6.935	0.000
Criminal History 6+	7804	0.066	5174	0.090	-4.983	0.000
Offense Severity XI	7,804	0.001	5,174	0.000	1.383	0.917
Offense Severity X	7,804	0.001	5,174	0.003	-2.876	0.002
Offense Severity IX	7,804	0.001	5,174	0.003	-2.956	0.002
Offense Severity VIII	7804	0.057	5174	0.047	2.504	0.006
Offense Severity VIII	7804	0.053	5174	0.069	-3.742	0.000
Offense Severity VI	7804	0.096	5174	0.148	-8.996	0.000
Offense Severity V	7804	0.056	5174	0.043	3.202	0.001
Offense Severity IV	7804	0.167	5174	0.151	2.355	0.009
Offense Severity III	7804	0.143	5174	0.138	0.844	0.199
Offense Severity I	7804	0.071	5174	0.074	-0.613	0.270
Presumptive Prison	7804	0.180	5174	0.240	-8.321	0.000
Conspiracy	7804	0.003	5174	0.003	0.330	0.371
Attempt	7804	0.030	5174	0.041	-3.254	0.001
Depart Above	7804	0.034	5174	0.050	-4.552	0.000
Depart Below	7804	0.089	5174	0.152	-11.043	0.000
Trial	7,804	0.038	5,174	0.052	-3.744	0.000
Age	7,804	30.368	5,174	30.332	0.145	0.442
Age squared	7,804	1027.119	5,174	1008.550	1.079	0.140
Race	7,804	0.000	5,174	1.000		
Sex	7,804	0.189	5,174	0.164	3.765	0.000
Young Offender	7,804	0.040	5,174	0.036	1.371	0.085
Young Black Male	7,804	0.000	5,174	0.485		
Hennepin County	7,804	0.127	5,174	0.385	-34.185	0.000

On average, Black offenders have more extensive prior records, a higher likelihood of being in Criminal History Levels 2 through 6, and are more likely to be in the higher levels of Conviction Offense seriousness above Level II (with the exception of VIII). Looking at Cell Type, Non-White offenders are 33% more likely to be in an Executed Sentence cell suggesting that nonwhite offenders face more presumptive prison sentences. In addition, nonwhite offenders are more likely to receive a departure either above or below than their white counterparts. Finally, it is noteworthy that 38% of all offenders sentenced in Hennepin County are nonwhite.

Direct Impact Perspective. The same set of seven extra-guideline factors used in the Michigan analysis is used to assess sentencing practices in Minnesota**.** The results of the estimation for both the in/out and sentence length decisions are presented in Table 5-12. In terms of overall fit, the "in/out" model predicts 87.1% of the cases correctly and the length model accounts for 86% of the variation in sentence length. In terms of joint effects, the extra-guideline variables are significant as a block in both equations. Even after controlling for all guideline relevant factors, there is some variation in sentencing accounted for by "suspect" factors.

Table 5-12: Minnesota Model with Extra-Guideline factors

	Selection Equation					Sentence Length Equation				
Variable	β	Robust s.e.	z	p	Change in Prob. @ mean	β	Robust s.e.	z	p	% change
Criminal History										
1 point	0.402	0.047	8.470	0.000	0.081	0.115	0.019	6.050	0.000	12.2%
2 points	0.823	0.048	17.200	0.000	0.203	0.241	0.018	13.120	0.000	27.3%
3 points	0.925	0.060	15.400	0.000	0.250	0.323	0.020	16.270	0.000	38.1%
4 points	1.183	0.073	16.160	0.000	0.352	0.383	0.023	16.620	0.000	46.7%
5 points	1.421	0.080	17.730	0.000	0.454	0.493	0.024	20.620	0.000	63.8%
6 points	1.794	0.098	18.300	0.000	0.566	0.601	0.028	21.590	0.000	82.4%
Severity of Conviction Offense										
Level XI	7.554	0.187	40.360	0.000	0.880	2.922	0.081	35.880	0.000	1757.9%
Level X	7.951	0.155	51.450	0.000	0.880	2.982	0.064	46.470	0.000	1872.3%
Level IX	8.101	0.118	68.500	0.000	0.880	2.409	0.042	57.120	0.000	1012.6%
Level VIII	1.361	0.105	13.010	0.000	0.426	1.905	0.026	74.190	0.000	571.8%
Level VII	1.784	0.070	25.640	0.000	0.573	1.440	0.022	64.350	0.000	322.0%
Level VI	0.735	0.056	13.120	0.000	0.180	0.890	0.020	44.940	0.000	143.5%
Level V	0.289	0.075	3.840	0.000	0.064	0.651	0.022	29.010	0.000	91.7%
Level IV	0.148	0.051	2.910	0.004	0.027	0.244	0.014	17.260	0.000	27.7%
Level III	0.084	0.051	1.640	0.101	0.015	0.025	0.013	1.880	0.060	2.6%
Level 1	0.078	0.067	1.170	0.241	0.015	-0.096	0.022	-4.330	0.000	-9.1%
Grid Cell Type										
Presumptive Comr	0.875	0.072	12.180	0.000	0.187	0.065	0.019	3.340	0.001	6.7%
Modifiers										
Attempt						-0.540	0.060	-9.040	0.000	-41.7%
Conspiracy						-0.604	0.013	-45.030	0.000	-45.4%
Departure										
Above						0.385	0.020	19.460	0.000	47.0%
Below						-0.332	0.011	-30.890	0.000	-28.2%
Extra Guideline										
Trial						0.108	0.019	5.790	0.000	11.4%
Age	0.015	0.010	1.500	0.134	0.003					
Agesq	0.000	0.000	-1.560	0.119	0.000					
Race	-0.017	0.043	-0.390	0.700	-0.003	-0.016	0.011	-1.440	0.151	-1.5%
Sex	-0.229	0.048	-4.800	0.000	-0.040	-0.027	0.014	-1.930	0.053	-2.7%
Young	0.007	0.094	0.080	0.940	0.001					
YBM	0.206	0.057	3.610	0.000	0.046	0.000	0.013	0.030	0.976	0.0%
Hennepin	-0.142	0.039	-3.610	0.000	-0.026	0.002	0.012	0.180	0.853	0.2%
Constant	-2.261	0.176	-12.860	0.000		2.459	0.036	67.930	0.000	
Lambda						0.013	0.017			

Number of Cases	12,978	3,057

Wald Block Tests

Sets of Variables	Chi Sq.	df	p-value
Prior Record	575.64	6	0.000
Conviction Categor	8533.74	10	0.000
Grid Cell Type	148.34	1	0.000
Departure			
Modifiers			
Extra Guideline	59.40	7	0.000

Wald Block Tests

Chi Sq.	df	p-value
526.21	6	0.000
8061.82	10	0.000
11.16	1	0.001
1471.75	2	0.000
2054.75	2	0.000
39.05	5	0.000

Percent Correctly Predicted	
Null Model	70.7%
Augmented Model	87.1%
PRE	55.8%

R2	85.9%

Condition Number 7.04

None of the age related variables are statistically significant in determining who receives a prison sentence in Minnesota (Table 5-12). In addition, while Race alone is not significant to the in/out decision, the subgroup of young Black males is more likely, ceteris paribus, to be sent to prison. Sex is also very significant and negative. Finally, the coefficient for Hennepin County is significant and negative; offenders convicted in Hennepin County are less likely to receive a prison sentence than their counterparts in the rest of state.

Turning to the sentence length decision, offenders convicted at trial see their sentences enhanced by 11.4% holding all else constant. All remaining extra legal coefficients are insignificant. Interestingly, there is no evidence that young Black males are given significantly longer prison sentences or that offenders sentenced in Hennepin County receive sentences different than in the rest of state after controlling for all other factors.

Overall, the extra guideline factors – trial, age, race, sex, and location – play a modest role in both sentencing decisions in Minnesota. While sometimes significant, their role does not appear to be substantively very large. However, the direct impact analysis does not completely control for the potentially confounding effect of the skewed composition of the Hennepin County caseload: 22% of all offenders and 60% of all non-white offenders. To fully investigate the impact of the extra guideline factors, it is necessary to move to the interactionist approach and control explicitly for where the sentencing takes place.

INTERACTIONIST PERSPECTIVE IN THE CONTEXT OF LARGE URBAN COURTS

An Expectation of Interaction

The differential perspective showed some basic differences in average Black and White offender profiles in terms of both guideline and extra-guideline characteristics, but no clear

implications that observed differences are discriminatory. Likewise, the direct impact perspective failed to provide decisive evidence that factors such as race, sex, and age are systematically influencing sentencing outcomes. The roles of extra-guideline characteristics in sentencing are neither obvious nor uniform.

Perhaps the most provocative finding is the observed differences between large urban courts and their counterparts in the rest of each state. A source of possible discrimination arises when judges in one part of a state prescribe sentences that are either much harsher or more lenient than judges in another part of the state. With respect to race, concern may be warranted because not only do most minority offenders reside in the large urban areas[77] (39% of all black offenders in Minnesota; 59% of all black offenders in Michigan), most of the offenders that are sentenced in urban areas are black (67% in Minnesota; 60% in Michigan). The larger jurisdictions are disproportionately minority, and if minority offenders in the large jurisdictions are being treated differently, this could mask any type of *systematic* statewide race (or sex, age) effect. Consequently, the overall conclusions that one reaches about the potential sources of discrimination will be greatly influenced by what goes on in the large urban courts.

However, differences in sentencing outcomes may also reflect more pragmatic issues. The criminal justice system has limited resources and manpower. Court dockets are crowded and court managers must determine how best to keep cases flowing, hold down backlogs and prioritize resources to ensure the most serious and important cases get the attention they deserve. Although a primary purpose of guidelines is to encourage statewide uniformity in sentencing, this policy goal must face the strong and established institutional position of local trial courts, which are typically decentralized in authority and operation. Certainly no research suggests local

[77] In Minnesota, we classify Hennepin County (District 4) as the only large urban court in the state. In Michigan, we classify four circuits in Southeastern Michigan (Wayne, Oakland, Macomb, Washtenaw) as the large urban courts.

trial courts are like a state executive agency located in a single location operating under a control and command structure. Judges and attorneys become socialized in their local court culture and with local norms related to right and wrong and the severity of punishment. People working in large urban centers tend to have different cultures than people working in smaller jurisdictions. One result may be observed differences in sentencing practices between larger and smaller jurisdictions related to such issues as the:

- Frequency of plea bargains
- Existence and magnitude of a trial tax
- Use of modifiers such as "attempt" in Minnesota and the habitual offender conviction in Michigan
- Departure rates
- Prioritization of resources
- Consistency in the severity of punishment

In the current study, the interactionist perspective directs attention to how sentencing outcomes vary between large urban courts and the rest of the state. The analysis proceeds by first examining differences in the average values for a select set of each of the independent variables (both guideline and extra-guideline) in urban and outstate courts. The next step involves estimating separate models for the urban and out-state courts in each state. Results show that sentencing behavior is statistically different in the large urban courts. The substantive implications of the differences are explored in the final piece of the analysis using the Blinder-Oaxaca technique to assess whether variation in sentencing outcomes between the largest urban settings and the rest of the state show differences in treatment based on discriminatory characteristics.

Analysis

Different Means. Differences in selected rates of occurrence for key factors are displayed in Table 5-13 for the two states. As can be seen, there are fewer trials in the Michigan urban courts and more in the Minnesota urban courts. Hennepin has two and one half times more attempt modifiers than do the outstate courts while SE Michigan courts utilize habitual 2nd and 3rd significantly less than do the outstate courts. Finally, there are substantially more departures below in the urban courts in both states.

Table 5-13: Selected Mean Values for Michigan and Minnesota

Michigan						
	Outstate Offenders		SE Michgan			
Factors	**Obs**	**Mean**	**Obs**	**Mean**	**zcored**	**p-value**
Prison Sentence	18,458	0.182	14,296	0.131	12.588	0.000
Prison Length	3,357	39.865	1,866	41.529	-1.027	0.152
Straddle Cell	18,458	0.215	14,296	0.198	3.872	0.000
Prison Cell	18,458	0.087	14,296	0.081	1.825	0.034
Habitual 2nd	18,458	0.062	14,296	0.035	11.292	0.000
Habitual 3rd	18,458	0.029	14,296	0.024	2.874	0.002
Habitual 4th	18,458	0.019	14,296	0.041	-11.958	0.000
Depart Above	18,458	0.014	14,296	0.012	1.355	0.088
Depart Below	18,458	0.033	14,296	0.044	-5.313	0.000
Trial	18,458	0.040	14,296	0.028	5.653	0.000
Age	18,458	30.651	14,296	31.646	-8.186	0.000
Black	18,458	0.308	14,296	0.584	-50.030	0.000
Female	18,458	0.168	14,296	0.164	1.125	0.870
Young Offender	18,458	0.036	14,296	0.036	-0.192	0.576
Young Black Male	18,458	0.136	14,296	0.247	-25.633	0.000
Minnesota						
	Outstate Offenders		Hennepin			
Factors	**Obs**	**Mean**	**Obs**	**Mean**	**zcored**	**p-value**
Prison Sentence	9,994	0.230	2,984	0.253	-2.562	0.005
Prison Length	2,302	46.161	755	43.638	1.308	0.191
Presumptive Execute	9,994	0.193	2,984	0.244	-6.078	0.000
Conspiracy	9,994	0.003	2,984	0.003	0.019	0.492
Attempt	9,994	0.024	2,984	0.067	-11.237	0.000
Depart Above	9,994	0.031	2,984	0.071	-9.659	0.000
Depart Below	9,994	0.092	2,984	0.186	-14.234	0.000
Trial	9,994	0.038	2,984	0.062	-5.586	0.000
Age	9,994	29.957	2,984	31.679	-6.191	0.000
Black	9,994	0.318	2,984	0.668	-26.282	0.000
Female	9,994	0.185	2,984	0.160	2.398	0.992
Young Offender	9,994	0.042	2,984	0.029	3.161	0.001
Young Black Male	9,994	0.162	2,984	0.297	-16.396	0.000

The discrimination analysis begins by estimating separate models for the urban and out-state courts in each state.[78] For Michigan, estimation results for SE Michigan versus the remaining 53 circuits in the state are displayed in Table 5-14. In Minnesota, the estimation used Hennepin County as the reference group and the remaining 86 counties as the comparison group, with results shown in Table 5-15.

[78] Specifically, we augment the basic model by using interactive dummy variables in conjunction with each of the model factors. Hence the coefficient for the interactive variables tells whether a difference is statistically significant as well as the direction and magnitude of the difference.

Table 5-14: Michigan Model with SE Michigan Interactions

	Selection Equation						Sentence Length Equation					
	Outstate Offenders			SE Michigan Offenders			Outstate Offenders			SE Michigan Offenders		
	β	s.e.	z	$\Delta\beta$	s.e.	z	β	s.e.	z	$\Delta\beta$	s.e.	z
Prior Record												
Prior Record Level B	-0.260	0.071	-3.670	0.063	0.107	0.590	-0.089	0.048	-1.850	0.126	0.078	1.610
Prior Record Level C	0.068	0.060	1.130	**0.178**	0.088	2.010	0.253	0.042	6.040	**0.211**	0.064	3.270
Prior Record Level D	0.747	0.065	11.500	-0.088	0.098	-0.900	0.569	0.042	13.550	**0.185**	0.066	2.820
Prior Record Level E	1.208	0.072	16.700	-0.104	0.111	-0.940	0.688	0.045	15.250	**0.222**	0.070	3.180
Prior Record Level F	1.440	0.081	17.690	-0.078	0.122	-0.640	0.762	0.048	15.900	**0.233**	0.074	3.130
Offense Seriousness												
Offense Level II	0.171	0.035	4.830	0.024	0.056	0.430	0.123	0.019	6.340	0.018	0.035	0.500
Offense Level III	0.539	0.045	11.880	-0.105	0.077	-1.370	0.239	0.024	10.080	**0.105**	0.044	2.370
Offense Level IV	0.568	0.074	7.640	-0.067	0.125	-0.530	0.415	0.032	12.830	0.022	0.056	0.380
Offense Level V	0.790	0.098	8.090	**-0.407**	0.152	-2.670	0.583	0.036	16.050	0.043	0.064	0.660
Offense Level VI	0.736	0.127	5.770	0.071	0.191	0.370	0.838	0.043	19.670	0.016	0.067	0.240
Conviction Offense Severity												
Crime Class A	1.177	0.135	8.710	**0.815**	0.197	4.130	1.626	0.050	32.290	**0.347**	0.080	4.360
Crime Class B	0.634	0.080	7.950	0.175	0.122	1.440	0.851	0.039	21.870	**0.240**	0.070	3.440
Crime Class C	0.257	0.069	3.730	**0.272**	0.103	2.650	0.510	0.030	16.810	**0.197**	0.054	3.620
Crime Class D	0.164	0.045	3.610	-0.065	0.070	-0.930	0.198	0.020	9.780	-0.049	0.040	-1.240
Crime Class F	-0.138	0.050	-2.720	-0.091	0.082	-1.110	-0.028	0.025	-1.100	0.022	0.053	0.420
Crime Class G	-0.263	0.047	-5.590	-0.099	0.078	-1.260	-0.192	0.027	-7.100	-0.010	0.059	-0.180
Crime Class H	-0.255	0.086	-2.980	-0.068	0.155	-0.440	-0.235	0.046	-5.080	0.092	0.114	0.800
Grid Cell Type												
Straddle Cell Type	0.856	0.044	19.320	**-0.275**	0.074	-3.710	0.398	0.037	10.890	-0.052	0.055	-0.930
Prison Cell Type	1.812	0.080	22.760	**-0.444**	0.125	-3.560	0.860	0.057	15.190	0.005	0.077	0.060
Habitual												
Habitual 2nd							0.067	0.021	3.200	**0.102**	0.047	2.170
Habitual 3rd							0.198	0.029	6.890	**0.124**	0.054	2.290
Habitual 4th							0.374	0.038	9.790	-0.041	0.052	-0.790
Departure												
Above							0.687	0.033	21.110	**0.240**	0.052	4.640
Below							-0.574	0.039	-14.620	-0.046	0.052	-0.880
Extra Guideline Factors												
Trial							0.107	0.023	4.630	**0.157**	0.044	3.610
Age (in years)	0.032	0.009	3.590	0.013	0.015	0.890						
Age squared	0.000	0.000	-3.640	0.000	0.000	-0.570						
Race	0.003	0.040	0.060	-0.041	0.059	-0.700	-0.068	0.018	-3.790	0.018	0.031	0.570
Sex	-0.364	0.053	-6.860	0.125	0.083	1.510	-0.032	0.030	-1.040	0.001	0.054	0.010
Young Offender	-0.249	0.110	-2.260	0.018	0.192	0.090						
Young Black Male	0.234	0.055	4.230	-0.098	0.080	-1.230	0.039	0.024	1.650	-0.049	0.037	-1.310
Constant	-2.733	0.155	-17.640	-0.330	0.258	-1.280	1.453	0.067	21.540	**-0.598**	0.085	-7.000

	Wald Block Tests			Wald Block Tests			Wald Block Tests			Wald Block Tests		
Sets of Variables	**Chi Sq.**	**df**	**p-value**	**Chi Sq.**	**df**	**p-value**	**Chi Sq.**	**df**	**p-value**	**Chi Sq.**	**df**	**p-value**
Prior Record	650.27	5	0.000	12.52	5	0.028	528.97	5	0.000	12.89	5	0.024
Offense Severity	195.89	5	0.000	10.98	5	0.052	467.03	5	0.000	6.94	5	0.225
Conviction Category	162.25	7	0.000	24.00	7	0.001	1138.97	7	0.000	38.84	7	0.000
Grid Cell Type	581.91	2	0.000	16.52	2	0.000	236.89	2	0.000	2.09	2	0.352
Habitual							117.94	3	0.000	11.17	3	0.011
Departure							666.72	2	0.000	22.60	2	0.000
All Guideline	4456.38	19	0.000	113.72	19	0.000	6715.94	24	0.000	136.96	19	0.000
Extra Legal	95.57	7	0.000	16.80	7	0.019	39.50	4	0.000	72.83	5	0.000
All Variables	7644.47	25	0.000	274.58	26	0.000	7085.74	28	0.000	520.34	29	0.000

Percent Correctly Predicted						
Null Model	77.9%		85.4%		R2	69.6%		64.8%
Full Model	89.1%		91.7%					
PRE	50.5%		43.4%					
% Correct No Prison	95.2%		98.3%					
% Correct Prison	61.5%		48.3%					

Table 5-15: Minnesota Model with Hennepin Interactions

	Selection Equation						Sentence Length Equation					
	Outstate Offenders			Hennepin Offenders			Outstate Offenders			Hennepin Offenders		
Variable	**β**	**s.e.**	**z**	**$\Delta\beta$**	**s.e.**	**z**	**β**	**s.e.**	**z**	**$\Delta\beta$**	**s.e.**	**z**
Criminal History												
1 point	0.474	0.054	8.770	**-0.298**	0.117	-2.540	0.121	0.020	5.960	-0.013	0.052	-0.240
2 points	0.886	0.055	16.220	**-0.235**	0.115	-2.040	0.229	0.019	11.930	0.077	0.050	1.550
3 points	0.981	0.069	14.250	-0.249	0.144	-1.730	0.321	0.020	15.710	0.032	0.054	0.590
4 points	1.197	0.084	14.210	-0.071	0.172	-0.410	0.403	0.023	17.810	-0.083	0.060	-1.380
5 points	1.464	0.096	15.220	-0.129	0.180	-0.720	0.501	0.025	20.120	-0.029	0.059	-0.500
6 points	1.762	0.116	15.180	0.114	0.226	0.500	0.622	0.028	22.500	-0.068	0.070	-0.970
Severity of Conviction Offense												
Level XI	7.537	0.200	37.690	-0.042	0.302	-0.140	3.053	0.101	30.130	**-0.399**	0.126	-3.160
Level X	7.964	0.170	46.720	0.545	0.341	1.600	3.073	0.071	43.420	**-0.311**	0.122	-2.550
Level IX	8.092	0.150	53.950	0.192	0.269	0.710	2.379	0.041	57.410	0.041	0.089	0.460
Level VIII	1.272	0.122	10.420	0.240	0.245	0.980	1.945	0.026	74.600	**-0.138**	0.069	-1.990
Level VII	1.839	0.080	22.900	-0.259	0.163	-1.580	1.487	0.020	73.590	**-0.173**	0.051	-3.380
Level VI	0.636	0.066	9.640	**0.313**	0.129	2.430	0.901	0.022	41.420	-0.053	0.047	-1.120
Level V	0.163	0.089	1.830	**0.517**	0.176	2.930	0.669	0.024	27.640	-0.070	0.055	-1.280
Level IV	0.112	0.058	1.940	0.135	0.126	1.070	0.262	0.015	17.080	**-0.079**	0.038	-2.090
Level III	0.068	0.059	1.140	0.050	0.121	0.420	0.019	0.015	1.290	0.013	0.033	0.400
Level 1	0.098	0.079	1.240	-0.078	0.147	-0.530	-0.114	0.024	-4.800	0.062	0.052	1.190
Grid Cell Type												
Presumptive Commit	0.991	0.087	11.450	**-0.388**	0.159	-2.440	0.083	0.019	4.360	-0.047	0.041	-1.150
Modifiers												
Attempt							-0.535	0.075	-7.150	-0.031	0.101	-0.310
Conspiracy							-0.663	0.016	-41.010	**0.081**	0.027	3.030
Departure												
Above							0.404	0.023	17.850	-0.066	0.044	-1.520
Below							-0.312	0.012	-25.930	**-0.068**	0.026	-2.640
Extra Guideline												
Trial							0.075	0.020	3.740	**0.111**	0.044	2.490
Age	0.018	0.011	1.590	-0.019	0.027	-0.700						
Agesq	0.000	0.000	-1.410	0.000	0.000	0.210						
Race	0.017	0.052	0.330	-0.073	0.099	-0.740	-0.015	0.012	-1.250	-0.009	0.027	-0.330
Sex	-0.251	0.054	-4.610	0.040	0.115	0.350	-0.031	0.013	-2.340	0.005	0.043	0.130
Young	-0.129	0.110	-1.180	0.427	0.239	1.790	0.012	0.015	0.770	-0.038	0.030	-1.290
YBM	0.193	0.070	2.750	-0.083	0.130	-0.640						
Constant	-2.378	0.194	-12.240	0.562	0.471	1.190	2.414	0.032	74.600	0.148	0.059	2.510

	Wald Block Tests			Wald Block Tests			Wald Block Tests			Wald Block Tests		
Sets of Variables	**Chi Sq.**	**df**	**p-value**	**Chi Sq.**	**df**	**p-value**	**Chi Sq.**	**df**	**p-value**	**Chi Sq.**	**df**	**p-value**
Prior Record	475.11	6	0.000	12.34	6	0.055	542.87	6	0.000	12.70	6	0.048
Conviction Category	5597.16	10	0.000	26.25	10	0.003	9618.60	10	0.000	46.51	10	0.000
Grid Cell Type	131.10	1	0.000	5.98	1	0.014	19.00	1	0.000	1.32	1	0.251
Modifiers							1716.21	2	0.000	9.48	2	0.009
Departure							1055.28	2	0.000	8.17	2	0.017
All Guideline	10622.09	17	0.000	45.98	17	0.000	21638.94	21	0.000	91.81	21	0.000
Extra Legal	44.17	6	0.000	19.42	7	0.007	19.81	4	0.001	13.92	5	0.016
All Variables	12438.40	23	0.000	85.54	24	0.000	23590.99	25	0.000	105.55	26	0.000

Percent Correctly Predicted						
Null Model	77.2%		68.2%	R2	88.0%	84.3%
Full Model	87.9%		84.2%			
PRE	56.5%		50.2%			
% Correct No Prison	93.8%		91.3%			
% Correct Prison	68.2%		63.0%			

Consistency. Overall consistency of sentencing outcomes is assessed using the same procedures as before (i.e., percent correctly predicted, R2, and the block tests) to determine if the use of the dual model significantly increases predictability. Table 5-14 contains the information relevant to sentencing in Michigan. The overall log likelihood test (fitting two separate models) yields a X^2 of 399 with 45 degrees of freedom; controlling for Large Urban Courts makes a statistically significant difference.

For the selection equation, the prior record, conviction class, and grid cell type blocks of coefficients make a significant addition to the explanatory power of the model. Looking at the percent predicted correctly, there are some substantial differences between the two sets of courts. In SE Michigan, the model gets 91.7% of the cases right with a 43.4% proportional reduction in error. While the model does well with the no prison decision (98.3% correct), it only gets 48.3% of the prison cases correctly. For the rest of the state, the model gets 89.1% of the cases right with a 50.5% proportional reduction in error. The predictions are 95% correct for the no prison decision and 61% correct for the prison decision. These results show that the predictability of prison-bound offenders in SE Michigan is lower than in the rest of the state.

Table 5-15 contains the information relevant to sentencing in Minnesota and confirms controlling for the Hennepin court makes a statistically significant difference (overall log likelihood test yields a X^2 of 200 with 48 degrees of freedom). At the in/out stage, there is a significant difference in the conviction class and grid cell type blocks of coefficients. There are modest differences between the two courts in the percent predicted correctly. In Hennepin, the model gets 84.2% of the cases right with a 50.2% proportional reduction in error. The model does very well with the no prison decision (91.3% correct); it is able to get 63% of the prison cases correctly. For the rest of the state, the model gets 87.9% of the cases right with a 56.5%

proportional reduction in error. The predictions are 94% correct for the no prison decision and 68% correct for the prison decision. The predictability of the model improves by taking location into account – the sentencing behavior is more "orderly" in the outstate courts.

For the prison length equation, the blocks of prior record, conviction class, habitual offender, and departure variables for SE Michigan are statistically significant, indicating sentencing practices are different. The R^2 for SE Michigan is 64.8%, while that for the rest of the circuits is nearly 70%. There is a slight edge in consistency for the outstate circuits.

Turning to Minnesota in Table 5-15, the prior record, conviction category, modifiers, and departure blocks all show a statistically significant difference in Hennepin County. In terms of overall goodness of fit, the R^2 for Hennepin is 84% while that for the rest of the state is nearly 88%. As expected, the analysis shows sentencing is somewhat more consistent outside the large urban court given the more flexible use of sentencing guidelines in large urban courts.

Different Coefficients

Grid Cell Guidance. Both guideline systems designate grid cells where prison is the presumptive sentence (Michigan also employs the straddle cell). Table 5-14 and Table 5-15 indicate that the impact of prison grid cells types is significantly less in SE Michigan and Hennepin County for the in/out decision. For SE Michigan, there is no difference in the impact of cell type on the prison length decision, while in Minnesota grid cell type enhances the length of sentence for outstate offenders and has no impact on the Hennepin County offenders. In both states, the urban courts appear to have a more flexible view of the in/out line.

Offense Severity. Courts need to get their business done within the resource constraints presented by their budgets and to impose sentences they think are appropriate and just. Table 5-14, shows the SE Michigan judges are much harsher for Crime Classifications A through C in

both the prison/no prison and sentence length decisions than outstate judges. In contrast, SE Michigan judges impose significantly lower prison sentences for the least serious offenses (Class G and H). Even though the Hennepin judges are much more likely to send individuals in Severity Levels V and VI to prison than their out-state counterparts, there is no indication that these judges are more or less severe on high severity offenses (Table 5-15). In fact, the Hennepin judges are more lenient on the sentence length decision for most of the high severity offenses.

Trial Tax. In both Minnesota and Michigan, the trial tax is two and one-half times higher in the large urban courts. For those offenders who are convicted at trial in the large urban courts, there is a significant sentence enhancement. Again, this is indicative of courts trying to conserve scarce resources.

Extra Legal Factors. In both Michigan and Minnesota, the block of extra guideline variables are statistically significant in both the urban and outstate locations. For Michigan, both the urban and non-urban locations show the age, sex, and young black male variables to significant in the in/out decision while there is little of significance in the length equation.[79] For Minnesota, sex and young black male variables are statistically significant for the outstate model, while there is no significant difference in the urban court. While young black males are more likely to receive a prison sentence in the non-urban courts in both Minnesota and Michigan, the marginal increase in probability is under 10% in both states.

[79] To check on the significance of the extra-legal variables, we re-estimated the dual model without the interaction terms. In Michigan, the age, sex, young offender, and young black male variables are significant for the non-urban courts while the same variables minus the young offender variable are significant in SE Michigan. In Minnesota the Sex and Young Black Male variables are significant in the non-urban courts while only the Sex variable is significant in Hennepin.

Different Coefficients or Different Means?

The preceding analyses showed both some interesting differences in the mean values for certain key factors as well as some interesting differences in the values of coefficients between the large urban courts and the remaining courts in each state. A natural question arises concerning the relative importance of these two sets of factors.

This issue is addressed using Blinder-Oaxaca (B-O) decomposition technique. The use of the B-O technique allows for an assessment of how sentencing outcomes vary between the largest urban settings and the rest of the state, and if offenders are treated differently based on potentially discriminatory characteristics. Using these results, one is able to sort between the extent to which differences in judicial sentencing in large urban locations (versus the rest of the state) is due to difference in legitimate sentencing relevant *endowments* (e.g., conviction offense and prior record) and to differences in treatment due to different weights being given to the sentencing relevant characteristics referred to as *discrimination*. Thus the Blinder-Oaxaca decomposition identifies the presence of discrimination when there are "palpable differences" in the estimated structural equations producing sentencing outcomes for the two groups (Darity and Mason, 1998).[80]

For both the reference (i.e., urban courts) and comparison groups (i.e., outstate courts), the B-O decomposition integrates the mean values for each independent variable with the estimated coefficients for the sentence *length* equations, as presented in Table 5-14 (Michigan) and Table 5-15 (Minnesota). The B-O technique first multiplies the coefficients from the length

[80] An insightful and non-technical introduction to the B-O technique is provided in Darity and Mason (1998 67-8). These authors make this distinction between the traditional dummy variable approach and the B-O method: "the race-gender dummy variable approach and the Blinder-Oaxaca technique should lead to the same conclusions about the presence or absence of discrimination. If a race or gender dummy variable is statistically significant or negative in the first approach, a Blinder-Oaxaca decomposition probably will reveal that the corresponding racial or gender group suffers a loss… due to differential treatment of given characteristics. However, the first approach obviously constrains the coefficient estimates on the variables to be the same for all groups, while the Blinder-Oaxaca approach does not."

equation by the overall mean values for each of the variables. Taking Michigan as an example, after multiplying each coefficient by its overall mean, the result is totaled yielding a predicted value for both SE Michigan and Outstate Michigan. The difference between the two is referred to as the Attributable Difference. The next step is to compute the predicted value when using Outstate coefficients and SE Michigan mean values; this value is subtracted from SE Michigan predicted value to obtain the Coefficient Difference. The remainder of the difference is due to differences in means, referred to as Endowment difference. The final step calculates the difference between the two constant terms known as the Shift Coefficient. The overall calculations are presented in Table 5-16 and 5-17.

Table 5-16: Blinder-Oaxaca Decomposition Michigan

	Outstate Offenders			SE Michigan Offenders			SE Mich Mean*Outstate Coeff		
	β	Mean	Prediction	β	Mean	Prediction	Coefficent	Mean	Prediction
Prior Record									
Prior Record Level B	-0.091	0.175	-0.016	0.037	0.166	0.006	-0.091	0.166	-0.015
Prior Record Level C	0.251	0.250	0.063	0.465	0.213	0.099	0.251	0.213	0.054
Prior Record Level D	0.567	0.197	0.112	0.758	0.172	0.130	0.567	0.172	0.097
Prior Record Level E	0.687	0.097	0.067	0.918	0.083	0.076	0.687	0.083	0.057
Prior Record Level F	0.760	0.063	0.048	1.004	0.067	0.067	0.760	0.067	0.051
Offense Seriousness									
Offense Level II	0.123	0.321	0.039	0.142	0.256	0.036	0.123	0.256	0.031
Offense Level III	0.238	0.133	0.032	0.346	0.085	0.029	0.238	0.085	0.020
Offense Level IV	0.415	0.034	0.014	0.440	0.025	0.011	0.415	0.025	0.010
Offense Level V	0.582	0.023	0.013	0.628	0.017	0.011	0.582	0.017	0.010
Offense Level VI	0.837	0.013	0.011	0.857	0.010	0.009	0.837	0.010	0.008
Conviction Offense Severity									
Crime Class A	1.621	0.019	0.031	1.981	0.027	0.053	1.621	0.027	0.044
Crime Class B	0.847	0.036	0.030	1.096	0.029	0.032	0.847	0.029	0.025
Crime Class C	0.507	0.057	0.029	0.711	0.054	0.038	0.507	0.054	0.027
Crime Class D	0.198	0.136	0.027	0.150	0.151	0.023	0.198	0.151	0.030
Crime Class F	-0.028	0.146	-0.004	-0.008	0.168	-0.001	-0.028	0.168	-0.005
Crime Class G	-0.191	0.265	-0.051	-0.204	0.240	-0.049	-0.191	0.240	-0.046
Crime Class H	-0.233	0.049	-0.012	-0.145	0.033	-0.005	-0.233	0.033	-0.008
Grid Cell Type									
Straddle Cell Type	0.401	0.215	0.086	0.353	0.198	0.070	0.401	0.198	0.079
Prison Cell Type	0.867	0.087	0.075	0.876	0.081	0.071	0.867	0.081	0.070
Habiutal Level									
Habitual 2nd	0.066	0.062	0.004	0.168	0.035	0.006	0.066	0.035	0.002
Habitual 3rd	0.197	0.029	0.006	0.322	0.024	0.008	0.197	0.024	0.005
Habitual 4th	0.370	0.019	0.007	0.332	0.041	0.014	0.370	0.041	0.015
Departure									
Above	0.684	0.014	0.009	0.926	0.012	0.011	0.684	0.012	0.008
Below	-0.575	0.033	-0.019	-0.620	0.044	-0.027	-0.575	0.044	-0.025
Extra Guideline Factors									
Trial	0.107	0.040	0.004	0.265	0.028	0.007	0.107	0.028	0.003
Age (in years)									
Age squared									
Race	-0.068	0.308	-0.021	-0.050	0.584	-0.029	-0.068	0.584	-0.040
Sex	-0.032	0.168	-0.005	-0.032	0.164	-0.005	-0.032	0.164	-0.005
Young Offender									
Young Black Male	0.040	0.136	0.005	-0.009	0.247	-0.002	0.040	0.247	0.010
Constant	1.450	1.000	1.450	0.828	1.000	0.828	1.450	1.000	1.450
Prediction (log)			2.035			1.517			1.964
Prediction (months)	1.379		7.650			4.558			7.127

Amount Attributable	-10%
Endowments (E)	7%
Coefficients (C)	-17%
Shift Coefficient (U)	62%
Raw Differential R (E+C+U)	52%
Adjusted Differential (C+U)	45%
Endowments as % of total (E/R)	14%
Discrimination as % of total (C+U)/R	86%

positive number indicates advantage to high group
negative number indicates advantage to low group

Table 5-17: Blinder-Oaxaca Decomposition Minnesota

		Outstate Offenders			Hennepin Offenders			Hennepin Mean*Outstate Coeff		
Variable		**Coefficent**	**Mean**	**Prediction**	**Coefficent**	**Mean**	**Prediction**	**Coefficent**	**Mean**	**Prediction**
Criminal History										
	1 point	0.120	0.167	0.020	0.110	0.150	0.017	0.120	0.150	0.018
	2 points	0.227	0.128	0.029	0.316	0.139	0.044	0.227	0.139	0.032
	3 points	0.319	0.087	0.028	0.361	0.090	0.032	0.319	0.090	0.029
	4 points	0.400	0.062	0.025	0.334	0.083	0.028	0.400	0.083	0.033
	5 points	0.498	0.036	0.018	0.489	0.065	0.032	0.498	0.065	0.032
	6 points	0.619	0.069	0.043	0.578	0.100	0.058	0.619	0.100	0.062
Severity of Conviction Offense										
	Level XI	3.049	0.001	0.002	2.681	0.001	0.003	3.049	0.00067	0.002
	Level X	3.068	0.002	0.006	2.794	0.002	0.006	3.068	0.00235	0.007
	Level IX	2.374	0.001	0.002	2.459	0.004	0.010	2.374	0.00402	0.010
	Level VIII	1.942	0.054	0.105	1.827	0.049	0.090	1.942	0.04926	0.096
	Level VII	1.483	0.059	0.088	1.337	0.061	0.082	1.483	0.06099	0.090
	Level VI	0.900	0.111	0.100	0.862	0.135	0.116	0.900	0.13539	0.122
	Level V	0.669	0.053	0.036	0.609	0.044	0.027	0.669	0.04357	0.029
	Level IV	0.262	0.172	0.045	0.186	0.123	0.023	0.262	0.12299	0.032
	Level III	0.019	0.140	0.003	0.034	0.144	0.005	0.019	0.14410	0.003
	Level 1	-0.114	0.067	-0.008	-0.051	0.090	-0.005	-0.114	0.09048	-0.010
Grid Cell Type										
	Presumptive Commit	0.080	0.193	0.015	0.050	0.244	0.012	0.080	0.244	0.019
Modifiers										
	Attempt	-0.536	0.003	-0.001	-0.566	0.003	-0.002	-0.536	0.003	-0.002
	Conspiracy	-0.663	0.024	-0.016	-0.580	0.067	-0.039	-0.663	0.067	-0.044
Departure										
	Above	0.404	0.031	0.013	0.337	0.071	0.024	0.404	0.071	0.029
	Below	-0.313	0.092	-0.029	-0.380	0.186	-0.071	-0.313	0.186	-0.058
Extra Guideline										
	Trial	0.075	0.038	0.003	0.185	0.062	0.011	0.075	0.062	0.005
	Age									
	Agesq									
	Race	-0.015	0.318	-0.005	-0.025	0.668	-0.017	-0.015	0.668	-0.010
	Sex	-0.030	0.185	-0.006	-0.029	0.160	-0.005	-0.030	0.160	-0.005
	Young									
	YBM	0.011	0.162	0.002	-0.023	0.297	-0.007	0.011	0.297	0.003
Constant		2.423	1.000	2.423	2.507	1.000	2.507	2.423		2.423
Prediction (log)				2.939			2.981			2.946
Prediction (months)				18.895			19.709			19.029

Amount Attributable	4.2%
Endowments (E)	-0.7%
Coefficients (C)	4.9%
Shift Coefficient (U)	-8.4%
Raw Differential R (E+C+U)	-4.2%
Adjusted Differential (C+U)	-3.5%
Endowments as % of total (E/R)	17%
Discrimination as % of total (C+U)/R	83%

positive number indicates advantage to high group
negative number indicates advantage to low group

Applying this procedure to the Michigan model shows 86% of the difference in sentencing between the reference and comparison courts is due to the difference in the estimated coefficients as opposed to differences in the mean values of the variables. A similar result is found in Minnesota, where 83% of the difference in sentencing between the two sets of courts is due to differenced in the estimated coefficients. In the lexicon of B-O, the conclusion for both states is that differences are due to *discrimination* (i.e., different weights given to the sentencing relevant factors) rather than differences in *endowments* (i.e., mean values of the sentencing relevant variables). This finding implies that differences in the weights attached to the variables, rather than the differential occurrence of certain factors, is responsible for the significant differences in sentencing outcomes.

Overall Impact of the Differences

Michigan. A more comprehensive picture of the extent to which there are differences in the prison/no prison decision between SE Michigan and the rest of the state can be seen by looking at the estimated probabilities of prison for the two geographical regions. Table 5A-1 shows the predicted probability of prison for each of the Michigan guideline grid cells where the predicted probability for offenders in SE Michigan are displayed along side the predicted probabilities for Outstate offenders. As can be seen, the differences are substantial. To summarize the differences between the two sets of predicted probabilities, a three-step procedure is used to obtain the average difference in probabilities for each of the eight crime classes.[81]

The results are displayed in Figure 5A-1. As expected, there is little difference between the probability of prison in Class A/Murder 2nd offenses. The combination of the smaller constant term along with the diminished impact of Straddle and Prison grid cell types in SE

[81] Step 1 involves computing the difference in predicted probabilities for each of the grid cells. Step 2 multiples the difference in each cell by the number of actual cases in each cell from Appendix 1. Step 3 adds up the results from Step 2 and divides by the total number of cases in the grid.

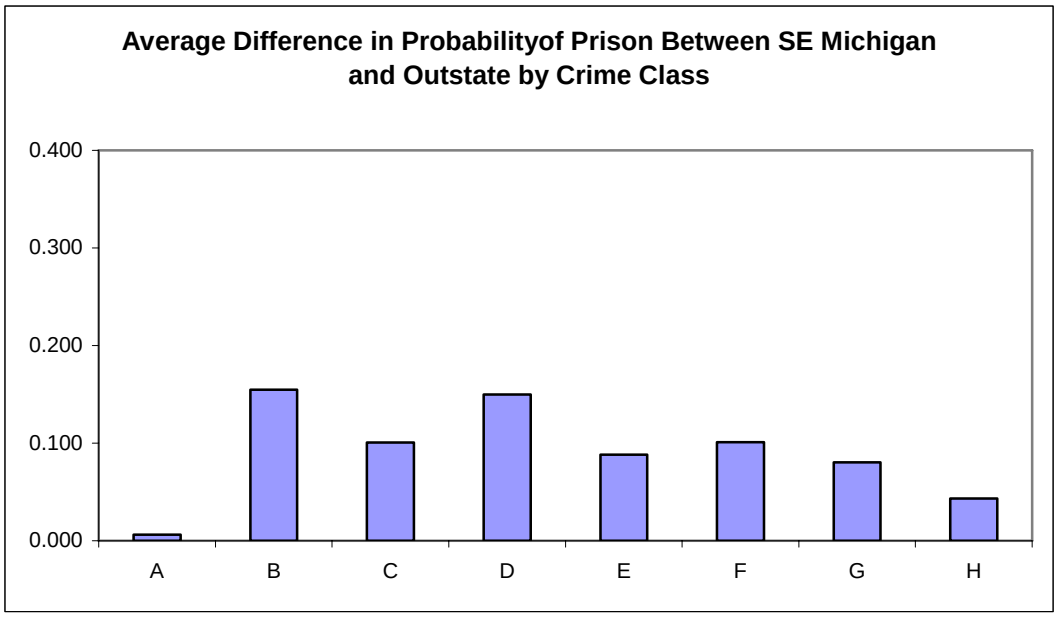
Michigan results in differences of 15%, 10%, 15%, 9%, 10%, 8%, and 4% for Classes B through H. The probability of receiving a prison sentence in SE Michigan is lower than in the rest of the state in spite of the fact that the same guidelines are being used.

To better understand how differences in sentencing practices between SE Michigan and the rest of the state affect the sentence length decision, predicted sentences are computed for each of the grid cells using the same procedures as before. The results are presented in Table 5A-2. The first panel of Table 5A-2 presents predicted sentence length for offenders convicted in SE Michigan, while the second panel presents the average sentences received by convicted Outstate offenders. Figure 5-1b summarizes the differences in predicted sentence length by crime class. In every crime classification the average sentences are much higher in the non-urban courts. For the most frequently occurring crime classes – D through H – expected sentences for similarly situated offenders range from 25% to 35% higher in the outstate courts. This is a remarkable difference given that the same sentencing guidelines are being used throughout the state.

Minnesota. Comparing the differences in the predicted probability of receiving a prison sentence in Hennepin versus the rest of the state helps clarify variation in sentencing practices in Minnesota (Table 5B-1). Summary results, displayed in Table 5-2a, show offenders in Hennepin County are less likely to be sent to prison than for Outstate offenders in eight of eleven criminal offense classifications.

Differences in estimated sentence length are minimal between Hennepin and the rest of the state with the exception of the three highest severity Levels (Table 5B-2). From Level VIII through Level I the differences are all in the 5% range.

Figure 1: Summary Differences -- Michigan



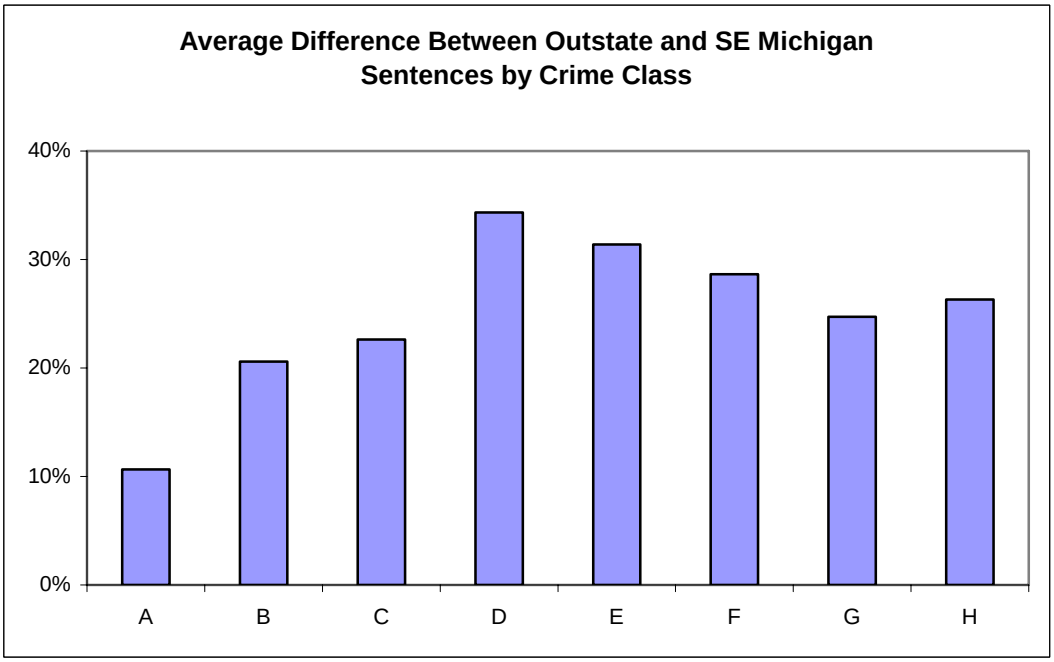
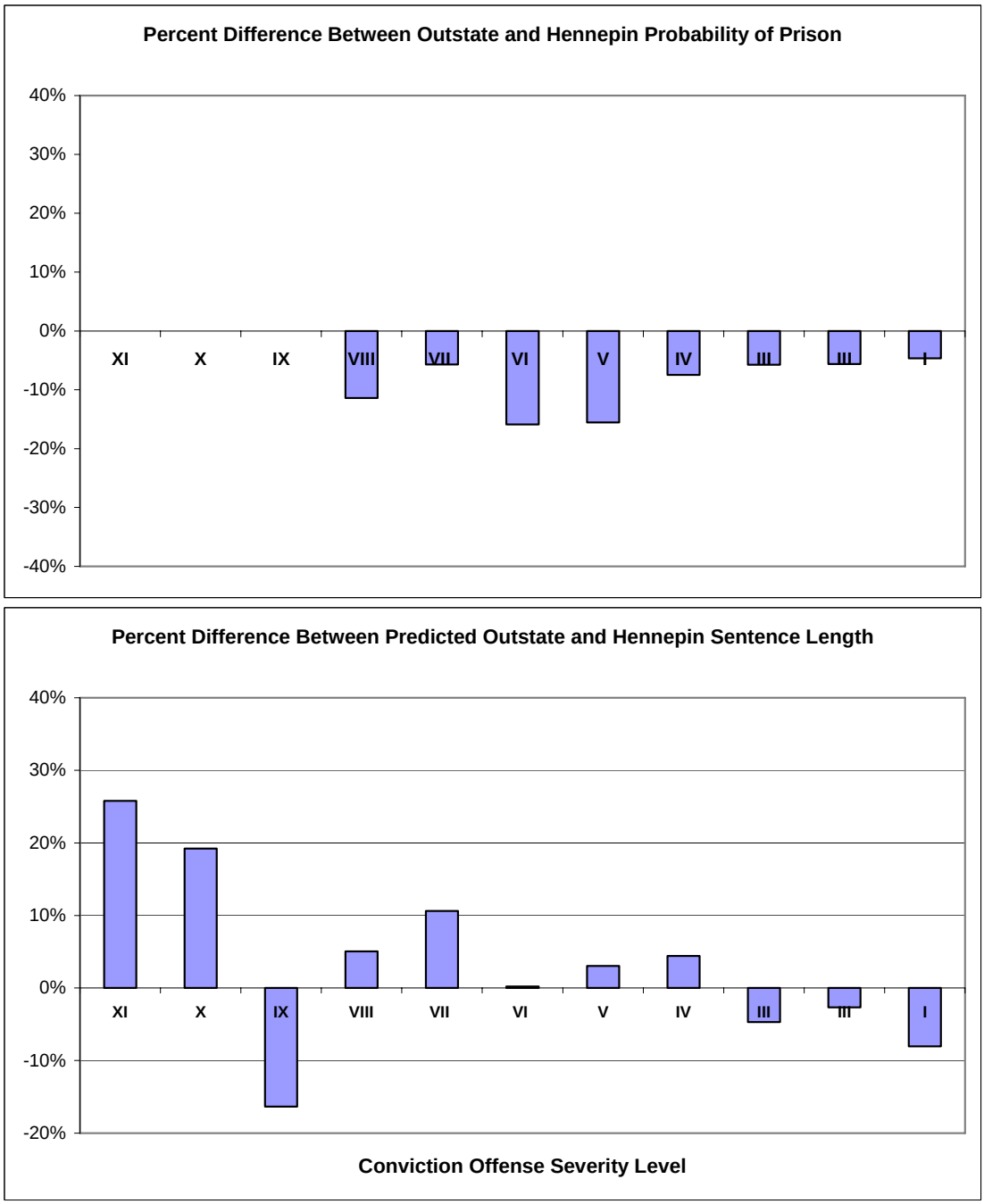


Figure 2: Summary Differences – Minnesota



SUMMARY

While there is little evidence of direct discrimination due to race, age, or sex, the analysis suggests that there is a hidden source of discrimination brought on by the differences in sentencing outcomes between the large urban courts and the rest of the state – especially in Michigan. A positive finding is that there is little evidence of direct racial discrimination in either Michigan or Minnesota. However, the analysis suggests that, to varying degrees, the operation of local norms serves to circumvent the goal of statewide uniformity in sentencing. Guideline recommendations that are seen by judges to be too harsh, too lenient, or too mechanistic will not be followed consistently. And there is evidence that the informal rules and norms in the large urban courts shaping what sentences are deemed appropriate differ from courts in the rest of the state. While the analysis shows that the differences are statistically significant, it is clear that, at least in Michigan, the differences are substantively significant as well.

Offenders in SE Michigan (which include 60% of all black offenders) receive sentences that are markedly more lenient than their counterparts in the rest of the state. The B-O decomposition finds 86% of differences arise from the same factors being weighted differently in the two parts of the state. As noted earlier, the differences in the coefficients for SE Michigan versus the rest of the state are dramatic enough to suggest that there are two distinct sentencing "regimes" in Michigan. The results of this analysis indicate the probability of going to prison is 10-15% higher in Outstate Michigan and the length of sentence is 25-30% greater. Differences are smaller only for offenders convicted at trial in SE Michigan, where the trial tax of 30% makes the SE Michigan sentence approximately equal to that of an offender convicted by pleas

in the rest of the state. In spite of a single set of guidelines, they are being applied in a very different manner in different parts of the state.

In Minnesota, there are surface similarities to Michigan. Over 80% of the difference between sentencing in the state's major urban court (Hennepin) and the rest of the state can be traced to differences in the coefficients attached to the guideline relevant variables. However, the substantive effects are small.

This result is important because many observers believe more rigid guidelines with tighter ranges will lead to greater circumvention by judges. Less rigid structure with wider ranges is often touted as a better means to balance limits on judicial discretion with the need to achieve just and reasonably consistent sentences in individual cases. The current analysis suggests neither view is quite right.

The analysis suggests the primary reason for the presence of two statistically and substantively significant sentencing regimes in Michigan can be traced to the very large guideline sentencing ranges. The smallest range is 50% and increase to over 100% in some instances. The magnitude of the ranges means that judges can sentence quite differently without having to depart. If the norms of the urban courts lead judges to look to the bottom of the ranges, while outstate judges look toward the top, there can be dramatic differences in sentencing outcomes. Figure 3b shows consistent differences of 25% in estimated sentence length across the crime classifications for SE Michigan and the rest of the state. While there is little evidence of discrimination as usually conceived, consistency is being achieved in a manner that suggests discrimination of a different kind – rather than using suspect factors to set sentences, judges in Michigan have been free to apply different weights to the sentencing relevant factors.

In Minnesota the differences are smaller and different than in Michigan. Hennepin County has a higher rate of imprisonment and slightly shorter sentences. In order to mete out shorter sentences within the confines of a guideline system with very narrow ranges, it is not surprising that Hennepin judges depart below twice as often as do judges in the rest of the state. This suggests that the primary way to reinforce a single sentencing regime is to ensure that the ranges are small and the departure policy is carefully circumscribed.

It is noteworthy that, in the aftermath of Blakely, the Minnesota Sentencing Commission has dramatically increased the size of the sentencing ranges from an average of 10% to 33%. The driving force for these changes is to give judges flexibility to give higher sentences without having to depart (and perhaps have a jury trial to establish the factors necessary for a departure). The experience in Michigan raises the possibility that alternative sentencing regimes could develop in Minnesota as range size increases.

Appendix 5A-1: Estimated Prison Probabilities SE Michigan vs. Outstate

SE MICHIGAN

A	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.606	0.528	0.695	0.934	0.974	0.986
	II	0.678	0.604	0.760	0.989	0.997	0.999
	III	0.757	0.691	0.826	0.994	0.998	0.996
	IV	0.779	0.715	0.945	0.995	0.993	0.997
	V	0.743	0.851	0.931	0.971	0.990	0.995
	VI	0.860	0.929	0.972	0.990	0.997	0.999

B	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.012	0.029	0.261	0.638	0.787	0.853
	II	0.067	0.187	0.328	0.871	0.942	0.966
	III	0.325	0.257	0.416	0.914	0.965	0.931
	IV	0.351	0.280	0.672	0.925	0.902	0.940
	V	0.310	0.456	0.630	0.770	0.881	0.925
	VI	0.472	0.624	0.776	0.878	0.946	0.969

C	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.006	0.003	0.045	0.242	0.700	0.783
	II	0.010	0.006	0.067	0.806	0.904	0.941
	III	0.066	0.044	0.315	0.864	0.938	0.887
	IV	0.075	0.197	0.570	0.879	0.847	0.900
	V	0.221	0.352	0.524	0.680	0.819	0.878
	VI	0.366	0.518	0.687	0.814	0.909	0.944

D	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.002	0.001	0.003	0.043	0.247	0.334
	II	0.003	0.002	0.006	0.364	0.538	0.872
	III	0.006	0.003	0.045	0.456	0.867	0.784
	IV	0.007	0.020	0.151	0.771	0.725	0.804
	V	0.024	0.056	0.358	0.517	0.686	0.771
	VI	0.060	0.352	0.525	0.680	0.819	0.878

E	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.001	0.001	0.003	0.035	0.086	0.133
	II	0.002	0.001	0.005	0.151	0.278	0.370
	III	0.004	0.002	0.009	0.213	0.362	0.247
	IV	0.005	0.003	0.043	0.234	0.192	0.270
	V	0.004	0.011	0.033	0.077	0.163	0.234
	VI	0.013	0.032	0.080	0.159	0.289	0.382

F	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.001	0.000	0.001	0.021	0.156	0.226
	II	0.001	0.001	0.002	0.251	0.409	0.510
	III	0.002	0.001	0.005	0.331	0.502	0.181
	IV	0.003	0.001	0.087	0.357	0.137	0.200

G	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.000	0.000	0.001	0.015	0.042	0.071
	II	0.001	0.000	0.001	0.082	0.172	0.458
	III	0.001	0.001	0.003	0.124	0.450	0.324

H	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.000	0.000	0.001	0.017	0.046	0.076
	II	0.001	0.000	0.002	0.089	0.182	0.258
	III	0.002	0.001	0.004	0.133	0.251	0.158

OUTSTATE MICHIGAN

A	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.623	0.522	0.650	0.973	0.991	0.996
	II	0.686	0.590	0.712	0.998	1.000	1.000
	III	0.804	0.724	0.823	1.000	1.000	0.999
	IV	0.812	0.734	0.965	1.000	0.998	0.999
	V	0.868	0.956	0.979	0.997	0.999	1.000
	VI	0.854	0.950	0.976	0.996	0.999	1.000

B	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.020	0.039	0.426	0.911	0.965	0.980
	II	0.091	0.364	0.494	0.991	0.998	0.999
	III	0.611	0.509	0.638	0.997	0.999	0.995
	IV	0.622	0.521	0.891	0.997	0.991	0.996
	V	0.707	0.872	0.929	0.984	0.996	0.998
	VI	0.685	0.858	0.920	0.982	0.995	0.997

C	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.007	0.003	0.063	0.501	0.923	0.951
	II	0.011	0.006	0.087	0.976	0.993	0.996
	III	0.144	0.093	0.486	0.991	0.998	0.986
	IV	0.151	0.368	0.801	0.991	0.977	0.987
	V	0.561	0.772	0.859	0.961	0.987	0.993
	VI	0.536	0.752	0.845	0.955	0.985	0.992

D	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.005	0.002	0.006	0.171	0.642	0.725
	II	0.009	0.004	0.010	0.821	0.917	0.995
	III	0.022	0.011	0.137	0.901	0.997	0.982
	IV	0.023	0.081	0.415	0.989	0.971	0.983
	V	0.183	0.376	0.834	0.951	0.983	0.991
	VI	0.167	0.718	0.818	0.945	0.980	0.989

E	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.003	0.001	0.004	0.132	0.258	0.339
	II	0.005	0.002	0.007	0.463	0.645	0.728
	III	0.015	0.007	0.018	0.609	0.771	0.550
	IV	0.016	0.008	0.110	0.620	0.469	0.563
	V	0.028	0.092	0.160	0.378	0.562	0.652
	VI	0.024	0.082	0.145	0.354	0.537	0.628

F	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.002	0.001	0.003	0.105	0.525	0.617
	II	0.004	0.002	0.004	0.732	0.861	0.906
	III	0.010	0.005	0.012	0.838	0.927	0.496
	IV	0.011	0.005	0.303	0.846	0.415	0.508

G	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.001	0.001	0.002	0.084	0.180	0.248
	II	0.002	0.001	0.003	0.360	0.543	0.883
	III	0.007	0.003	0.009	0.504	0.907	0.761

H	OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
	I	0.001	0.001	0.002	0.085	0.182	0.250
	II	0.002	0.001	0.003	0.362	0.545	0.636
	III	0.007	0.003	0.009	0.507	0.685	0.447

Appendix 5A-2: Estimated Sentence Length SE Michigan vs. Outstate

se mich

A

OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
I	49.1	52.4	76.9	98.1	112.6	121.9
II	55.5	59.0	87.0	111.9	129.1	140.1
III	76.2	69.9	104.1	135.6	157.4	171.2
IV	117.9	76.5	114.0	148.7	172.8	187.9
V	218.9	91.3	136.5	178.9	208.2	226.5
VI	512.7	114.1	170.9	224.5	261.7	284.8

B

OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
I	34.0	18.4	35.7	43.8	48.8	52.3
II	18.7	27.7	39.9	49.4	55.4	59.5
III	34.6	32.2	46.8	58.7	66.7	71.9
IV	53.4	35.2	51.1	64.2	73.0	78.8
V	98.3	41.6	60.7	76.8	87.6	94.7
VI	229.1	51.7	75.6	96.0	109.8	118.9

C

OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
I	25.0	27.4	18.2	21.6	34.4	36.6
II	27.6	12.0	20.2	35.0	38.9	41.5
III	17.3	16.4	33.4	41.3	46.3	49.7
IV	26.7	25.3	36.5	45.2	50.7	54.5
V	70.2	29.9	43.2	53.8	60.7	65.3
VI	163.3	37.1	53.7	67.1	75.9	81.8

D

OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
I	15.1	16.5	23.1	26.9	13.8	14.4
II	16.6	18.2	25.5	14.3	15.4	24.2
III	21.8	20.7	13.9	16.5	26.9	28.8
IV	33.5	10.7	15.1	26.4	29.5	31.6
V	29.1	12.5	25.5	31.4	35.2	37.8
VI	67.4	22.0	31.6	39.2	44.0	47.2

E

OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
I	13.2	14.3	19.9	11.4	12.1	12.6
II	14.6	15.9	22.1	12.7	13.6	14.1
III	19.1	17.9	24.9	14.5	15.6	25.3
IV	28.8	19.1	13.3	15.6	25.8	27.5
V	52.0	11.1	15.6	27.6	30.7	32.7
VI	119.4	13.6	19.1	34.2	38.2	40.9

F

OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
I	11.8	13.0	18.2	21.1	15.9	16.6
II	13.0	14.3	20.0	16.5	17.6	18.5
III	17.1	16.3	22.8	19.0	20.4	21.8
IV	26.3	17.7	17.5	20.7	22.3	23.7

G

OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
I	10.8	11.8	16.5	19.2	20.2	20.9
II	11.9	13.0	18.2	21.2	22.3	16.6
III	15.5	14.8	20.7	24.1	18.4	19.3

H

OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
I	10.9	11.9	16.7	19.3	20.4	21.1
II	12.0	13.1	18.4	21.3	22.5	23.4
III	15.7	14.9	20.9	24.4	25.8	26.8

outstate

Predicted Sentence in Months (w/mhat and depart above)

A

OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
I	67.8	63.7	85.7	111.8	123.3	132.0
II	75.1	70.4	95.2	125.1	138.7	148.7
III	92.6	76.3	104.2	138.7	154.9	166.3
IV	139.8	90.7	124.0	165.3	184.7	198.3
V	248.0	106.0	145.4	194.7	217.9	234.1
VI	569.5	135.9	186.8	250.9	281.1	302.1

B

OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
I	41.5	26.5	44.4	55.8	59.8	63.2
II	30.0	36.9	48.8	61.7	66.6	70.6
III	47.0	39.3	52.3	67.1	73.3	78.1
IV	70.8	46.6	62.1	79.8	87.2	93.0
V	124.5	54.0	72.3	93.4	102.5	109.4
VI	284.3	68.9	92.4	119.8	131.8	140.9

C

OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
I	32.0	30.9	25.2	30.4	44.1	46.3
II	34.7	16.8	27.4	45.8	48.8	51.5
III	26.1	22.1	39.1	49.4	53.3	56.5
IV	39.2	35.1	46.4	58.7	63.4	67.2
V	93.0	40.6	53.8	68.5	74.3	78.9
VI	212.0	51.6	68.6	87.6	95.3	101.5

D

OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
I	24.7	23.9	30.7	36.5	24.0	24.8
II	26.8	25.8	33.2	25.4	26.3	38.6
III	31.6	26.9	22.1	26.9	39.9	42.1
IV	47.4	20.1	26.1	44.2	47.4	50.1
V	52.5	23.2	40.8	51.5	55.4	58.7
VI	119.1	39.3	52.0	65.8	71.0	75.3

E

OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
I	20.7	19.8	25.2	19.7	20.2	20.7
II	22.5	21.5	27.4	21.5	22.1	22.7
III	26.3	22.2	28.3	22.5	23.4	35.2
IV	38.8	25.7	22.0	26.3	39.6	41.6
V	66.9	19.5	25.1	43.0	46.0	48.5
VI	150.5	24.6	31.7	54.7	58.8	62.1

F

OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
I	18.5	17.9	23.0	27.3	25.1	25.9
II	20.0	19.4	24.9	26.7	27.4	28.3
III	23.6	20.1	25.9	28.1	29.0	30.4
IV	35.4	23.8	27.5	33.3	34.2	35.8

G

OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
I	16.9	16.3	20.9	24.8	25.1	25.7
II	18.2	17.6	22.6	26.8	27.2	25.5
III	21.4	18.3	23.5	28.0	26.2	27.1

H

OV Level	PRV Level A (0 pts)	B (1-9 pts)	C (10-24)	D (25-49)	E (50-74)	F (75+)
I	17.0	16.4	21.1	25.0	25.3	25.9
II	18.4	17.8	22.8	27.1	27.5	28.2
III	21.6	18.5	23.7	28.3	28.8	29.6

Appendix 5A-3: Estimated Probabilities Hennepin vs. Outstate

Outstate Probability of Prison

	0	1	2	3	4	5	6
XI	1.000	1.000	1.000	1.000	1.000	1.000	1.000
X	1.000	1.000	1.000	1.000	1.000	1.000	1.000
IX	1.000	1.000	1.000	1.000	1.000	1.000	1.000
VIII	0.454	0.640	0.780	0.807	0.861	0.912	0.950
VII	0.295	0.474	0.636	0.924	0.951	0.972	0.987
VI	0.041	0.102	0.196	0.591	0.672	0.762	0.844
V	0.013	0.041	0.092	0.404	0.490	0.595	0.705
IV	0.012	0.037	0.084	0.100	0.469	0.575	0.687
III	0.010	0.033	0.077	0.092	0.452	0.558	0.671
II	0.009	0.028	0.068	0.081	0.119	0.181	0.646
I	0.011	0.035	0.082	0.097	0.140	0.208	0.682

Hennepin Probability of Prison

	0	1	2	3	4	5	6
XI	1.000	1.000	1.000	1.000	1.000	1.000	1.000
X	1.000	1.000	1.000	1.000	1.000	1.000	1.000
IX	1.000	1.000	1.000	1.000	1.000	1.000	1.000
VIII	0.630	0.695	0.838	0.857	0.928	0.952	0.986
VII	0.421	0.490	0.674	0.871	0.937	0.959	0.989
VI	0.203	0.256	0.429	0.692	0.815	0.866	0.950
V	0.135	0.177	0.327	0.592	0.734	0.798	0.916
IV	0.063	0.087	0.189	0.211	0.577	0.657	0.828
III	0.048	0.068	0.156	0.175	0.525	0.608	0.792
II	0.037	0.054	0.129	0.147	0.255	0.327	0.757
I	0.039	0.056	0.133	0.151	0.262	0.335	0.763

Table 5A-4: Estimated Sentence Length Hennepin vs. Outstate

Outstate Offenders

	0	1	2	3	4	5	6
XI	258	290	323	354	384	424	478
X	263	296	330	361	392	432	488
IX	131	148	165	180	196	216	244
VIII	86	97	107	118	127	140	158
VII	76	85	94	74	80	89	100
VI	43	48	53	42	45	50	56
V	34	38	42	33	36	40	44
IV	23	26	28	31	24	26	30
III	18	20	22	24	19	21	23
II	18	20	22	24	26	28	23
I	16	21	19	21	23	25	20

Hennepin Offenders

	0	1	2	3	4	5	6
XI	188	210	258	270	263	307	336
X	211	235	289	302	294	344	376
IX	151	168	207	216	211	246	269
VIII	81	90	110	115	112	131	143
VII	66	74	90	71	69	80	88
VI	42	47	57	44	43	50	55
V	33	36	44	34	33	39	42
IV	21	24	29	30	22	26	28
III	18	21	25	26	19	22	24
II	18	20	24	25	25	29	23
I	17	21	23	24	23	27	22

CHAPTER 6: THE VIRGINIA STATISTICAL MODELS – ASSAULT AND BURGLARY

INTRODUCTION

The quantitative analysis of the Virginia sentencing guidelines represents critical decision–making elements with a series of categorical variables in the same manner as the previous examination of the Minnesota and Michigan systems. However, whereas those two states employ a grid-type approach to classify similarly situated offenders, the Virginia guidelines employ a worksheet-style format in which each offender is evaluated using a separate list of sentencing relevant variables for the in/out and the sentence length decisions. The number and type of factors scored vary not only between the in/out and sentence length worksheets, but also across each of 15 crime types. Consequently, it is necessary to construct separate statistical models for each crime type examined (e.g., Burglary).

In this Chapter, overall results are presented for a representative set of six crime groups (i.e., Assault, Burglary/Dwelling, Drug, Fraud, Larceny, and Robbery). Detailed discussion of model design, results, and interpretation focuses on two crime groups: Assault and Burglary. The two crime groups are discussed together to facilitate comparison and increase understanding of the operation of the Virginia guidelines in practice. The basic results for the remaining crime groups are presented in Appendix 6-1 to this chapter.

MODELING THE GUIDELINES

An immediately noticeable aspect of the structure and mechanics of the Virginia guidelines is the detailed nature of the elements on the worksheets, as previously described in Chapter 3. There are separate, though often overlapping, sets of elements with differing point values governing the in/out (Section A of the worksheet) and sentence length (Section C of the

worksheet) decisions. The factors emerged from a comprehensive analysis of historical sentencing practices conducted by the Virginia Criminal Sentencing Commission (VCSC).[82]

Statistical techniques applied by VCSC identified the elements of offense conduct and offender characteristics important in past sentencing decisions and thereby permitted the assignment of weights to each individual element in proportion to their demonstrated historical significance. As a result, one can directly compare each specific factor's importance in the sentencing decision. For example, on Worksheet A for Assault, the weight for "use of a firearm" is the same as that for "serious physical victim injury" and indicates that historically judges have attached approximately the same importance (sentence outcomes have been equally influenced by these two factors) for firearm use as they have for serious victim injury when considering whether an offender should be imprisoned.

The offense- and offender-related characteristics linked to the length of prison sentence are scored in a metric that ties directly to months of incarceration. For example, a Robbery offender who scores "12"on Worksheet C for use of a knife or firearm will see their recommended prison sentence increase by 12 months.

Over the past 20 years, there have been adjustments to the elements and their relative weights on the worksheets for all crime groups. However, the same design principles underlie the content of each worksheet: proportional weights on Worksheet A and weights denominated in months on Worksheet C. Specific guideline elements, associated weights, and average rate of

[82] The original crime-group specific worksheets were developed in 1988 using sentencing data from 1985-1987. Worksheet A was designed using multiple discriminant function analysis, with variable scores refined through Probit analysis. The choice of factors and corresponding weights on Worksheet C were determined using OLS regression. In conjunction with the development of the current Truth-in-Sentencing Guidelines, sentence length recommendations for violent crimes were normatively adjusted. No changes were made to the guidelines with respect to the determination of the prison/no prison decision.

occurrence are displayed in Table 6-1a (Assault) and Table 6-1b (Burglary) for both Sections A and C.[83]

Table 6-1a: Mean Values Worksheet A Variables – Assault

Section A Variables	Point Values	Mean
Primary Offense		
Attempted A&B	1	0.266
A&B against family member 3rd	2	0.108
Attempted Malicious Injury	3-4	0.037
A&B law enforcement, fire, rescue	6	0.258
Unlawful Injury to law enforcement, etc.	7	0.232
Additional Counts		
Maximum penalties totalling 3-10 years	1-2	0.047
Maximum penalties totalling 11 or more years	3+	0.009
Addiitonal Offenses		
Maximum penalties totalling 2-10 years	1	0.131
Maximum penalties totalling 11-17 years	2	0.023
Maximum penalties totalling 18 or more years	3+	0.020
Weapon Used		
Simulated weapon or non firearm	1	0.311
Firearm	2	0.089
Serious Physical Injury		
Serious physical injury to victim	2	0.192
Prior Convictions		
Maximum penalties totalling 7-23 years	1	0.186
Maximum penalties totalling 24-46 years	2	0.128
Maximum penalties totalling 47 or more years	3	0.149
Prior Incarcerations/Commitments		
	2	0.611
Prior Juvenile Record		
	2	0.198
Legally Restrained		
Other than post-incarceration	3	0.348
Post incarceration supervision	5	0.127
Type of Prior Felony in A&B Family		
3rd or subsequent	3	0.020
Other person felony	4	0.045
Prison Threshold		
Section A Total > 5		0.754
Extra Guideline Factors		
Black Males		0.488
Black Females		0.093
White Women		0.041
Near DC		0.123
Southeast		0.216
Richmond		0.130
Dependent Variable: received a prison sentence		**0.506**

[83] Together, there are 22 separate 0,1 variables in the Assault in/out model and 40 separate 0,1 variables in the model for the Burglary/Dwelling crime group.

Table 6-1a: Mean Values Worksheet A Variables – Burglary

Section A Variables and Categories	Section A point values	Mean
Primary Offense		
Occupied Dwelling with intent to commit misdemeanor without deadly weapon	1	0.085
Dwelling with intent to commit larceny one count **(suppressed)**	3	0.696
Dwelling with intent to commit larceny two counts	5	0.083
Dwelling with intent to commit larceny three counts or Dwelling at night with deadly weapon	7	0.077
Occupied Dwelling with intent to commit misdemeanor with deadly weapon	9	0.004
Dwelling with intent to commit murder, rape, robbery, or arson with or without deadly weapon	14	0.010
Primary Offense Additional Counts		
Maximum penalties totalling 5-14 years	1	0.001
Maximum penalties totalling 15-27 years	2	0.029
Maximum penalties totalling 28-43 years	3	0.008
Maximum penalties totalling 44 or more years	4	0.017
Addiitonal Offenses		
Maximum penalties totalling 5-14 years	1	0.077
Maximum penalties totalling 15-27 years	2	0.297
Maximum penalties totalling 28-43 years	3	0.087
Maximum penalties totalling 44 or more years	4	0.098
Mandatory Firearm Conviction for Current Event	3	0.025
Weapon Used		
Simulated Weapon	2	0.015
Knife	4	0.017
Firearm	6	0.016
Prior Convictions		
Total maximum penalties for 5 most recent--2-8 years	1	0.182
Total maximum penalties for 5 most recent--9-19 years	2	0.056
Total maximum penalties for 5 most recent--20-31 years	3	0.129
Total maximum penalties for 5 most recent--32-41 years	4	0.046
Total maximum penalties for 5 most recent-- > 42 years	5	0.254
Adult Felony Property		
1 prior conviction	1	0.103
2-5 prior felony convictions	2	0.174
6-10 prior felony convictions	3	0.058
11 or more prior felony convictions	4	0.037
Prior Juvenile Property		
1-2 prior juvenile property adjudications	1	0.112
3-11 prior juvenile property adjudications	2	0.054
12+ prior juvenile property adjudications	3	0.007
Prior Misdemeanor		
1 prior misdemeanor conviction/adjudication	1	0.115
2-4 prior misdemeanor conviction/adjudications	2	0.242
5-6 prior misdemeanor conviction/adjudications	3	0.106
7-9 prior misdemeanor conviction/adjudications	4	0.094
10+ prior misdemeanor conviction/adjudications	5	0.155
Prior Incarcerations/Commitments	3	0.587
Prior Revocations of Parole/Post Release, Supervised Probation or CCCA	1	0.266
Prior Juvenile Record	2	0.269
Legally Restrained		
Other than parole/post release, supervised probation or CCCA	3	0.262
Parole/post release, supervised probation or CCCA	7	0.199
Prison Threshold		
Total Section A Points 14 or more		0.558
Extra Guideline Factors		
Black Males		0.344
Black Females		0.022
White Women		0.052
Near DC		0.128
Southeast		0.216
Richmond		0.131
Dependent Variable: received a prison sentence		0.491

Assault. Ten separate variables are specified in the Section A Worksheet for the Assault crime group. The first variable, Primary Offense, initializes the sentencing process by assigning points based upon the offender's conviction offense. There are five different point values available for Primary Offense.[84] Separate 0,1 variables are created for each available category in the remaining nine variables on the worksheet. No suppressed categories are included for this latter group of variables because in only one case (Prior Incarcerations/Commitments) do more that one-half of all offenders receive points for a given variable.

Once an offender is scored on each of the 10 Assault elements and summed, the recommendation is prison if the Section A total score is six points or more. Consequently, the current research creates a prison threshold variable by taking on the value of 1 whenever the Section A score exceeds five points. Because there are many ways to get at least six points, this prison "trigger" mechanism provides an important additional piece of information to the sentencing judge.

A similar approach is used to model the eight elements on the Assault Section C worksheet with one caveat. The Primary Offense variable is a 3x10 "grid" of values designed to provide a baseline sentence for each offender based on offense severity and prior record classification. To avoid introducing an overly large number of categorical variables to capture all possible values for Primary Offense (values range from 7 to 264), values are grouped into eight categories based upon the empirical distribution.[85]

Burglary. Thirteen separate elements are included on the Section A worksheet for Burglary/Dwelling and incorporated into the model. Primary Offense serves to center the offender with six different possible point values (category 3 suppressed). All possible categories

[84] There are ten distinct categories of primary offense so that some categories have the same point values. The most frequently occurring category – Attempted Assault and Battery (1 point) –is omitted in the analysis.
[85] The zero point category is suppressed.

of the remaining twelve Section A elements are used because in no case do offender's receive points on all elements.[86] A total score of 14 or more points results in a prison recommendation. A prison threshold variable is included, taking on the value of 1 whenever the total score exceeds 13 points and 0 otherwise.

There are nine elements on the Burglary/Dwelling Section C worksheet, all included as 0,1 variables. Given that the Primary Offense variable is a 3x16 "grid" of values, ranging from 8 to 456 points, the eight category summary measure employed in the Assault model is used to model Burglary as well.[87]

Extra Guideline Factors

The extra guideline variables included in the Virginia analyses are the same for both Assault and Burglary and also displayed in Tables 6-1a and 6-1b. Information was originally sought on race, sex, age, conviction at trial, and sentencing location. Age is not included in the final models because the data are missing for more than 50% of the offenders in the 2002 data set. The analysis uses three categorical variables to assess the interaction between race and sex: Black Males, Black Females, White Females, with White Males the suppressed category. The trial variable notes whether the offender was convicted at either a bench or jury trial as opposed to a plea of guilty. To capture sentencing location, three sets of large urban courts in Northern Virginia, Southeast Virginia, and Greater Richmond are distinguished.[88]

All data are provided by the Virginia Sentencing Commission and cover all convictions during the 2002 calendar year. The Assault and Burglary/Dwelling crime groups have 1,614 and

[86] Looking at the mean values in Table 1, it can be seen that 71% of the offenders have points for prior misdemeanor convictions, 67% for prior convictions, and 56% for additional offenses.
[87] It is interesting that the Virginia Sentencing Commission makes as many distinctions in Primary Offense as it does given that over 90% of the offenses in this group carry the same maximum sentence of 20 years.
[88] *Northern Virginia*: Circuit 17 (Arlington), Circuit 18 (Alexandria), Circuit 19 (Fairfax), and Circuit 31 (Prince William). *Southeast*: Circuit 2 (Virginia Beach), Circuit 3 (Portsmouth), Circuit 4(Norfolk), Circuit 7 (Newport News), Circuit 8 (Hampton). *Richmond*: Circuit 12 (Chesterfield), Circuit 13 (Richmond), Circuit 14 (Henrico).

1,668 observations respectively. The data set includes information on all of the sentencing guideline variables in Sections A and C.

THE ESTIMATED MODELS

The evaluation of the Virginia sentencing guidelines focuses on clarifying three key policy issues developed in Chapter 4 and investigated for the Michigan and Minnesota systems in Chapter 5. They are as follows:

- *Issue 1: Do the basic design features of the guidelines serve to locate similarly situated offenders?*
- *Issue 2: Do the guidelines in operation provide clear-cut and proportional distinctions between more serious and less serious offenders?*
- *Issue 3: Is there evidence of discrimination distinct from inconsistency in sentencing?*

Determining what it means to be "similarly situated" under the Virginia guidelines is a different enterprise than for states employing a grid system. The differences are less noticeable for the in/out decision where an offender either receives or does not receive a prison recommendation based on the guideline criteria. One distinction under the Virginia system is that the sentencing judge can easily see on Worksheet A how close to the prison/no prison threshold each offender is. The voluntary nature of the Virginia guidelines may lead to less than a complete discontinuity at the threshold as judges evaluate the severity of individual offenders with Section A scores close to the cut-off value.

More substantial differences emerge at the sentence length decision. The prison length recommendation is highly individualized in Virginia without the systematic clustering of offenders common to guideline grid designs. For Virginia, the point total reached on Worksheet C converts directly into the length in months of the midpoint sentence recommendation. For

both Assault and Burglary/Dwelling, the Section C sentence recommendation tables provide specific (and distinct) sentences for scores ranging from seven to 600 points (or months). As a consequence, there is essentially no explicit notion of similarity groups. Rather, the Virginia guidelines approach the concept of similarly situated by emphasizing finely grained proportional distinctions among offenders.

The VCSC traditionally measures consistency using dispositional and durational judicial compliance.[89] The current research extends the assessment of consistency and proportionality to examine the extent to which variation in disposition choice and sentence length are explained by differences in legally relevant factors (e.g., offense severity, prior record) included on each worksheet and not by extra-guideline elements, such as race or sex. A goal of the current research is to provide a clearer understanding of how judges actually use the information on the worksheets by identifying the elements they emphasize most consistently in their sentencing decisions.

Assessing the In/Out Decision

Issue 1. The results for the Assault and Burglary in/out models are presented in Table 6-2A and Table 6-2B. In terms of overall fit, the Assault model predicts 75% of the cases correctly with a 59% proportional reduction in error.[90] The model does well in predicting correctly both prison sentences (71%) and non-prison sentences (80%). The Burglary model predicts 81% of the cases correctly with a 69% proportional reduction in error.[91] The model accurately predicts both non-incarceration (79%) and incarceration (84%) sentences. Overall results suggest judges

[89] Dispositional compliance refers to the correspondence between dispositions recommended by the guidelines and the actual disposition imposed, while durational compliance refers to the rate at which judges sentence offenders to terms of incarceration that fall within the recommended guideline range.
[90] The mean value of the dependent variable is .50; that is, 50% of those convicted of an offense that falls into the Assault crime type receive a prison sentence.
[91] 49% of those convicted of an offense that falls into the Burglary/Dwelling crime group receive a prison sentence.

generally comply with the guideline recommendation on whether to sentence a convicted offender to prison.[92] The information for the remaining crime groups is presented in Appendix 6-1.[93]

[92] Block tests have less significance to examining the Virginia guidelines because the focus is not on identifying groups of similarly situated offenders. Instead, individual worksheet factors are designed to accentuate relevant distinctions among offenders that are incorporated in an array of proportionally comparable sentences.

[93] The following table provides comparisons with the remaining crime groups:

	Assault	Burglary	Fraud	Larceny	Narcotics	Robbery
Null Model	39.5%	40.9%	68.0%	67.6%	67.7%	84.3%
Augmented Model	75.3%	81.4%	81.8%	84.0%	84.5%	88.5%
PRE	59.2%	68.5%	78.8%	50.6%	52.0%	26.7%
% Correct No Prison	80.1%	83.6%	91.8%	91.4%	91.4%	29.5%
% Correct Prison	70.7%	79.2%	53.2%	63.1%	65.9%	98.2%

Table 6-2a: Prison/No Prison Estimated Model – Assault

Variable	Coef.	Robust Std. Err.	z	P>|z|	Probability Change*
Section A Variables (with point values)					
Primary Offense					
(suppressed)					
2	-0.814	0.140	-5.800	0.000	
3	0.243	0.199	1.220	0.223	
6	-0.733	0.122	-6.020	0.000	
7	1.073	0.129	8.320	0.000	
Additional Counts					
1-2	0.775	0.167	4.650	0.000	0.293
3+	-0.347	0.508	-0.680	0.494	-0.100
Addiitonal Offenses					
1	0.382	0.115	3.320	0.001	0.138
2	1.190	0.368	3.230	0.001	0.448
3+	1.149	0.401	2.870	0.004	0.434
Weapon					
1	-0.337	0.094	-3.570	0.000	-0.098
2	0.010	0.173	0.060	0.952	0.003
Serious Physical Injury					
2	0.391	0.104	3.770	0.000	0.141
Prior Felony Convictions					
1	0.093	0.104	0.890	0.371	0.031
2	0.251	0.122	2.050	0.040	0.088
3	0.908	0.132	6.860	0.000	0.345
Prior Incarcerations					
2	0.134	0.096	1.390	0.164	0.046
Prior Juvenile Record					
2	0.156	0.098	1.600	0.110	0.053
Legally Restrained					
3	0.056	0.089	0.630	0.527	0.019
5	0.349	0.133	2.630	0.008	0.125
Assault and Battery (only)					
3	0.442	0.281	1.580	0.115	0.161
4	0.049	0.192	0.260	0.797	0.016
Prison Threshold					
	0.397	0.126	3.160	0.002	0.144

Extra-Guideline Factors					
Sex and Race					
Black Males	-0.037	0.079	-0.470	0.638	-0.012
Black Females	-0.289	0.127	-2.270	0.023	-0.085
White Women	-0.230	0.167	-1.380	0.168	-0.070
Urban Courts					
Near DC	0.220	0.115	1.920	0.055	0.077
Southeast	-0.049	0.091	-0.530	0.595	-0.016
Richmond	-0.063	0.110	-0.570	0.568	-0.020
Constant	-0.610	0.109	-5.620	0.000	

**Probability change is calculated as the change from the baseline. The baseline is the constant plus the mean values of the points for the primary offense (Baseline Probability of Prison = .26)*

Goodness of Fit -- Assault Selection Equation

	Wald Block Tests		
Section A Variable	**Chi Square**	**df**	**p**
Primary Offense	177.47	4	0.000
Primary Additional Counts	21.94	2	0.000
Additional Offenses	28.31	3	0.000
Weapon	15.77	2	0.000
Serious Physical Injury	14.10	1	0.000
Prior Felony Convictions	50.54	3	0.000
Prior Incarcerations/Commitments	1.90	1	0.168
Prior Juvenile Record	2.43	1	0.119
Legally Restrained	7.24	2	0.027
Assault and Battery	2.52	2	0.284
Prison Threshold	11.44	1	0.001
Extra Guideline Factors	12.62	6	0.049
Sex and Race	6.48	3	0.090
Sentencing Circuit	5.39	3	0.145

Percent Correctly Predicted	
Null Model	39.5%
Augmented Model	75.3%
PRE	59.2%
% Correct No Prison	80.1%
% Correct Prison	70.7%

Table 6-2b: Prison/No Prison Estimated Model – Burglary

Variable	Coef.	Robust Std. Err.	z	P>|z|	Probability Change*
Section A (with point values)					
Primary Offense					
1	-0.525	0.138	-3.820	0.000	
5	-0.091	0.130	-0.700	0.482	
7	0.146	0.178	0.820	0.412	
9	0.208	0.659	0.310	0.753	
14	0.686	0.572	1.200	0.231	
Additional Counts					
1	-0.054	0.568	-0.090	0.925	-0.015
2	-0.012	0.223	-0.050	0.959	-0.003
3	0.448	0.521	0.860	0.391	0.150
4	-0.114	0.328	-0.350	0.727	-0.031
Addiitonal Offenses					
1	-0.260	0.138	-1.890	0.059	-0.063
2	-0.103	0.091	-1.130	0.259	-0.020
3	0.049	0.142	0.340	0.731	0.013
4	0.027	0.139	0.200	0.844	0.007
Mandatory Firearm Conviction					
3	7.392	0.200	37.000	0.000	0.786
Weapon Used					
2	0.145	0.310	0.470	0.639	0.044
4	0.193	0.259	0.740	0.457	0.059
6	0.530	0.407	1.300	0.193	0.179
Prior Convictions					
1	-0.145	0.142	-1.020	0.307	-0.033
2	0.063	0.185	0.340	0.734	0.018
3	-0.244	0.166	-1.470	0.141	-0.057
4	-0.322	0.219	-1.470	0.142	-0.078
5	0.087	0.182	0.480	0.633	0.019
Adult Felony Property					
1	0.294	0.146	2.020	0.044	0.084
2	0.520	0.138	3.760	0.000	0.144
3	0.694	0.201	3.450	0.001	0.231
4	0.669	0.244	2.740	0.006	0.227
Prior Juvenile Property					
1	-0.006	0.150	-0.040	0.965	-0.002
2	-0.151	0.190	-0.800	0.426	-0.039
3	-0.468	0.468	-1.000	0.317	-0.110
Prior Misdemeanor					
1	-0.496	0.136	-3.650	0.000	-0.105
2	-0.358	0.125	-2.860	0.004	-0.070
3	-0.090	0.167	-0.540	0.591	-0.023
4	-0.299	0.171	-1.750	0.081	-0.070
5	-0.187	0.156	-1.200	0.230	-0.043
Prior Incarcerations/Commitments					
3	0.088	0.117	0.760	0.449	0.011
Prior Revocations					
1	0.341	0.109	3.120	0.002	0.080
Prior Juvenile Record					
2	-0.260	0.113	-2.300	0.022	-0.051
Legally Restrained					
3	0.049	0.096	0.510	0.613	0.011
7	0.410	0.124	3.300	0.001	0.107
Prison Threshold					
Total > 13	1.428	0.129	11.030	0.000	0.222

Extra-Guideline Factors					
Sex and Race					
Black Males	0.112	0.083	1.350	0.178	0.022
Black Females	0.380	0.219	1.740	0.083	0.123
White Women	-0.251	0.164	-1.530	0.126	-0.063
Urban Courts					
Near DC	-0.126	0.117	-1.080	0.280	-0.032
Southeast	-0.202	0.100	-2.030	0.042	-0.054
Richmond	-0.378	0.113	-3.360	0.001	-0.093
Constant	-0.797	0.101	-7.890	0.000	

	Wald Block Tests		
Section A Variable	**Chi Square**	**df**	**p**
Primary Offense	18.10	4	0.001
Primary Additional Counts	1.00	4	0.910
Additional Offenses	5.20	4	0.267
Mandatory Firearm Convictio	1369.10	1	0.000
Weapon Used	2.33	3	0.507
Prior Convictions	11.34	5	0.045
Adult Felony Property	20.44	4	0.000
Prior Juvenile Property	1.61	3	0.657
Prior Misdemeanor	14.87	4	0.005
Prior Incarcerations/Commitm	0.57	1	0.450
Prior Revocations	9.76	1	0.002
Prior Juvenile Property	5.27	1	0.022
Legally Restrained	11.86	2	0.003
Prison Threshold	121.72	1	0.000
Extra Guideline Factors	19.09	9	0.024
Sex and Race	7.68	3	0.053
Sentencing Circuit	12.63	6	0.049

Percent Correctly Predicted	
Null Model	40.9%
Augmented Model	81.4%
PRE	68.5%
% Correct Prison	83.6%
% Correct No Prison	79.2%

Issue 2. The next step is to examine which elements on Worksheet A judges use in a systematic fashion to distinguish offenders who are recommended for prison from those who are not. Each element on the worksheet should make a contribution to explaining the in/out decision in line with their associated point values if the guidelines are operating as envisioned by the designers. For example, Additional Offenses has seven categories that rise incrementally from zero to six points, this analysis examines whether each of these distinctions affect the judicial choice of disposition in the expected way.

Without exception, it is expected that each of the individual categorical variables has a positive and significant impact on the in/out decision.[94] The results show that judges use only a subset of elements on Worksheet A in a consistent fashion.[95] For Assault (Table 6-2A), 10 of the twenty-three sentencing relevant categorical variables meet these criteria. The elements used most consistently the Assault in/out decision include:

- Unlawful injury to law enforcement personnel (7 points)
- Additional Counts (1 and 2 points)
- All three Additional Offenses variables
- Serious Physical Injury (2 points)
- Prior Felony Convictions (2 and 6 points)
- Post incarceration supervision (5 points)

Contrary to expectations, the weapons category (point value = 1) has a significant negative effect. This variable occurs frequently and one possibility is that its effect is confounded because

[94] The evaluation of the guideline models begins by identifying a statistical version of a baseline offender. For the Assault crime group, the baseline offender is an individual convicted of Attempted Assault and Battery (5 year maximum penalty) with no other Section A points. This baseline offender has a 26% probability of receiving a prison sentence. The baseline offender for the Burglary crime group is a person convicted of Burglary of a dwelling with intent to commit larceny without a deadly weapon and no other Section A points. This baseline offender has a 21% probability of receiving a prison sentence. Therefore, as the remaining features are examined, they are viewed in the context of a movement away from a particular baseline.

[95] In this case, the term consistent means that there is statistical evidence that most judges employed a particular factor in the same way during the in/out decision.

it is an element of one or more of the Primary Offense categories. There are a number of other factors that are significant and negative as well.

The significance of individual distinctions between adjacent categories within an element (e.g., point values 1, 2, 3, and 4 in Additional Offenses) for Assault are presented in Table 6-3A. Just over one-half of the adjacent categories are statistically significant from one another. For example, in the Additional Offenses variable, the move from 0 to 1 and from 1 to 2 points represents a statistically significant change; the movement from 2 to 3 is not. Taken together, these results appear to indicate that judges do not differentiate offenders using all the finely grained distinctions made on Section A.

Table 6-3a: Levels Tests -- Assault

Primary Offense				
1/2	**2/3-4**	**3-4/6**	**6/7**	
0.000	0.000	0.000	0.000	
Primary Additional Counts				
0/1-2	**1-2/3+**			
0.000	0.045			
Additional Offenses				
0/1	**1/2**	**2/3+**		
0.001	0.032	0.883		
Weapon				
0/1	**1/2**			
0.000	0.034			
Serious Physical Injury				
0/2				
0.000				
Prior Felony Convictions				
0/1	**1/2**	**2/3**		
0.355	0.210	0.000		
Prior Incarcerations/Commitments				
0/2				
0.168				
Prior Juvenile Record				
0/2				
0.119				
Legally Restrained				
0/3	**3/5**			
0.559	0.020			
Assault and Battery				
0/3	**3/4**			
0.113	0.224			

A similar lack of significance is observed for the Burglary model (Table 6-2b) where 12 of 41 individual coefficients are found to be statistically significant.[96] The elements that appear to be most salient to the sentencing decision for Burglary are:

- Use of a firearm (6 points)
- Adult felony property convictions (all categories; 1-4 points)
- Prior revocations of parole/post-release (1 point)
- On parole or supervised probation at time of offense (7 points)
- Crossing the prison threshold (Section A Total > 13 points)

The test of adjacent categories suggests that judges do not consistently distinguish Burglary offenders using the complete set of elements as laid out in Section A or that they see a noticeable difference between adjacent elements within a particular variable (Table 6-3b). Of the 38 separate elements included in the model, only ten are found significantly different from their neighbor. It appears that there is a great deal of overlap between adjacent categories.

[96] This count includes three coefficient found to be significant, but with a negative sign.

Table 6-3b: Levels Tests – Burglary

Primary Offense				
0/1	**3/5**	**3-5/7**	**7/9**	**9/14**
0.000	0.017	0.262	0.928	0.580
Primary Additional Counts				
0/1	**1/2**	**2/3**	**3/4**	
0.925	0.945	0.388	0.323	
Additional Offenses				
0/1	**1/2**	**2/3**	**3/4**	
0.059	0.270	0.291	0.900	
Mandatory Firearm Conviction				
0/3				
0.000				
Weapon Used				
0/2	**2/4**	**4/6**		
0.639	0.904	0.478		
Prior Convictions				
0/1	**1/2**	**2/3**	**3/4**	**4/5**
0.307	0.237	0.089	0.681	0.024
Adult Felony Property				
0/1	**1/2**	**2/3**	**3/4**	
0.044	0.135	0.371	0.928	
Prior Juvenile Property				
0/1	**1/2**	**2/3**		
0.965	0.470	0.519		
Prior Misdemeanor				
0/1	**1/2-3**	**2-3/4**	**4/5**	
0.000	0.018	0.223	0.473	
Prior Incarcerations/Commitments				
0/3				
0.449				
Prior Revocations				
0/1				
0.002				
Prior Juvenile Property				
0/2				
0.022				
Legally Restrained				
0/3	**3/7**			
0.613	0.003			

The challenge of selecting proportionate categorical distinctions is most pronounced for criminal history. In the Burglary/Dwelling group, the offender receives points for Prior Convictions, Adult Felony Property convictions, Juvenile property adjudications, misdemeanor convictions, prior incarcerations, prior revocations, and prior juvenile record. All individual correlations among this set of elements exceed .90, suggesting a degree of overlap and redundancy. To have an Adult Felony Property Conviction, an offender must have a Prior Conviction and may have a Prior Incarceration as well. In the Michigan and Minnesota guidelines, each of these elements is included but the points are assigned to place offenders into one of six (Michigan) or seven (Minnesota) prior record categories. Given the combinations in Virginia, there are at least 1% of offenders with point values ranging from 0 to 21; implicitly suggesting that there are 22 measurable categories of prior record level.

Under Virginia's voluntary system, limited consensus – at least from a statistical point of view – exists on the relevance of particular elements, or precisely how each one should be weighted in the decision to incarcerate. Multiple configurations among the Worksheet A elements are possible, and there are many ways to obtain a particular total score. Some judges might discount a particular element while other judges emphasize it, with the ultimate result that the decision to sentence to prison rests more on the total overall score than on any particular set of individual elements on the worksheet.

Support for the view that judges weight particular elements differently on Worksheet A is shown in Figures 6-1a and 6-1b, where all estimated coefficient values for the Assault and Burglary models are arrayed by the number of points assigned to the specific category on the respective Section A worksheets. Recall the point values on a specific worksheet are designed to be proportional and comparable to each other. Taking the Assault Worksheet A as an example,

an underlying design principle is that the six separate elements with a score of three points are viewed by judges as having a similar impact on the decision of whether to incarcerate. In addition, an element with a score of six should have twice the effect. If judges are using the worksheet factors consistently, the estimated coefficients should cluster together for factors with the same point values (e.g., three) and show a pattern of proportional increase for factors with higher point values (e.g., six, seven). Therefore, a relevant question is whether the estimated coefficients are consistent with the underlying categorical point values. It does not appear that they are.

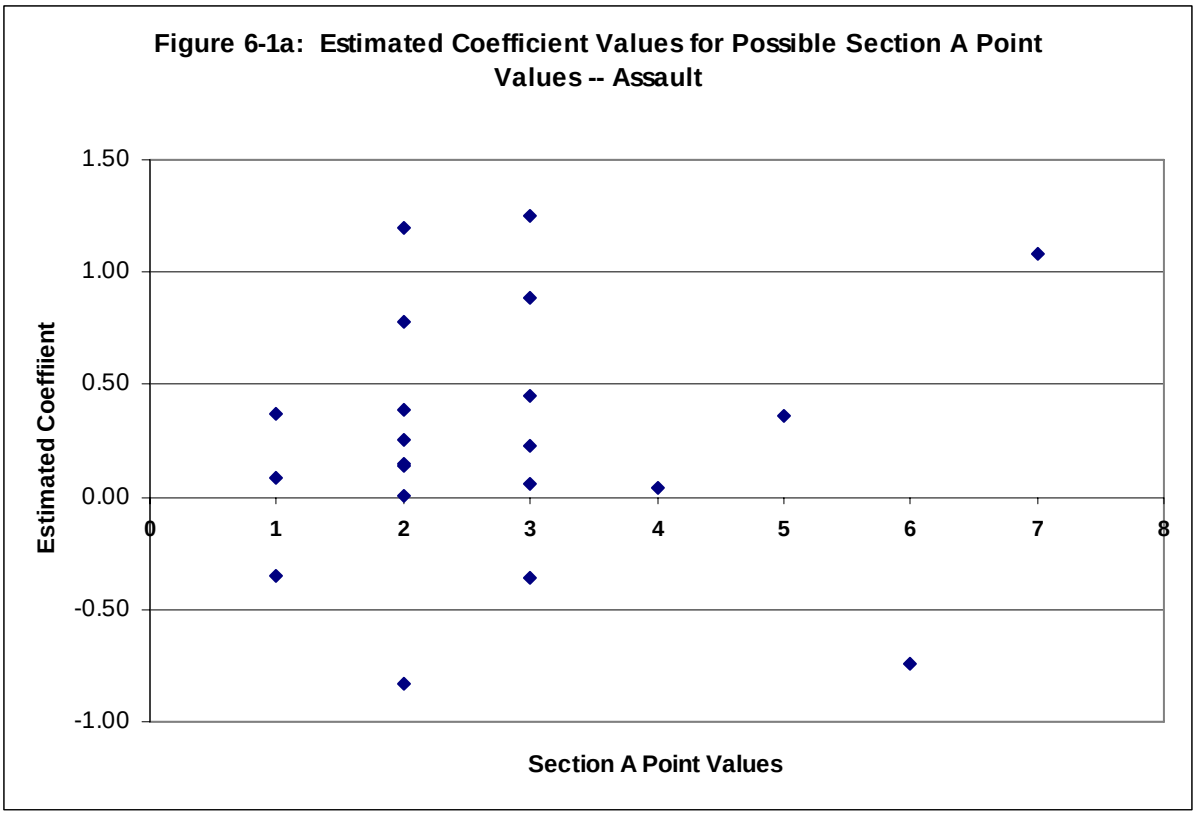
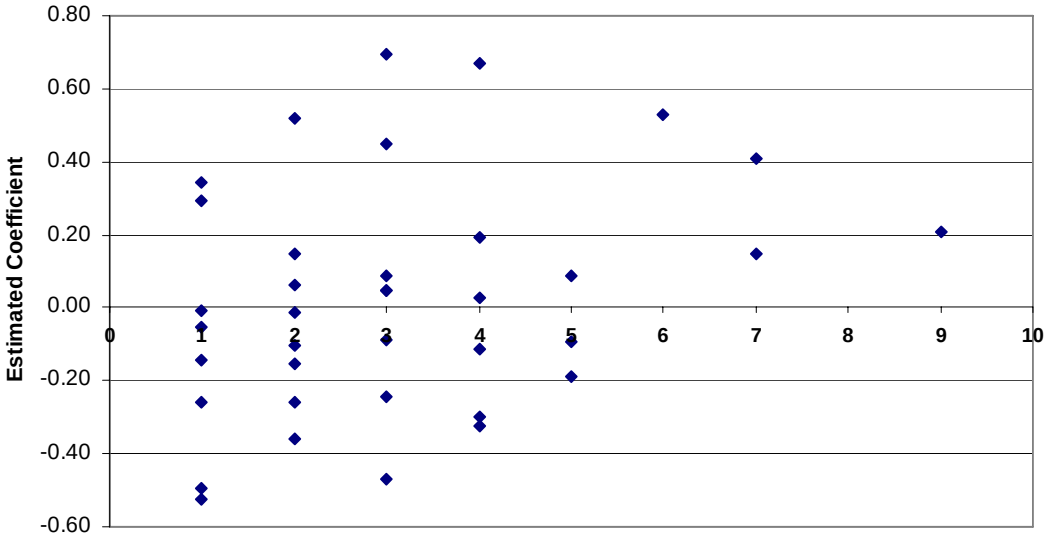


Figure 6-1b: Comparing Estimated Coefficients by Point Values -- Burglary
(excluding Mandatory Firearm variable)



Both Figures 6-1a and 6-1b show considerable variation and limited indication of a pattern. For example, in Assault, the six elements on the worksheet with a score of 3 points have coefficient values that show modest clustering and are found to be both positive and negative. Moreover, there is no clear visual evidence of a positive slope to the coefficients indicating the elements with higher points translate into greater emphasis by judges. On Figure 6-1b, for example, the coefficient value for 9 points is about the same as the coefficient value for 3 points. The Virginia judges' implicit sentencing behavior is not consistent with the explicit point values currently part of the Assault and Burglary guidelines. Not all equal point values are equal in a statistical sense.

Although only some individual elements on Section A are found to be statistically significant, the model still correctly predicts a large majority of the in/out decisions. Much as

grid cell location proved an important explanatory factor in the Michigan and Minnesota analyses, the total Section A score is highly significant in both the Assault and Burglary models. The total score provides a judge with an immediate summary assessment of each offender that is directly comparable to the threshold value at the bottom of the worksheet. Judges might use the total score in at least two ways when evaluating offenders. First, because higher scores indicate more serious offenders in the context of the Virginia guidelines, as the total score increases there is an increase in the likelihood of prison. Second, given that the threshold value is a "bright line" in the design of the guidelines, judges might restrain their use of incarceration until an offender's score exceeds the threshold.

The results show offenders with lower total worksheet scores are less likely to receive a prison sentence than offenders with higher scores. However, there are differences between the crime groups as shown in Figures 6-2a and 6-2b. The figures present both the actual percentage as well as the estimated probability of prison for possible values of the Section A total points for Assault and Burglary. For Assault, there is a continual increase in the probability of receiving a prison sentence as the Section A total increases across the full spectrum of points. However, the predicted probability of prison is only 30 percent at the threshold value of 6 points and does not reach 50 percent until a total of 10 Section A points. For the Assault crime group, the judges appear to exercise considerable discretion, as is their right under a voluntary system, in determining whom to incarcerate. In practice, the threshold acts more as a strong signal than a strict legal standard.

Figure 6-2:a Estimated Probability of Prison for Section A Totals -- Assault

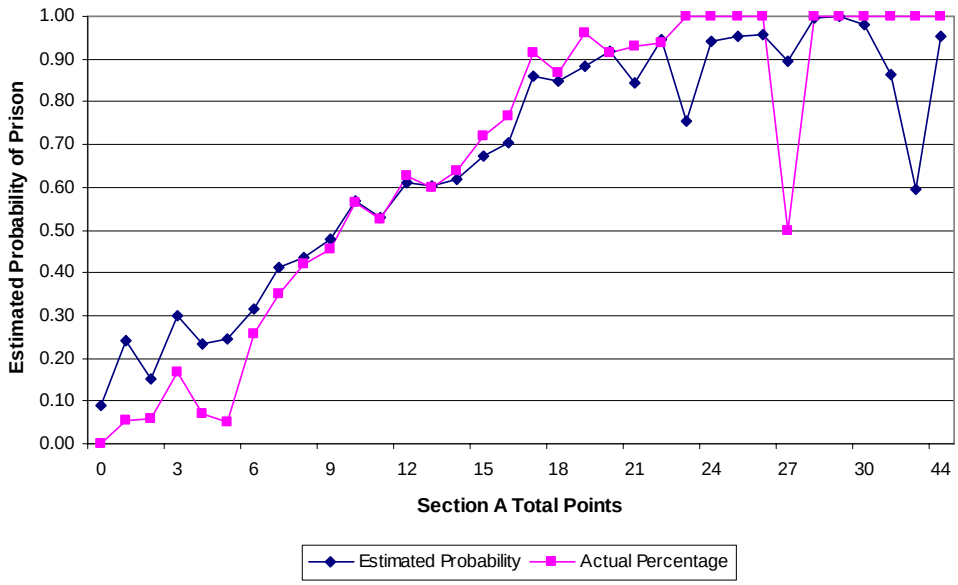
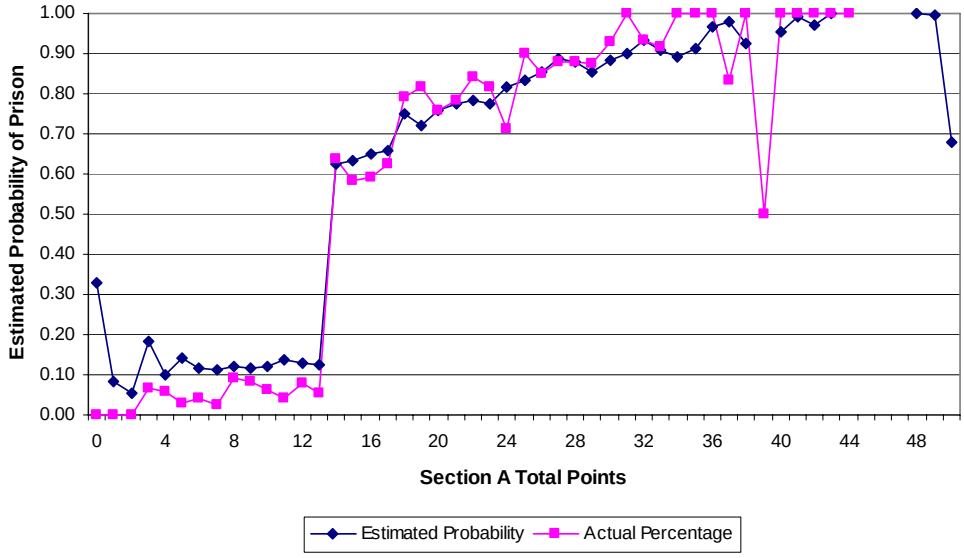


Figure 6-2b: Estimated Probabaility of Prison by Total Section A Points -- Burglary



For Burglary, Figure 6-2b shows that below the threshold of 14 points the probability of receiving a prison sentence is stable at a very low rate. However, once the point total exceeds 13, there is not only a dramatic jump in the probability of prison but the probability continues to rise as the Section A total increases. In this case, the threshold is operating as envisioned by the guideline designers and creates a sharp discontinuity when the total score exceeds the threshold value. The results indicate judges are following the overall guideline recommendation for the in/out decision despite a lack of consistency in the weighting of individual factors. It appears that the total number of points is much more salient than the source of the points.

Assessing the Prison Length Decision

For each crime group covered in the Virginia guidelines, a distinct Section C worksheet determines a prison sentence recommendation by summing the scores of all individual elements. Tables 6-4a and 6-4b present the mean values for each of the Section C variables/categories for those offenders receiving a prison sentence.

Table 6-4a: Mean Values Section C Variables – Assault

Section C Variables	Point Values	Mean
Primary Offense		2.761
Primary Offense Points	7	0.051
Primary Offense Points	8	0.285
Primary Offense Points	14	0.032
Primary Offense Points	16-17	0.107
Primary Offense Points	32-34	0.177
Primary Offense Points	68	0.049
Primary Offense Points	88	0.031
Primary Offense Points	>88	0.011
Additional Counts		
Maximum penalties totalling 3 years	2	0.058
Maximum penalties totalling 5 years	3	0.012
Maximum penalties totalling 10 years	5-6	0.004
Maximum penalties totalling 20 or more years	13+	0.001
Addiitonal Offenses		
Maximum penalties totalling 1-2 years	1	0.059
Maximum penalties totalling 3-4 years	2	0.044
Maximum penalties totalling 5 years	3	0.054
Maximum penalties totalling 10 years	5-6	0.062
Maximum penalties totalling 20 years	11-13	0.027
Maximum penalties totalling 30 years	16-19	0.010
Maximum penalties totalling 40 or more years	22-26	0.004
Firearm in Possession		
Knife	2	0.062
Firearm	3	0.022
Firearm in Malicious Wounding	4	0.203
Victims Receiving Injury		
1 Victim Assault and Battery	3	0.077
1 Victim Malicous Wounding	14	0.206
2 Victims Malicous Wounding	70	0.012
3 or more Victims Malicious Wounding	85	0.001
Prior Convictions		
Maximum penalties totalling 5-10 years	1	0.120
Maximum penalties totalling 20 years	2	0.060
Maximum penalties totalling 30 years	3	0.062
Maximum penalties totalling 40 or more years	4	0.072
Maximum penalties totalling 40 or more years (A&B)	6	0.055
Prior Person Convictions		
1 Prior Person Conviction	6	0.083
2 Prior Person Convictions	12	0.015
3 or more Prior Person Convictions	18	0.010
Legally Restrained		
Yes for Assault and Battery	2	0.326
Yes for Malicious Wounding	6	0.230
Departure		
Aggravating		0.153
Mitigating		0.066
Extra Guideline Factors		
Trial		0.321
Black Males		0.519
Black Females		0.069
White Women		0.031
Near DC		0.099
Southeast		0.153
Richmond		0.069
Dependent Variable: length of prison sentence		**57.206**

Table 6-4b: Mean Values Section C Variables – Burglary

Section C Variables	Section C point values	Mean
Primary Offense		
Primary Offense Points	7	0.017
Primary Offense Points	8	0.109
Primary Offense Points	14	0.028
Primary Offense Points	16-17	0.357
Primary Offense Points	32-34	0.288
Primary Offense Points	68	0.048
Primary Offense Points	88	0.018
Primary Offense Points	>88	0.015
Primary Offense Additional Counts		
Maximum penalty 5, 10 years	1	0.203
Maximum penalty 20 years	3	0.090
Maximum penalty Life	6	0.046
Addiitonal Offenses		
Maximum penalty 4, 5, or 10	1	0.074
Maximum penalty 20 years	3	0.260
Maximum penalty 30 years	4	0.043
Maximum penalty 40+ years	6	0.066
Weapon Used		
Knife or Firearm	12	0.045
Physical or Serious Physical Victim Injury		
Yes	10	0.033
Prior Convictions/Adjudications		
Maximum penalty 5, 10 years	1	0.072
Maximum penalty 20 years	2	0.133
Maximum penalty 30 years	3	0.038
Maximum penalty 40+ years	5	0.093
Proir Felony Burglary Convictions/Adjudications		
1 prior Burglary conviction	2	0.178
2 prior Burglary convictions	3	0.093
3 prior Burglary convictions	5	0.049
4 prior Burglary convictions	6	0.026
5 prior Burglary convictions	8	0.029
6+ prior Burglary convictions	9	0.065
Prior Felony Convictions/Adjudications Against Person		
1 prior person felony conviction	4	0.100
2 prior person felony convictions	9	0.038
3 prior person felony convictions	13	0.013
4+ prior person felony convictions	17	0.009
Parole/Post Release Supervision		
Yes	3	0.380
Departure		
Uttered Sentence Above Guideline Range		0.098
Uttered Sentence Below Guideline Range		0.104
Extra Guideline Factors		
Trial		0.181
Black Males		0.383
Black Females		0.020
White Women		0.039
Near DC		0.126
Southeast		0.206
Richmond		0.112
Dependent Variable: length of prison sentence		**48.445**

Issue 1 assesses overall consistency by examining how well the complete models of the Assault and Burglary crime groups explain the observed variation in imposed prison sentences. Given the prominence of the concept of proportionality in the Virginia guidelines, *Issue 2* focuses on whether the elements on the Section C worksheet are individually significant, proportionate in effect, and in the predicted direction. Because the Section C worksheet ends with the calculation of a total score that translates directly into the length of prison sentence in months, the analysis also explores how the Section C total compares to the estimated sentence length based on each model.

Issue 1. In the current research, consistency refers to how well an offender's estimated sentence compares to the actual length of prison sentence received. Complete results for the analysis of sentence length are presented in Table 6-5a (Assault) and Table 6-5b (Burglary). For the Assault model, the squared correlation is .53 indicating the statistical model accounts for 53% of the variation in sentence length. [97] For Burglary, the correlation between the predicted sentences from the sentence length equation is 49%.[98]

The block tests show two important points. First, in the Assault crime group, with the exception of two variables, all remaining variables provide a statistically significant impact to the sentence length decision. In Burglary, all blocks are statistically significant. Second, in both Assault and Burglary, the two most dominant blocks are Primary Offense and Departure, which dwarf the impact of the other variables.

The estimated coefficient of the inverse Mill's ratio is -.064 for the Assault crime group and -.062 for the Burglary crime group. The overall Wald tests for both models suggest that it is

[97] The FIML estimation process does not produce an R^2 value as in ordinary least squares regression, but a related measure gauges how well the model fits: the squared correlation between the predicted sentences from the sentence length equation and the actual sentences. This value is reported here.

[98] The R^2 for Fraud (33.4%), Larceny (31.5%), Narcotics (37.1%), and Robbery (57%) are, with the exception of the Robbery group substantially lower.

not possible to reject the null hypothesis of independence at the .05 level – it appears that there is evidence that the in/out and length decisions are related to one another albeit in a manner different from Michigan.[99] There is also no indication of multicollinearity.[100]

[99] Note that all of the coefficients for the inverse Mills' ratio are significant and negative for the six Virginia crime groups.

[100] The condition number is 6.39 for Assault and 6.94 for Burglary indicating it is unlikely there is extensive collinearity introduced by the inverse Mill's ratio in either model.

Table 6-5a: Prison Length Equation Estimates – Assault

Variable	Coef.	Robust Std. Error	z	P>|z|	% Change	Mean
Section C Variables (with point values)						
Primary Offense						
7	-0.487	0.129	-3.780	0.000	-39%	0.026
8	-0.614	0.112	-5.490	0.000	-46%	0.198
14	-0.359	0.131	-2.730	0.006	-30%	0.039
16-17	-0.317	0.115	-2.750	0.006	-27%	0.143
32-34	0.096	0.111	0.860	0.389	10%	0.299
68	0.673	0.134	5.040	0.000	96%	0.093
88	0.916	0.146	6.280	0.000	150%	0.058
>88	1.455	0.206	7.060	0.000	329%	0.021
Additional Counts						
2	-0.006	0.060	-0.100	0.918	-1%	0.058
3	0.241	0.129	1.860	0.063	27%	0.012
5-6	0.407	0.199	2.040	0.041	50%	0.004
13+	-0.460	0.255	-1.810	0.071	-37%	0.001
Addiitonal Offenses						
1	0.161	0.054	2.960	0.003	18%	0.059
2	0.038	0.063	0.600	0.549	4%	0.044
3	0.217	0.065	3.330	0.001	24%	0.054
5-6	0.273	0.053	5.150	0.000	31%	0.062
11-13	0.413	0.102	4.050	0.000	51%	0.027
16-19	0.531	0.123	4.320	0.000	70%	0.010
22-26	0.597	0.373	1.600	0.110	82%	0.004
Firearm in Possession						
2	0.044	0.058	0.760	0.447	5%	0.062
3	0.129	0.096	1.340	0.179	14%	0.022
4	0.176	0.042	4.170	0.000	19%	0.203
Victims Receiving Injury						
3	0.053	0.056	0.950	0.343	5%	0.077
14	0.174	0.049	3.600	0.000	19%	0.206
70	0.515	0.153	3.370	0.001	67%	0.012
85	0.859	0.100	8.580	0.000	136%	0.001
Prior Convictions						
1	-0.073	0.046	-1.600	0.110	-7%	0.120
2	-0.081	0.074	-1.090	0.275	-8%	0.060
3	-0.009	0.062	-0.140	0.885	-1%	0.062
4	0.017	0.058	0.300	0.767	2%	0.072
6	-0.001	0.057	-0.020	0.985	0%	0.055
Prior Person Convictions						
6	-0.037	0.069	-0.530	0.597	-4%	0.083
12	0.207	0.113	1.830	0.068	23%	0.015
18	0.374	0.185	2.020	0.043	45%	0.010
Legally Restrained						
2	-0.051	0.042	-1.200	0.231	-5%	0.326
6	0.069	0.045	1.550	0.120	7%	0.230
Departure						
Aggravating	0.573	0.066	8.690	0.000	77%	0.153
Mitigating	-0.793	0.064	-12.440	0.000	-55%	0.066

Extra Guideline Factors						
Trial	0.054	0.035	1.540	0.123	6%	0.321
Sex and Race						
Black Males	0.101	0.041	2.490	0.013	11%	0.519
Black Females	-0.078	0.059	-1.330	0.185	-8%	0.069
White Women	0.023	0.075	0.300	0.762	2%	0.031
Urban Courts	0.011	0.057	0.190	0.853	0.011	
Near DC	-0.032	0.048	-0.660	0.506	-3%	0.099
Southeast	-0.041	0.056	-0.720	0.472	-4%	0.153
Richmond	3.389	0.105	32.230	0.000		0.069
Constant	3.077	0.110	28.080	0.000		
lambda	-0.064	0.023				
Number of obs	1614					
Censored obs	797					
Uncensored obs	817					
LR Test of Independence			7.511	0.006		

Goodness of Fit -- Assault Length of Sentence

		Wald Block Tests	
Section A Variable	**Chi Square**	**df**	**p**
Primary Offense	301.67	8	0.000
Primary Additional Counts	10.85	4	0.028
Additional Offenses	62.71	7	0.000
Firearm	19.32	3	0.000
Victim Injury	79.56	4	0.000
Prior Convictions/Adjudicatio	3.90	5	0.564
Prior Felony Person	8.19	3	0.042
Legally Restrained	5.01	2	0.082
Departure	275.19	2	0.000
Extra Legal	15.33	7	0.032
Trial	2.38	1	0.123
Sex and Race	11.65	3	0.009
Sentencing Circuit	1.01	3	0.799
R2 -- Full Model	53.5%		

Table 6-5b: Prison Length Equation Estimates – Burglary

Variable	Coef.	Robust Std. Error	z	P>|z|	% Change
Section C Variables					
Primary Offense					
1-8	-0.630	0.147	-4.280	0.000	-47%
9	-0.522	0.105	-4.950	0.000	-41%
10-16	-0.305	0.127	-2.390	0.017	-26%
18	-0.232	0.101	-2.300	0.022	-21%
19-36	0.253	0.106	2.380	0.018	29%
38-56	0.714	0.136	5.240	0.000	104%
60-99	0.772	0.218	3.550	0.000	116%
100+	1.548	0.198	7.830	0.000	370%
Additional Counts					
1	0.432	0.053	8.190	0.000	54%
3	-0.361	0.064	-5.650	0.000	-30%
6	-0.242	0.075	-3.230	0.001	-22%
Addiitonal Offenses					
1	0.000	0.049	0.000	0.997	0%
3	-0.077	0.033	-2.300	0.022	-7%
4	0.167	0.055	3.050	0.002	18%
6	0.090	0.044	2.070	0.039	9%
Weapon Used					
12	0.248	0.073	3.390	0.001	28%
Physical or Serious Injury					
10	0.239	0.090	2.660	0.008	27%
Prior Convictions					
1	-0.105	0.058	-1.790	0.073	-10%
2	-0.107	0.037	-2.890	0.004	-10%
3	-0.084	0.057	-1.480	0.140	-8%
5	0.157	0.047	3.300	0.001	17%
Proir Felony Burglary					
2	0.045	0.039	1.140	0.254	5%
3	0.161	0.052	3.080	0.002	17%
5	0.188	0.048	3.920	0.000	21%
6	0.310	0.091	3.420	0.001	36%
8	0.339	0.129	2.640	0.008	40%
9	0.230	0.046	5.000	0.000	26%
Prior Felony Person					
4	0.125	0.042	3.010	0.003	13%
9	0.279	0.094	2.960	0.003	32%
13	0.097	0.081	1.200	0.232	10%
17	0.167	0.112	1.500	0.135	18%
Parole/Post Release Supervision					
3	0.095	0.029	3.260	0.001	10%

Departure					
Aggravating					
Mitigating	0.348	0.088	3.980	0.000	42%
	-0.801	0.048	-16.620	0.000	-55%
Exra Guideline Factors					
Trial					
	0.108	0.044	2.460	0.014	11%
Sex and Race					
Black Males					
Black Females	-0.057	0.038	-1.500	0.133	-6%
White Women	-0.310	0.079	-3.940	0.000	-27%
	-0.065	0.069	-0.940	0.349	-6%
Urban Courts					
Near DC	-0.088	0.051	-1.720	0.086	-8%
Southeast	0.007	0.045	0.160	0.869	1%
Richmond	-0.053	0.043	-1.230	0.217	-5%
Constant	3.499	0.097	35.940	0.000	
lambda	-0.062	0.023			
Number of obs	1,668				
Censored obs	849				
Uncensored obs	819				
LR Test of Independence (chi square (1))			7.20	0.007	

Condition #	6.94

	Wald Block Tests		
Section A Variable	**Chi Square**	**df**	**p**
Primary Offense	443.24	8	0.000
Primary Additional Counts	72.38	3	0.000
Additional Offenses	26.42	4	0.000
Weapon Used	11.50	1	0.001
Physical or Serious Injury	7.07	1	0.008
Prior Convictions/Adjudicatior	29.24	4	0.000
Prior Felony Burglary	38.68	6	0.000
Prior Felony Person	17.11	4	0.002
Parole/Post Release	10.60	1	0.001
Departure	307.98	2	0.000
Extra Legal	21.72	10	0.017
Trial	6.03	1	0.014
Sex and Race	16.17	3	0.001
Sentencing Circuit	4.13	6	0.659

R2 -- Full Model	49.3%

Issue 2. Given the prominence of the concept of proportionality in the Virginia guidelines, this issue focuses on whether the factors on the Section C worksheet are individually significant, proportionate in effect, and in the predicted direction. In addition, the Section C worksheet ends with the calculation of a total score, similar to the process used on Section A. The assessment begins by examining the impact of the Primary Offense categories in the sentencing decision for both crime groups. Baselines are determined by combining the impact of each distinct primary offense category with that of the estimated constant term**.** How each combination translates into an estimate of prison length for the Assault crime group is shown in Table 6-6. A correspondence exists between the worksheet points and estimated months in the model**.** For example, the baseline for those with seven or eight points is approximately one year while those with 32 points start at approximately two years. Offenders in the maximum category start at approximately eight years. For Burglary, the model estimates offenders with eight Primary Offense points receive a sentence of approximately one and one half years, while those with 16 points start at approximately two years. Offenders in the maximum category start at approximately 13 years. Hence, the Primary Offense categories provide a coherent baseline to the sentencing process. Similar information for all six of the crime groups in the current research is available in Table 6-6. Based on the correspondence between the point values and the implied base sentences, the Primary Offense categories, as conceptualized, provide a coherent baseline to the sentencing process.

Table 6-6: Sentencing Impact of Primary Offense

Assault		Burglary		Fraud		Larceny		Narcotics		Robbery	
Primary Offense		Primary Offense		Primary Offense		Primary Offense		Primary Offense		Primary Offense	
Points	Months	Points	Months	Points	Months	Points	Months	Points	Months	Points	Months
7	13.3	1-8	17.6	1-6	17.3	1-6	18.9	1-5	15.8	1-20	23.5
8	11.7	9	19.6	7	18.3	7	20.9	6-10	17.5	21-38	37.3
14	15.2	10-16	24.4	8	17.5	8-9	21.2	11-15	18.2	39-58	60.6
16-17	15.8	18	26.2	9	19.3	10	21.3	16-18	20.8	59-64	67.1
32-34	23.9	19-36	42.6	10	19.6	11-14	24.3	19-21	24.7	65-92	98.3
68	42.5	38-56	67.5	11-12	20.4	15-22	26.9	22-35	27.3	93-128	115.7
88	54.2	60-99	71.6	13-14	22.3	28	35.9	36-59	37.2	129-168	139.9
>88	93.0	100+	155.5	15+	30.2	29+	45.6	60+	56.9	169+	205.2

The remaining coefficients on Table 6-5a, which are categorical variables, are interpretable as percentage change from the baseline sentence. Approximately one-half of the coefficients in the Assault model are statistically significant in the predicted direction. Particularly significant factors are found in Additional Offenses, Weapon Used, Victims Receiving Serious Injury, and Prior Felony Convictions Against the Person categories.

Over one half of the individual coefficients are statistically significant in the predicted direction, as shown in Table 6-5b. Four variables are found to have a particularly clear and significant impact on the sentence length decision: Use of a weapon, Serious injury to victim, Prior felony burglary convictions, and Prior felony person convictions.

In addition to individual significance, two other criteria of proportionality are examined related to (1) whether elements with the same weights on Section C (e.g., three points) are given the same relative weight by judges in determining sentence length and (2) whether elements that are different in size on the worksheet (e.g., 3, 6, 12) are treated proportionately different in practice by judges.

First, because there are many different ways to get a particular point value (e.g., three points) on Assault Section C, Figure 6-3a displays the estimated coefficients for each possible category point value as a way to assess how well proportionality is achieved across point values (excluding the coefficients for the Primary Offense variable). While not all elements are statistically significant, there is evidence of a coherent order as the estimates for elements with the same point values tend to cluster and to trend upward for elements with higher point values.

Figure 6-3a; Estimated Coefficients by Section C Point Values (Assault)
(excluding values for Primary Offense)

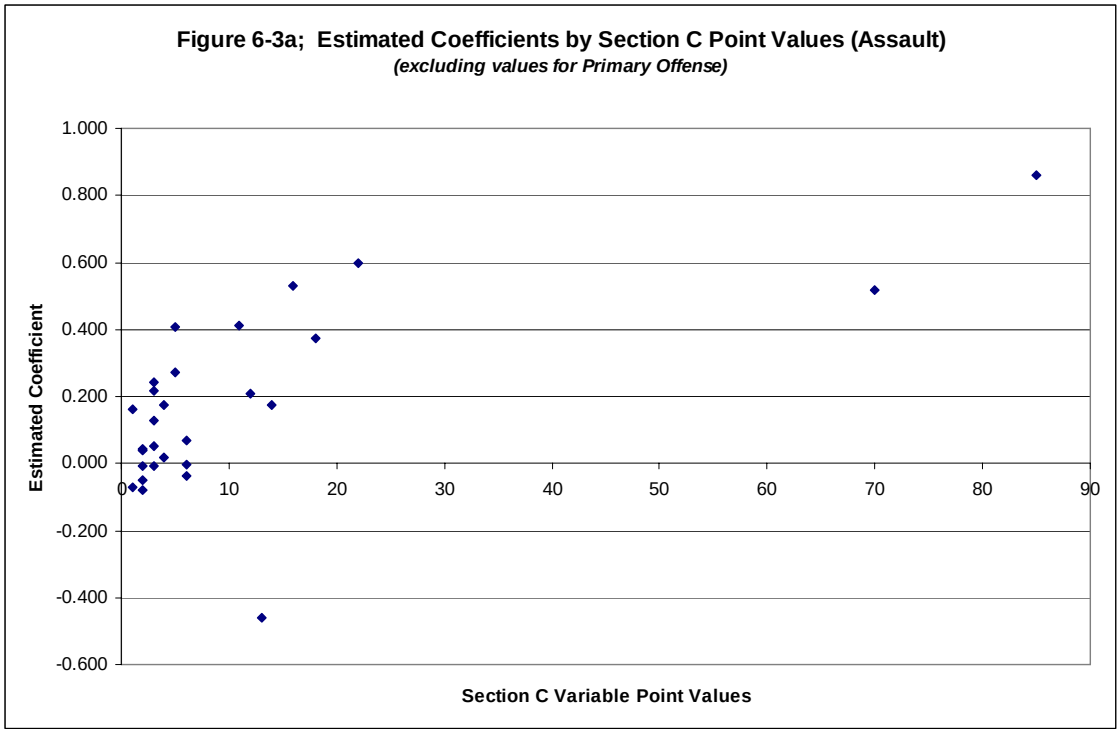
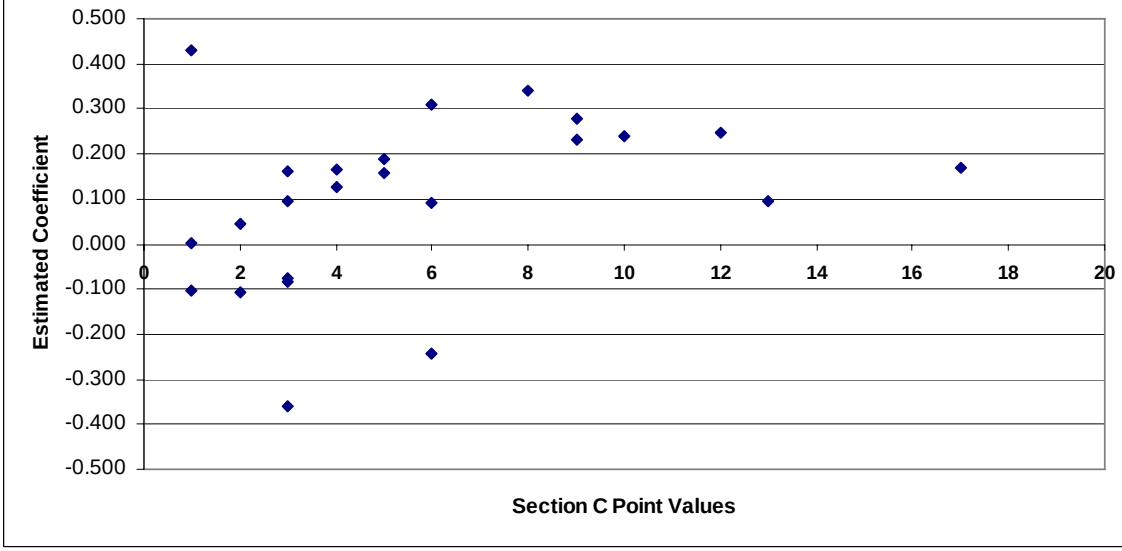


Figure 6-3b: Estimated Coefficients by Section C Point Values -- Burglary
(excluding coefficients for Primary Offense)



With respect to the Burglary crime group, Figure 6-3b shows how well the estimated coefficients track each possible category point value in Section C (excluding those for Primary Offense). Again, there is some evidence of proportionality as most estimated coefficients are positive and slightly increasing in magnitude as the point values increase.

However, there are also several apparent anomalies in the Burglary model. The presence of statistically significant negative coefficients for the Additional Counts and Prior Convictions variables runs counter to expectations. With respect to the Additional Counts categories, there is a significant increase for one additional count but negative values for more counts. Since any offender with points for Prior Felony Burglary must also have points for Prior Convictions, it is necessary to add the coefficients together. For example, an offender with two prior burglary convictions would receive -.107 from Prior Convictions and .045 from Prior Burglary – the net effect is negative. The multiple scoring of prior record categories introduces a degree of complexity and redundancy possibly undermining the intent of the guidelines.[101]

Second, Table 6-7a and Table 6-7b summarize the test results that adjacent elements – within each variable – are statistically significant from one another. For both the Assault and Burglary crime groups most of the individual factors within each variable are not distinct from one another. For Assault, the most positive results are fairly consistent and significant differences between the categories in the Primary Offense Variable.[102]

[101] The correlations between scores on Prior Convictions, Prior Burglary, Prior Person, and Parole range from .69 to .81 indicating that individual offenders are receiving points from multiple variables. In fact, if one adds the points for the four variables together, there are 23 different scores that have at least 1% of the cases. This stands in marked contrast to the Michigan and Minnesota guidelines that have 6 or 7 categories.

[102] It is interesting to see that even though the differences are not significant there is a consistent pattern for the increasing point values for Additional Offenses – the movement from 0 to 1 increases the baseline sentence by 18%; from 1 to 2 decreases the sentence by 4%; from 2 to 3 increases the sentence by 24%; from 3 to 5 increases the sentence by 31%; from 5 to 11 increases the sentence by 51%; from11 to 16 increases the sentence 70%; and from 16 to 22 the sentence increases by 82%. There are similar patterns for Firearm in Possession (5%, 14%, 19%), Victims receiving injury (5%, 19%, 67%m and 136%), and Prior Person Convictions (-4%, 23%, and 45%).

Table 6-7a: Levels Test for Section C Variables – Assault

Primary Offense							
0/7	**7/8**	**8/14**	**14/16**	**16/32**	**32/68**	**68/88**	**88/>88**
0.000	0.095	0.001	0.617	0.000	0.000	0.004	0.000
Primary Additional Counts							
0/2	**2/3**	**3/5-6**	**5-6/13+**				
0.918	0.075	0.485	0.009				
Additional Offenses							
0/1	**1/2**	**2/3**	**3/5-6**	**5-6/11-13**	**11-13/16-19**	**16-19/22-26**	
0.003	0.121	0.040	0.472	0.200	0.441	0.866	
Firearm in Possession							
0/2	**2/3**	**3/4**					
0.447	0.414	0.649					
Victim Receiving Injury							
0/3	**3/14**	**14/70**	**70-85**				
0.343	0.087	0.023	0.046				
Prior Felony Convictions							
0/1	**1/2**	**2/3**	**3/4**	**4/6**			
0.110	0.919	0.432	0.739	0.808			
Prior Person Convictions							
0/6	**6/12**	**12/18**					
0.597	0.039	0.420					
Legally Restrained							
0/2	**2/6**						
0.231	0.026						

Table 6-7b: Levels Test for Section C Variables – Burglary

Primary Offense							
0/8	**8/9**	**9/16**	**16/18**	**18-36**	**37/59**	**60/99**	**99/100+**
0.000	0.365	0.019	0.395	0.000	0.000	0.770	0.001
Primary Additional Counts							
0/1	**1/3**	**3/6**					
0.000	0.000	0.089					
Additional Offenses							
0/1	**1/3**	**3/4**	**4/6**				
0.997	0.1307	0.000	0.226				
Weapon Used							
0/12							
0.000							
Physical or Serious Injury							
0/10							
0.008							
Prior Convictions/Adjudications							
0/1	**1/2**	**2/3**	**3/5**				
0.073	0.974	0.709	0.000				
Prior Felony Burglary							
0/2	**2/3**	**3/5**	**5/6**	**6/8**	**8/9**		
0.254	0.033	0.6327	0.186	0.845	0.388		
Prior Felony Person							
0/4	**4/9**	**9/13**	**13/17**				
0.003	0.122	0.114	0.569				
Parole/Post Release							
0/3							
0.001							

The Burglary crime group also shows no strong consistency among the estimated coefficients and the prescribed point values on the worksheet. Considering Prior Felony Burglary for example, smooth increases in estimated prison length occur as scores increase incrementally from zero to eight, but then fall back to the level of five points when the score changes from eight to nine. Given the similarity in the size of the coefficients for 3, 5, and 9 points, one interpretation is judges are not making marked distinctions among offenders in concert with the fine gradations in the scoring of this variable on Section C. Similar issues of consistency arise for other variables as well.

Departures. A lack of strong consistency in how judges use the individual worksheet elements to evaluate individual offenders does not result in a high number of departures. The

sentence length decision models incorporate variables for durational departures above or below the sentencing guideline range (Tables 6-5a and 6-5b). Virginia judges depart from the guideline recommendations in Assault cases in about 22% of all cases (15.3% above and 6.6% below) and in about 20% of Burglary cases (9.8% above and 10.4% below). When Virginia judges depart from the Assault recommendations they either increase (Departure Above) by 77% or decrease (Departure Below) by 55%. For Burglary, a departure from the sentence length recommendation either increases the sentence (Departure Above) by 42% or decreases the sentence (Departure Below) by 55%. [103]

Predicted Sentence Length. Judges comply with the guideline sentence recommendation in about 80% of Assault and Burglary cases. Figure 6-4A compares the Section C Total score for the Assault crime group to the mean estimate for each possible point total, and Figure 6-4b does the same for the Burglary crime group. For both crime groups there is a close correspondence between the estimates and the mean predicted sentences.

[103] As can be seen in the Appendix, the numbers for Assault and Burglary departure rates are consistent across the remaining crime groups. The percentages above are 93%, 57%, 44%, and 44% for Fraud, Larceny, Narcotics, and Robbery respectively. The percentages below are -43%, -45%, -44%, and -55% for Fraud, Larceny, Narcotics, and Robbery respectively.

Figure 6-4a: Estimated Sentence by Section C Total Points--Assault

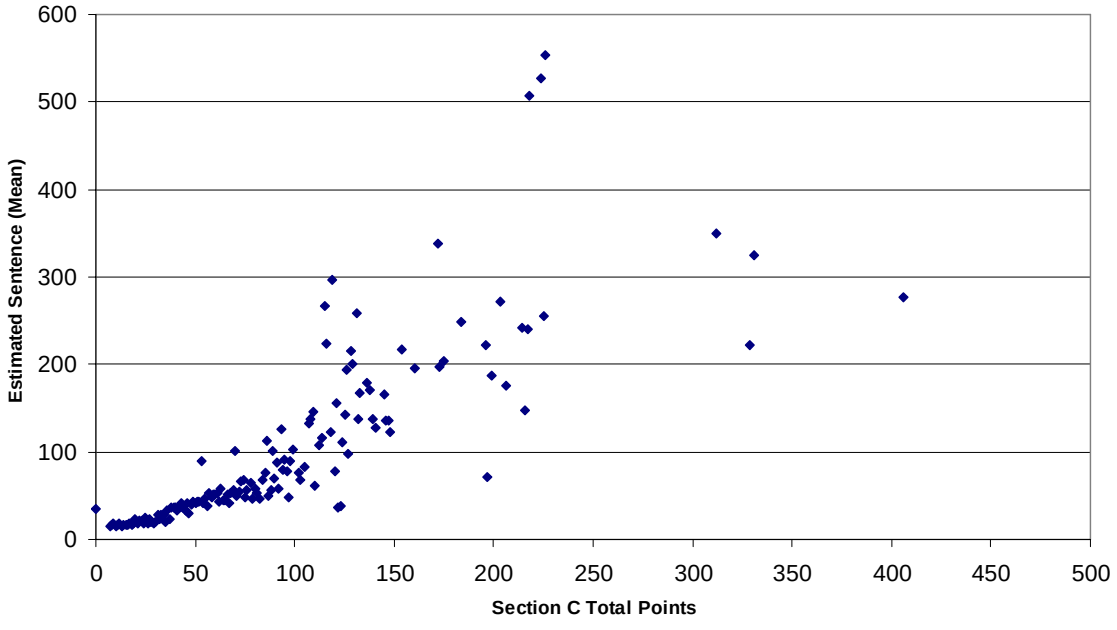
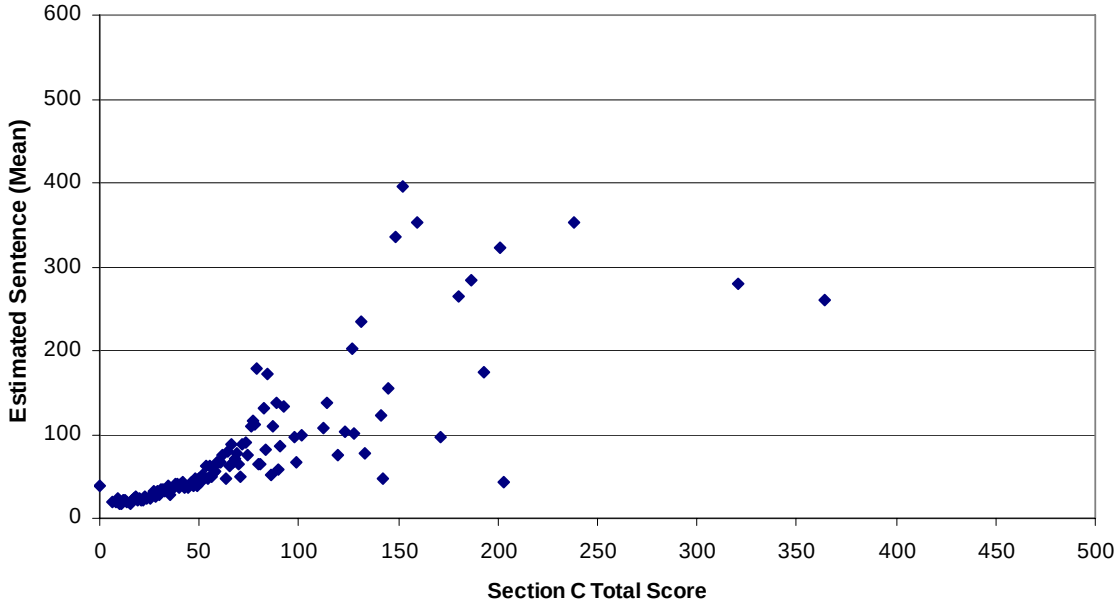
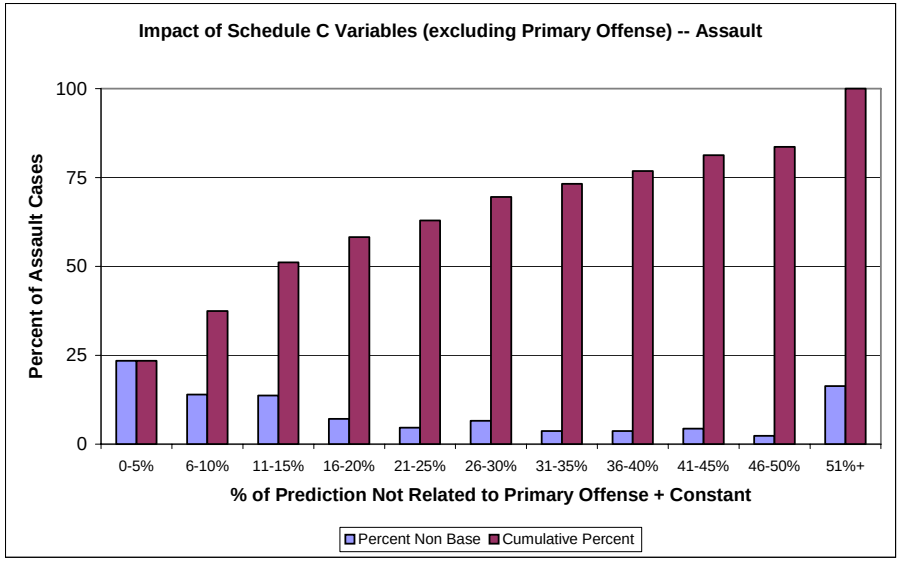


Figure 6-4B: Predicted Sentence (Mean) for Various Section C Totals -- Burglary

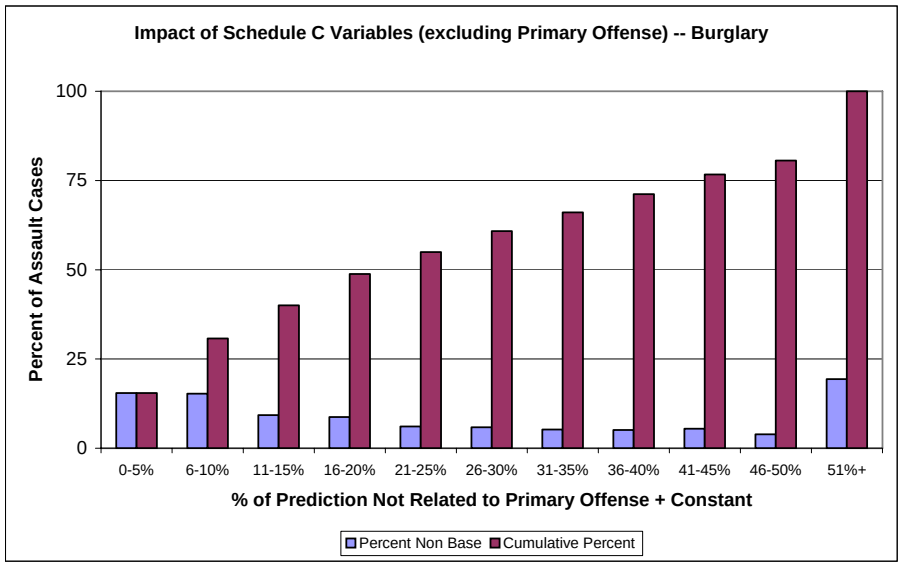


However, even though the R^2 values in both models are quite high, the perplexing fact is that many of the guideline variables in Section C are either insignificant or negative or both. The block tests show that the two principle "drivers" of prison sentences are the points from the Primary Offense and Departures (when they occur). To clarify the role of these factors, the estimated prison sentence is separated into two components. First, a "baseline" sentence is calculated from the constant term, the Primary Offense coefficients, and (where appropriate) the Departure coefficient. Second, the remainder or marginal amount attributable to remaining Section C variables is obtained by subtracting the former from the overall predicted value. Table 6-8 presents the results of these calculations for Assault and Burglary.

Table 6-8: Impact of Schedule C variables excluding Primary Offense and Departures



Assault			
Non Base Contribution	N	Percent	Cum %
0-5%	192	24%	24%
6-10%	114	14%	37%
11-15%	112	14%	51%
16-20%	58	7%	58%
21-25%	38	5%	63%
26-30%	54	7%	70%
31-35%	30	4%	73%
36-40%	30	4%	77%
41-45%	36	4%	81%
46-50%	19	2%	84%
51%+	134	16%	100%
	817	100%	



Burglary/Dwelling			
Non Base Contribution	N	Percent	Cum %
0-5%	127	16%	16%
6-10%	125	15%	31%
11-15%	76	9%	40%
16-20%	72	9%	49%
21-25%	50	6%	55%
26-30%	48	6%	61%
31-35%	43	5%	66%
36-40%	42	5%	71%
41-45%	45	5%	77%
46-50%	32	4%	81%
51%+	159	19%	100%
	819	100%	

The two sets of bars in Table 6-8 show the percent of the estimated sentence not attributable to the baseline sentence. The left-hand bar represents the proportion of offenders with a particular percentage of their sentence coming from factors other than the constant term, the Primary Offense coefficients, and (where appropriate) the Departure coefficient, while the right-hand bar represents the cumulative percentage. Taking the Assault crime group as an example, sixteen percent of offenders have less than five percent of their estimated sentence coming from non-baseline factors and, for over half the offenders (51 percent), the other Section C variables contribute no more than 15% to the predicted sentence. The situation is similar for the Burglary crime group where the other Section C variables are estimated to make a very small contribution to the predicted sentence (15% or less) for 40% of the offenders. These results suggest the remaining variables – at least statistically – play a relatively peripheral role in the sentence length decision.

It appears, therefore, that in both Section A and Section C, there is a primary driver for each of the two decisions. In Section A, the primary driver is reaching the threshold number of points regardless of how the threshold is attained. In Section C, the primary driver comes from the points on the Primary Offense variable, with the remaining variables adding little to the **predicted** value.

Inverse Mills' Ratio

As noted earlier, the coefficient for the inverse Mill's ratio is statistically significant and negative in both equations. When the coefficient of IMR is negative, there are unobserved/unmeasured factors increasing the probability of selection but leading to a lower than average score on the dependent variable. With a significant and negative inverse Mills ratio coefficient, unobserved factors that affect the likelihood of prison are inversely related to the

sentence length decision. Given the persistence of this finding across all six crime groups, it may suggest that there is something in the design of the Virginia guidelines that leads to this relationship.

In both the Assault and Burglary crime types, the estimated coefficient is negative, significant, and in the vicinity of .06. It would appear, therefore, that in both crime groups there are unmeasured factors that lead to an increase in the probability of an offender receiving a prison sentence but also lead to a lower sentence. In both the Assault and Burglary crime groups there are similar elements found on both the Section A and Section C worksheets. It may be the case that certain elements on Section A that increase the probability of an offender being sent to prison might, in the eyes of a judge, not warrant as great a weight in the determination of sentence length as the guidelines suggest. As an example, in Section A of the Burglary crime, an offender may receive up to 5 points for Misdemeanor convictions that, in turn, increases the probability of a prison sentence. In the statistical model, the points from Misdemeanor have a direct negative impact on the probability of prison but the points contribute to the attainment of the threshold of fourteen points or more. While the judge sentences the offender to prison, there is some type of compensation that leads to a lower than expected sentence. Consider an offender who has a .25 estimated probability of receiving a prison sentence but in fact goes to prison. The inverse Mills' ratio is 1.28. When multiplied by -.062, the result is .074. This, in turn, translates into a decrease of 7.4% in the expected prison sentence. Although the impact is modest, the results for Virginia stand in contrast to those from Michigan where the coefficient for the IMR is positive and significant. As can be seen in the Appendix, the coefficients for the inverse Mills' ratio are all in the vicinity of –20; this suggests a reduction in the prison sentence of approximately 20% holding all else constant. The persistence of negative and significant

coefficients for the inverse Mills' ratio is perhaps tied to the fact that there are so many ways to achieve the necessary points for a prison sentence that in some instances judges compensate by reducing the Section C sentence.

SUMMARY

Under the Virginia Sentencing Guidelines, judges tend to follow the recommendations on which offenders should be imprisoned and for what length of time. However, judges are not constrained, in practice, to employ each specific element on the worksheets in the manner prescribed by the guidelines, despite (or perhaps because of) their detailed structure and organization. The scoring mechanism works but not because judges adhere to the theory that all elements are to be given their assigned weight. Judges appear to use the Threshold value on Section A and the Primary Offense score on Section C as "bottomline" metrics in deciding whom to incarcerate and for how long, rather than depending on a multitude of individual elements. The result is considerable agreement on sentencing outcomes. Hence, consistency on outcomes is achieved but without strict conformity to a specified process.

INVESTIGATING DISCRIMINATION: EXTRA GUIDELINE FACTORS

A line of thought suggests that since the Virginia sentencing guidelines are voluntary, there is more room for the discrimination to "creep" into the sentencing outcomes. To explore this possibility, the same analysis strategy used to investigate discrimination in Michigan and Minnesota is applied to Virginia. Three perspectives on how discrimination occurs are examined (and developed more fully in Chapter 5). First, the differential involvement perspective is assessed by examining the mean values of the two racial groupings on the variables included in the model. From this perspective it is possible to see if white and non-white offenders are different from one another in conviction offense severity and criminal history.

Second, the direct-impact perspective is assessed by augmenting the basic model with the extra-guideline variables. Third, the interactionist perspective suggests allowing all of the coefficients in the model to vary by racial category improves the overall fit. Pursuing these perspectives provides a comprehensive assessment of discrimination in Virginia sentencing that is comparable to the results of the other two states.

Differential Involvement Perspective

Assault. In the Assault crime group Blacks are sentenced to prison 51.2% of the time while their white counterparts are sentenced to prison 49.9% of the time, as shown in Table 6-9a. With respect to the length of the sentence, however, there is a discernible difference in the actual sentences given to the two groups with Blacks receiving an average sentence of 62.6 months and whites 49.5 months. Table 6-9a presents the average values for each of the independent variables in the Assault model as well. Turning first to the Section A variables, as befitting a very small difference in the imprisonment rate, there are almost no significant differences. Turning to the sentencing length equation and looking at the Section C categories of the Primary Offense variable, Black offenders are more likely to be at the higher end of the severity spectrum. There are few significant differences in the remaining Section C variables. It is clearly possible that the difference in average sentence length is attributable to the differential severity levels of the conviction offense.

Table 6-9a: Mean Values by Racial Groups -- Assault

		Racial Breakdown					
		White Offenders		Black Offenders			
		Obs	Mean	Obs	Mean	z-score	p-value
Sentence Length		337	49.508	480	62.611	-2.459	0.007
Primary Offense							
Primary Offense Points	7	337	0.021	480	0.029	-0.746	0.228
Primary Offense Points	8	337	0.234	480	0.173	2.171	0.015
Primary Offense Points	14	337	0.030	480	0.046	-1.172	0.121
Primary Offense Points	16-17	337	0.166	480	0.127	1.570	0.942
Primary Offense Points	32-34	337	0.267	480	0.321	-1.653	0.049
Primary Offense Points	68	337	0.086	480	0.098	-0.575	0.283
Primary Offense Points	88	337	0.036	480	0.073	-2.255	0.012
Primary Offense Points	>88	337	0.024	480	0.019	0.492	0.311
Additional Counts							
Maximum penalties totalling 3 years	2	337	0.062	480	0.054	0.492	0.311
Maximum penalties totalling 5 years	3	337	0.018	480	0.008	1.212	0.113
Maximum penalties totalling 10 years	5-6	337	0.003	480	0.004	-0.279	0.390
Maximum penalties totalling 20 or more years	13+	337	0.000	480	0.002	-0.838	0.201
Addiitonal Offenses							
Maximum penalties totalling 1-2 years	1	337	0.059	480	0.058	0.061	0.476
Maximum penalties totalling 3-4 years	2	337	0.030	480	0.054	-1.679	0.047
Maximum penalties totalling 5 years	3	337	0.039	480	0.065	-1.621	0.052
Maximum penalties totalling 10 years	5-6	337	0.071	480	0.056	0.871	0.192
Maximum penalties totalling 20 years	11-13	337	0.024	480	0.029	-0.472	0.319
Maximum penalties totalling 30 years	16-19	337	0.009	480	0.010	-0.216	0.414
Maximum penalties totalling 40 or more years	22-26	337	0.003	480	0.004	-0.279	0.390
Firearm in Possession							
Knife	2	337	0.071	480	0.056	0.871	0.192
Firearm	3	337	0.018	480	0.025	-0.690	0.245
Firearm in Malicious Wounding	4	337	0.175	480	0.223	-1.673	0.047
Victims Receiving Injury							
1 Victim Assault and Battery	3	337	0.086	480	0.071	0.803	0.211
1 Victim Malicous Wounding	14	337	0.184	480	0.221	-1.283	0.100
2 Victims Malicous Wounding	70	337	0.012	480	0.013	-0.081	0.468
3 or more Victims Malicious Wounding	85	337	0.000	480	0.002	-0.838	0.201
Prior Convictions							
Maximum penalties totalling 5-10 years	1	337	0.116	480	0.123	-0.311	0.378
Maximum penalties totalling 20 years	2	337	0.045	480	0.071	-1.560	0.059
Maximum penalties totalling 30 years	3	337	0.068	480	0.058	0.577	0.282
Maximum penalties totalling 40 or more years	4	337	0.062	480	0.079	-0.916	0.180
Maximum penalties totalling 40 or more years (A&	6	337	0.050	480	0.058	-0.487	0.313
Prior Person Convictions							
1 Prior Person Conviction	6	337	0.083	480	0.083	-0.013	0.495
2 Prior Person Convictions	12	337	0.009	480	0.019	-1.152	0.125
3 or more Prior Person Convictions	18	337	0.006	480	0.013	-0.938	0.174
Legally Restrained							
Yes for Assault and Battery	2	337	0.318	480	0.331	-0.413	0.340
Yes for Malicious Wounding	6	337	0.211	480	0.244	-1.105	0.134
Departure							
Aggravating		337	0.157	480	0.150	0.284	0.388
Mitigating		337	0.059	480	0.071	-0.651	0.258
Extra Guideline Factors							
Trial		337	0.264	480	0.360	-2.904	0.002
Black Males		676	0.000	938	0.840	-33.312	0.000
Black Females		676	0.000	938	0.160	-10.917	0.000
White Women		676	0.098	938	0.000	9.772	0.000
Near DC		676	0.120	938	0.125	-0.297	0.383
Southeast		676	0.209	938	0.222	-0.634	0.263
Richmond		676	0.112	938	0.143	-1.793	0.036

Primary Offense							
Attempted A&B	1	676	0.256	938	0.274	-0.810	0.209
A&B against family member 3rd	2	676	0.096	938	0.117	-1.346	0.089
Attempted Malicious Injury	3-4	676	0.049	938	0.029	2.099	0.018
A&B law enforcement, fire, rescue	6	676	0.269	938	0.249	0.896	0.185
Unlawful Injury to law enforcement, etc.	7	676	0.209	938	0.248	-1.871	0.031
Additional Counts							
Maximum penalties totalling 3-10 years	1-2	676	0.049	938	0.046	0.278	0.610
Maximum penalties totalling 11 or more years	3+	676	0.006	938	0.012	-1.200	0.115
Addiitonal Offenses							
Maximum penalties totalling 2-10 years	1	676	0.109	938	0.147	-2.210	0.014
Maximum penalties totalling 11-17 years	2	676	0.025	938	0.021	0.507	0.306
Maximum penalties totalling 18 or more years	3+	676	0.019	938	0.020	-0.146	0.442
Weapon Used							
Simulated weapon or non firearm	1	676	0.312	938	0.310	0.081	0.468
Firearm	2	676	0.072	938	0.101	-2.002	0.023
Serious Physical Injury							
Serious physical injury to victim	2	676	0.186	938	0.196	-0.492	0.311
Prior Convictions							
Maximum penalties totalling 7-23 years	1	676	0.161	938	0.204	-2.159	0.015
Maximum penalties totalling 24-46 years	2	676	0.118	938	0.134	-0.950	0.171
Maximum penalties totalling 47 or more years	3	676	0.123	938	0.167	-2.484	0.006
Prior Incarcerations/Commitments							
	2	676	0.574	938	0.638	-2.584	0.005
Prior Juvenile Record							
	2	676	0.197	938	0.199	-0.130	0.448
Legally Restrained							
Other than post-incarceration	3	676	0.314	938	0.372	-2.433	0.007
Post incarceration supervision	5	676	0.127	938	0.127	0.021	0.492
Type of Prior Felony in A&B Family							
3rd or subsequent	3	676	0.013	938	0.026	-1.719	0.043
Other person felony	4	676	0.037	938	0.050	-1.260	0.104
Prison Threshold							
Section A Total > 5		676	0.499	938	0.512	-0.524	0.300

Burglary. As can be seen in Table 6-9b, in the Burglary crime group blacks are sentenced to prison 54% of the time while their white counterparts are sentenced to prison 46% of the time – the result is statistically significant. With respect to the length of the sentence, there is also a statistically significant difference in the actual sentences given to the two groups with blacks receiving an average sentence of 53 months and whites 45 months. Table 6-9b provides the mean values for all of the Section A and Section C variables as well. As can be seen, black Burglary offenders tend to have more Section A points for prior record categories as well as a slightly higher incidence of reaching the 14 point threshold. With respect to the Section C variables, there are no clear patterns along racial lines.

Table 6-9b: Mean Values by Racial Groups -- Burglary

		Racial Breakdown					
		White Offenders		Black Offenders			
		Obs	Mean	Obs	Mean	z-score	p-value
Dependent Variable: Sentence Length		489	45.37	330	53.00	-1.665	0.048
Primary Offense							
Primary Offense Points	7	489	0.01	330	0.03	-1.846	0.032
Primary Offense Points	8	489	0.11	330	0.10	0.426	0.335
Primary Offense Points	14	489	0.03	330	0.02	0.547	0.292
Primary Offense Points	16-17	489	0.37	330	0.33	1.287	0.099
Primary Offense Points	32-34	489	0.30	330	0.28	0.644	0.260
Primary Offense Points	68	489	0.02	330	0.08	-3.775	0.000
Primary Offense Points	88	489	0.01	330	0.03	-2.102	0.018
Primary Offense Points	>88	489	0.01	330	0.02	-1.876	0.030
Primary Offense Additional Counts							
Maximum penalty 5, 10 years	1	489	0.24	330	0.15	2.993	0.001
Maximum penalty 20 years	3	489	0.11	330	0.07	1.942	0.026
Maximum penalty Life	6	489	0.06	330	0.03	2.138	0.016
Addiitonal Offenses							
Maximum penalty 4, 5, or 10	1	489	0.07	330	0.08	-0.928	0.177
Maximum penalty 20 years	3	489	0.25	330	0.27	-0.516	0.303
Maximum penalty 30 years	4	489	0.05	330	0.03	1.445	0.074
Maximum penalty 40+ years	6	489	0.08	330	0.04	2.514	0.006
Weapon Used							
Knife or Firearm	12	489	0.03	330	0.07	-2.433	0.007
Physical or Serious Physical Victim Injury							
Yes	10	489	0.02	330	0.05	-1.644	0.050
Prior Convictions/Adjudications							
Maximum penalty 5, 10 years	1	489	0.08	330	0.06	1.040	0.149
Maximum penalty 20 years	2	489	0.14	330	0.12	1.032	0.151
Maximum penalty 30 years	3	489	0.05	330	0.02	2.050	0.020
Maximum penalty 40+ years	5	489	0.08	330	0.12	-1.811	0.035
Proir Felony Burglary Convictions/Adjudications							
1 prior Burglary conviction	2	489	0.17	330	0.18	-0.404	0.343
2 prior Burglary convictions	3	489	0.10	330	0.08	0.644	0.260
3 prior Burglary convictions	5	489	0.06	330	0.04	1.030	0.151
4 prior Burglary convictions	6	489	0.02	330	0.03	-0.243	0.404
5 prior Burglary convictions	8	489	0.01	330	0.05	-3.518	0.000
6+ prior Burglary convictions	9	489	0.08	330	0.05	1.551	0.060
Prior Felony Convictions/Adjudications Against Person							
1 prior person felony conviction	4	489	0.09	330	0.12	-1.652	0.049
2 prior person felony convictions	9	489	0.03	330	0.05	-1.310	0.095
3 prior person felony convictions	13	489	0.01	330	0.02	-0.351	0.363
4+ prior person felony convictions	17	489	0.01	330	0.01	-0.913	0.181
Parole/Post Release Supervision							
Yes	3	489	0.40	330	0.35	1.367	0.086
Departure							
Uttered Sentence Above Guideline Range		489	0.07	330	0.13	-2.823	0.002
Uttered Sentence Below Guideline Range		489	0.12	330	0.08	1.927	0.027
Extra Guideline Factors							
Trial		489	0.13	330	0.26	-4.697	0.000
Black Males							
Black Females							
White Women							
Near DC		1,057	0.13	611	0.13	-0.301	0.382
Southeast		1,057	0.21	611	0.23	-1.004	0.158
Richmond		1,057	0.13	611	0.13	0.280	0.390

Dependent Variable: Prison/No Prison		1,057	0.46	611	0.54	-3.049	0.001
Primary Offense							
Occupied Dwelling with intent to commit misdemeanor without deadly weapon	1	1,057	0.06	611	0.12	-3.900	0.000
Dwelling with intent to commit larceny one count **(suppressed)**	3						
Dwelling with intent to commit larceny two counts	5	1,057	0.09	611	0.06	2.131	0.017
Dwelling with intent to commit larceny three counts or Dwelling at night with deadly weapon	7	1,057	0.09	611	0.06	2.079	0.019
Occupied Dwelling with intent to commit misdemeanor with deadly weapon	9	1,057	0.00	611	0.01	-1.129	0.129
Dwelling with intent to commit murder, rape, robbery, or arson with or without deadly weapon	14	1,057	0.01	611	0.01	-0.594	0.276
Primary Offense Additional Counts							
Maximum penalties totalling 5-14 years	1	1,057	0.00	611	0.00	0.119	0.453
Maximum penalties totalling 15-27 years	2	1,057	0.03	611	0.03	0.286	0.388
Maximum penalties totalling 28-43 years	3	1,057	0.01	611	0.00	1.186	0.118
Maximum penalties totalling 44 or more years	4	1,057	0.02	611	0.01	1.288	0.099
Addiitonal Offenses							
Maximum penalties totalling 5-14 years	1	1,057	0.06	611	0.10	-2.996	0.001
Maximum penalties totalling 15-27 years	2	1,057	0.31	611	0.28	1.300	0.097
Maximum penalties totalling 28-43 years	3	1,057	0.10	611	0.07	2.424	0.008
Maximum penalties totalling 44 or more years	4	1,057	0.12	611	0.06	3.597	0.000
Mandatory Firearm Conviction for Current Event	3	1,057	0.02	611	0.03	-1.497	0.067
Weapon Used							
Simulated Weapon	2	1,057	0.01	611	0.02	-1.189	0.117
Knife	4	1,057	0.01	611	0.03	-2.668	0.004
Firearm	6	1,057	0.01	611	0.02	-1.836	0.033
Prior Convictions							
Total maximum penalties for 5 most recent--2-8 yea	1	1,057	0.20	611	0.16	2.153	0.016
Total maximum penalties for 5 most recent--9-19 ye	2	1,057	0.05	611	0.06	-0.566	0.286
Total maximum penalties for 5 most recent--20-31 y	3	1,057	0.13	611	0.13	-0.133	0.447
Total maximum penalties for 5 most recent--32-41 y	4	1,057	0.05	611	0.05	-0.039	0.484
Total maximum penalties for 5 most recent-- > 42 ye	5	1,057	0.22	611	0.31	-4.094	0.000
Adult Felony Property							
1 prior conviction	1	1,057	0.09	611	0.13	-2.574	0.005
2-5 prior felony convictions	2	1,057	0.16	611	0.19	-1.713	0.043
6-10 prior felony convictions	3	1,057	0.05	611	0.07	-1.055	0.146
11 or more prior felony convictions	4	1,057	0.04	611	0.03	0.728	0.233
Prior Juvenile Property							
1-2 prior juvenile property adjudications	1	1,057	0.11	611	0.12	-0.624	0.266
3-11 prior juvenile property adjudications	2	1,057	0.05	611	0.06	-1.357	0.087
12+ prior juvenile property adjudications	3	1,057	0.01	611	0.00	0.646	0.259
Prior Misdemeanor							
1 prior misdemeanor conviction/adjudication	1	1,057	0.11	611	0.12	-0.425	0.335
2-4 prior misdemeanor conviction/adjudications	2	1,057	0.25	611	0.23	1.142	0.127
5-6 prior misdemeanor conviction/adjudications	3	1,057	0.10	611	0.12	-1.080	0.140
7-9 prior misdemeanor conviction/adjudications	4	1,057	0.09	611	0.10	-1.022	0.153
10+ prior misdemeanor conviction/adjudications	5	1,057	0.14	611	0.18	-2.599	0.005
Prior Incarcerations/Commitments	3	1,057	0.56	611	0.63	-2.930	0.002
Supervised Probation or CCCA	1	1,057	0.24	611	0.30	-2.730	0.003
Prior Juvenile Record	2	1,057	0.28	611	0.25	1.159	0.123
Legally Restrained							
Other than parole/post release, supervised probation or CCCA	3	1,057	0.25	611	0.28	-1.147	0.126
Parole/post release, supervised probation or CCCA	7	1,057	0.19	611	0.22	-1.322	0.093
Prison Threshold							
Total Section A Points 14 or more		1,057	0.54	611	0.59	-2.248	0.012

Direct Impact Perspective

The hallmark of the direct impact perspective – from a statistical point-of-view – is to determine whether any of the extra-guideline variables are statistically significant after controlling for the legally relevant variables.

Assault. Looking first at the bottom of Table 6-2a, neither the Sex and Race combinations nor the sentencing circuits play a significant role in the in/out decision for Assault. Individually, only the coefficient for black females is significant suggesting that, on average, black women have a probability of prison that is 8.5 percent less than that of white men. None of the urban circuit coefficients are statistically significant at the .05 level; extra-guideline elements do not play a role in the in/out decision. Turning to the bottom of Table 6-5a, the results are almost identical. Both the trial and sentencing circuit variables fail to reach the level of statistical significance. In terms of Sex and Race, the coefficient for black males is positive and significant; the coefficient indicates that Black men receive a sentence that is 11% longer than their white counterparts.

Burglary. Looking at the bottom of Table 6-2b, extra-guideline elements play a marginal role in the in/out decision in Burglary/Dwelling. The Wald Block tests are in the vicinity of the standard levels of statistical significance. With the exception of two of the coefficients for the urban circuits (Southeast and Richmond), all of the individual coefficients fail to reach statistical significance. The coefficients for the two sets of Urban courts indicate that they are somewhat less likely to send offenders to prison, all else being equal. With respect to the in/out decision, the Virginia guidelines have successfully eliminated any indications of discrimination.

Looking at the bottom of Table 6-5b, the entire block of extra-guideline elements is statistically significant. The coefficient for the trial variable suggests that those offenders

convicted at trial receive approximately a 11% longer prison sentence than other comparable offenders who pled guilty. The only indication that race or gender exert an influence on sentencing is found in the coefficient for black women who receive a 27% reduction in their sentence once all other variables are taken into account. Turning to the urban court variables, even though the block is significant, none of the coefficients reach the .05 level.

Interactionist Perspective

The Differential Involvement and Direct Impact approaches lead to similar conclusions concerning nonwhite offenders and their white counterparts – virtually no or minimal discrimination. However, the interactionist perspective allows all coefficients in the model to vary for each of the racial groupings and to see if the model then fits the data more closely. Based on such a test – Likelihood Ratio – for each of the two crime groups, the same result is reached for both Assault and Burglary; there is no statistically significant advantage gained from having separate models for whites and non whites.[104] Assuming race exerts its influence primarily in urban courts, the effects of an urban versus rural variable is explored. Again using a Likelihood Ratio test, the results demonstrate no disparities between regions. [105] Hence, the evidence leads to the conclusion that there is no evidence of *systematic* discrimination in Virginia sentencing.

For completeness, and to facilitate comparison with Michigan and Minnesota, the Blinder-Oaxaca analysis – comparing urban and non-urban circuits – for both Assault and Burglary is undertaken even though there are apparently no significant geographic regional

[104] The Likelihood Ratio chi square test yields a value of 42.56 with 42 degrees of freedom ($p < .45$) for the Assault crime group. The Likelihood Ratio chi square test yields a value of 45.73 with 40 degrees of freedom ($p < .25$) for the Burglary crime group.

[105] The Likelihood Ratio chi square test yields a value of 19.61 with 40 degrees of freedom ($p < .99$) for the Assault crime group. The Likelihood Ratio chi square test yields a value of 44.43 with 40 degrees of freedom ($p < .25$) for the Burglary crime group.

differences. In Assault, the decomposition suggests that approximately 80% of the difference is due to discrimination (i.e., different coefficients) and the remainder due to endowments. In Burglary, the decomposition suggests that approximately 56% of the difference is due to discrimination (i.e., different coefficients) and the remainder due to endowments. The results for the Assault crime group are similar to those found in Michigan and Minnesota.

There is no evidence to suggest that there is systematic discrimination – that rises to the level of statistical significance – in Virginia. There is no evidence that black offenders are being treated differently (except for the black male coefficient in Assault) and there is no evidence of separate sentencing regimes. This is interesting given that the explained variance in both Virginia crime groups is less than that of the Michigan and Minnesota counterparts. With more variation unexplained, it seems that it would be more likely to find some systematic discrimination evidence. We do not.

SUMMARY

The Virginia sentencing guidelines use a comprehensive and detailed set of offense and offender criteria to reach recommendations for the in/out and sentence length decisions. This system differs from the grid-style format used in Michigan and Minnesota in that it has more moving parts and does not employ an economical set of similarity groupings. Some combination of the relatively more complicated scoring system, greater emphasis on individualized sentencing, and the voluntary nature of the guidelines likely leads to the lower degree of consistency observed in Virginia. However, because the consistency bar is particularly high in Michigan and Minnesota, the current research concludes the Virginia system is operating well in achieving its goal of overall consistency.

Two challenges confront the use of the guidelines based on the analysis of Assault and Burglary. First, many of the individual variables in both Section A and C fail to reach statistical significance and there are limited statistically significant differences between adjacent categories for either crime group.[106] Second, for Section A in Burglary, redundancy exists with respect to the various prior record-related variables. In fact, two variables in Burglary – Prior Juvenile Property and Prior Misdemeanor – do not appear to be statistically relevant. Therefore, concern with individual variables is more pronounced for Section A than for Section C, where each of the sentence length models accounts for approximately 50% of the variance and the relative magnitude of the coefficients conforms more closely with the actual worksheet point values.

The worksheet factors and associated points are premised on the belief that these factors and point values model the actual sentence decision-making process of judges. The VCSC should consider re-assessing the complete set of factors included on the worksheets and examine the possibility of streamlining Section A and Section C to include only the most salient elements.

Finally, there is no evidence of systematic racial, sexual, or geographical discrimination in Virginia. Taking three distinct perspectives across two different crimes, virtually no evidence of discrimination arises within the confines of the Virginia sentencing guidelines.

[106] There are two possible explanations for this state of affairs. One explanation is that due to their voluntary nature, the Virginia guidelines do not provide sufficient control over the sentencing process. A second explanation is that the list-style lacks the subsets of similarly situated offenders that encourage judges to treat like offenders in the same way. Intertwined with the second reason is the fact that the Virginia list contains many overlapping variables than mean that there are a huge number of ways to get the same number of points – not all of which are equal in the judges' mind.

Table 6A-1: Prison/No Prison Model – Fraud

Section A Variable	Coef.	Robust Std. Err.	z	P>|z|	Probability Change*	Mean
Section A Variables (with point values)						
Primary Offense						
1	-1.505	0.164	-9.160	0.000		0.103
3	-1.453	0.147	-9.890	0.000		0.245
4	-1.585	0.145	-10.890	0.000		0.264
5	-1.410	0.159	-8.870	0.000		0.098
6	-1.307	0.175	-7.490	0.000		0.096
7	0.467	1.001	0.470	0.641		0.001
8	-1.399	0.184	-7.590	0.000		0.042
11	-1.145	0.174	-6.570	0.000		0.047
Additional Counts						
1	0.528	0.153	3.450	0.001	0.04	0.042
Addiitonal Offenses						
1	0.320	0.077	4.160	0.000	0.02	0.176
2	0.484	0.094	5.170	0.000	0.04	0.082
3	0.655	0.161	4.070	0.000	0.06	0.030
4	0.720	0.132	5.430	0.000	0.07	0.056
Prior Convictions						
1	-0.229	0.130	-1.760	0.078	-0.01	0.159
2	0.008	0.146	0.060	0.956	0.00	0.097
3	0.136	0.145	0.940	0.348	0.01	0.098
4	0.319	0.169	1.890	0.059	0.02	0.050
5	0.603	0.144	4.180	0.000	0.05	0.230
Prior Felony Property						
1	0.006	0.089	0.070	0.947	0.00	0.183
3	0.155	0.110	1.410	0.158	0.01	0.073
4	0.124	0.195	0.640	0.525	0.01	0.018
5	0.386	0.107	3.610	0.000	0.03	0.102
Prior Misdemeanor						
1	0.054	0.094	0.570	0.567	0.00	0.320
2	0.140	0.110	1.280	0.202	0.01	0.150
3	0.233	0.108	2.170	0.030	0.01	0.191
Prior Incarceration						
3	0.216	0.095	2.280	0.023	0.01	0.505
Prior Revocations						
3	0.147	0.072	2.050	0.040	0.01	0.214
Prior Juvenile						
1	0.227	0.085	2.660	0.008	0.01	0.103
Legally Restrained						
4	0.087	0.073	1.200	0.232	0.00	0.222
9	0.434	0.082	5.310	0.000	0.03	0.166
Prison Threshold						
	0.949	0.112	8.480	0.000	0.11	

Extra-Guideline Factors

Sex and Race						
Black Male	-0.051	0.075	-0.680	0.495	0.00	0.272
Black Female	-0.282	0.085	-3.300	0.001	0.00	0.189
White Female	-0.277	0.081	-3.430	0.001	-0.01	0.241
Region						
Near DC	0.034	0.094	0.360	0.716	0.00	0.119
Southeast	-0.043	0.074	-0.580	0.562	0.00	0.217
Richmond	-0.019	0.089	-0.210	0.830	0.00	0.134
Constant	-0.756	0.102	-7.430	0.000		

**Probability change is calculated as the change from the baseline. The baseline is the constant plus the mean values of the points for the primary offense (Baseline Probability of Prison = .02)*

Goodness of Fit -- Fraud Selection Equation

	Wald Block Tests		
Sets of Variables	**Chi Sq.**	**df**	**p-value**
Primary Offense	129.34	8	0.000
Additional Counts	11.90	1	0.001
Additional Offenses	58.01	4	0.000
Prior Convictions	62.39	5	0.000
Other Felony Property	17.58	4	0.001
Prior Misdemeanor	6.74	3	0.081
Prior Incarcerations	5.19	1	0.023
Prior Revocations	4.21	1	0.040
Prior Juvenile	7.08	1	0.008
Legally Restrained	30.69	2	0.000
Prison Threshold	71.95	1	0.000
Extra Guideline Factors	19.39	6	0.004
Sex and Race	18.91	3	0.000
Sentencing Circuit	0.61	3	0.894

Percent Correctly Predicted	
Null Model	68.0%
Augmented Model	81.8%
PRE	78.8%
% Correct No Prison	91.8%
% Correct Prison	53.2%

Table 6A-2: Prison Length Model – Fraud

Section C Variable	Coef.	Robust Std. Error	z	P>|z|	% Change	Mean
Section C Variables (with points)						
Primary Offense						
1-6	-0.639	0.083	-7.660	0.000		0.144
7	-0.582	0.083	-7.040	0.000		0.149
8	-0.623	0.086	-7.210	0.000		0.076
9	-0.528	0.087	-6.080	0.000		0.109
10	-0.509	0.085	-5.990	0.000		0.098
11-12	-0.472	0.095	-4.960	0.000		0.054
13-14	-0.382	0.087	-4.380	0.000		0.092
15+	-0.078	0.087	-0.900	0.371		0.184
Additional Counts						
1	-0.016	0.048	-0.320	0.747	-2%	0.056
Addiitonal Offenses						
1	-0.018	0.031	-0.580	0.561	-2%	0.165
2	0.026	0.048	0.550	0.582	3%	0.065
3	-0.016	0.049	-0.330	0.740	-2%	0.044
Prior Convictions						
1	-0.148	0.046	-3.210	0.001	-14%	0.057
2	-0.117	0.033	-3.500	0.000	-11%	0.117
3	-0.076	0.051	-1.510	0.130	-7%	0.063
4	-0.039	0.036	-1.100	0.270	-4%	0.146
Prior Felony Fraud						
1	0.071	0.039	1.820	0.069	7%	0.090
2	0.074	0.043	1.720	0.086	8%	0.088
3	0.088	0.042	2.100	0.036	9%	0.080
4	0.204	0.083	2.470	0.014	23%	0.028
5	0.102	0.061	1.670	0.096	11%	0.029
6	0.238	0.075	3.180	0.001	27%	0.022
7	0.277	0.105	2.640	0.008	32%	0.015
8	0.240	0.035	6.870	0.000	27%	0.146
Prior Juvenile						
4	0.073	0.032	2.250	0.024	8%	0.202
On parole						
5	0.065	0.026	2.500	0.012	7%	0.417
Departure						
Aggravating	0.657	0.062	10.670	0.000	93%	0.085
Mitigating	-0.567	0.058	-9.750	0.000	-43%	0.049

Extra-Guideline Factors						
Trial	0.110	0.070	1.580	0.113	12%	0.076
Sex and Race						
Black Males	-0.011	0.034	-0.310	0.757	-1%	0.315
Black Females	0.030	0.038	0.790	0.428	3%	0.140
White Women	-0.065	0.039	-1.670	0.096	-6%	0.192
Region						
Region 1	-0.002	0.045	-0.040	0.969	0%	0.127
Region 5	-0.007	0.034	-0.220	0.827	-1%	0.203
Region 6	0.031	0.046	0.670	0.505	3%	0.121
Constant	3.487	0.088	39.740	0.000		
lambda	-0.176	0.045		#		
Number of obs	3343					
Censored obs	2472					
Uncensored obs	871					
LR Test of Independence(Chi Sq with 1 df)			15.34	0.00		

	Wald Block Tests		
Sets of Variables	**Chi Sq.**	**df**	**p-value**
Primary Offense	258.40	8	0.000
Additional Counts	0.10	1	0.752
Additional Offenses	0.91	3	0.823
Prior Convictions	19.12	4	0.001
Prior Felony Fraud	55.07	8	0.000
Prior Juvenile	5.08	1	0.024
On Parole	6.25	1	0.012
Departure	221.78	2	0.000
Extra Legal	7.53	7	0.376
Trial	2.51	1	0.113
Sex and Race	5.15	3	0.161
Sentencing Circuit	0.57	3	0.903
R2 -- Full Model	33.4%		

Table 6A-3: Prison/No Prison Model – Larceny

Variable	Coef.	Robust Std. Err.	z	P>|z|	Probability Change*	Mean
Section A Variables (with point values)						
Primary Offense						
1	-2.225	0.129	-17.270	0.000		0.230
3	-1.914	0.116	-16.490	0.000		0.502
4	-1.320	0.174	-7.570	0.000		0.017
5	-1.480	0.134	-11.050	0.000		0.097
6	-1.638	0.139	-11.820	0.000		0.059
7	-1.402	0.229	-6.110	0.000		0.017
10	-1.052	0.294	-3.580	0.000		0.006
11	-1.148	0.265	-4.340	0.000		0.007
Additional Counts						
1	0.214	0.246	0.870	0.383	0.013	0.005
2	0.403	0.222	1.820	0.069	0.030	0.008
3	0.761	0.606	1.260	0.209	0.079	0.001
4	0.166	0.303	0.550	0.585	0.010	0.004
5	1.061	0.501	2.120	0.034	0.142	0.003
Addiitonal Offenses						
1	0.345	0.067	5.190	0.000	0.024	0.133
2	0.634	0.112	5.660	0.000	0.059	0.047
3	0.617	0.165	3.750	0.000	0.056	0.014
4-5	0.708	0.191	3.700	0.000	0.070	0.011
Prior Convictions						
1	-0.213	0.109	-1.950	0.051	-0.008	0.182
2	-0.237	0.136	-1.740	0.082	-0.009	0.069
3	-0.255	0.115	-2.230	0.026	-0.010	0.137
4	0.168	0.113	1.490	0.136	0.010	0.282
Prior Felony Larceny						
2	0.263	0.071	3.720	0.000	0.017	0.149
3	0.533	0.076	7.010	0.000	0.045	0.120
4	0.597	0.093	6.420	0.000	0.053	0.073
Other Felony Property						
1	0.251	0.056	4.460	0.000	0.016	0.201
2	0.477	0.094	5.090	0.000	0.038	0.053
Other Felony Person						
1	0.441	0.075	5.850	0.000	0.034	0.079
2	0.831	0.117	7.110	0.000	0.092	0.037
Prior Misdemeanor						
1	0.103	0.086	1.200	0.229	0.006	0.351
2	0.194	0.098	1.980	0.047	0.012	0.172
3	0.506	0.099	5.090	0.000	0.041	0.180
Prior Incarcerations/Commitments						
5	0.212	0.096	2.210	0.027	0.013	0.585
Prior Juvenile Record						
1	0.173	0.060	2.910	0.004	0.010	0.160
Legally Restrained						
1	0.222	0.062	3.590	0.000	0.014	0.272
2	0.500	0.065	7.730	0.000	0.041	0.208
Amount of Embezzlement						
3	0.298	0.303	0.980	0.325	0.020	0.013
6	0.494	0.193	2.560	0.010	0.040	0.013
9	0.810	0.268	3.020	0.003	0.088	0.005
Prison Threshold						
	0.836	0.083	10.040	0.000	0.093	0.390

Extra-Guideline Factors						
Sex and Race						
Black Man	-0.030	0.053	-0.570	0.572	-0.001	0.373
Black Female	-0.318	0.079	-4.030	0.000	-0.011	0.143
White Female	-0.370	0.082	-4.490	0.000	-0.012	0.147
Region						
Near DC	-0.009	0.072	-0.120	0.905	0.000	0.123
Southeast	-0.037	0.058	-0.640	0.519	-0.002	0.216
Richmond	-0.076	0.072	-1.060	0.291	-0.003	0.141
Constant	-0.273	0.086	-3.170	0.002		

**Probability change is calculated as the change from the baseline. The baseline is the constant plus the mean values of the points for the primary offense (Baseline Probability of Prison = .02)*

Goodness of Fit -- Larceny Selection Equation

	Wald Block Tests		
Sets of Variables	**Chi Sq.**	**df**	**p-value**
Primary Offense	339.15	8	0.000
Additional Counts	8.18	5	0.147
Additional Offenses	65.91	4	0.000
Prior Convictions	52.05	4	0.000
Prior Felony Larceny	62.38	3	0.000
Other Felony Property	35.32	2	0.000
Other Felony Person	74.26	2	0.000
Prior Misdemeanor	45.87	3	0.000
Prior Incarcerations	4.88	1	0.027
Prior Juvenile	8.48	1	0.004
Legally Restrained	60.71	2	0.000
Amount of Embezz.	14.78	3	0.002
Prison Threshold	100.86	1	0.000
Extra Guideline Factors	35.21	6	0.000
Sex and Race	33.64	3	0.000
Sentencing Circuit	1.30	3	0.729

Percent Correctly Predicted	
Null Model	67.6%
Augmented Model	84.0%
PRE	50.6%
% Correct No Prison	91.4%
% Correct Prison	63.1%

Table 6A-4: Prison Length Model – Larceny

Variable	Coef.	Robust Std. Error	z	P>|z|	% Change	Mean
Section C Variable (with point values)						
Primary Offense						
1-6	-0.286	0.068	-4.220	0.000		0.086
7	-0.189	0.066	-2.850	0.004		0.162
8-9	-0.172	0.074	-2.310	0.021		0.051
10	-0.169	0.069	-2.440	0.015		0.106
11-14	-0.037	0.067	-0.550	0.585		0.187
15-22	0.066	0.070	0.950	0.342		0.128
28	0.355	0.076	4.670	0.000		0.064
29+	0.592	0.084	7.010	0.000		0.048
Additional Counts						
1	0.140	0.132	1.060	0.289	15%	0.004
2	-0.108	0.108	-1.000	0.320	-10%	0.010
Addiitonal Offenses						
1	-0.011	0.031	-0.350	0.730	-1%	0.107
2	0.027	0.043	0.640	0.524	3%	0.054
3	0.183	0.059	3.090	0.002	20%	0.035
5	0.067	0.096	0.700	0.483	7%	0.009
Prior Convictions						
1	-0.122	0.034	-3.610	0.000	-11%	0.110
2	-0.113	0.032	-3.580	0.000	-11%	0.116
3	-0.084	0.025	-3.380	0.001	-8%	0.178
Prior Felony Larceny						
1	-0.038	0.032	-1.180	0.239	-4%	0.212
2	-0.053	0.035	-1.520	0.129	-5%	0.148
3	-0.066	0.038	-1.740	0.081	-6%	0.101
4	0.051	0.036	1.390	0.165	5%	0.175
Prior Felony Property						
1	0.014	0.029	0.480	0.628	1%	0.160
2	0.033	0.027	1.220	0.224	3%	0.160
Prior Felony Person						
2	-0.069	0.030	-2.320	0.020	-7%	0.145
4	-0.014	0.046	-0.300	0.761	-1%	0.046
6	0.103	0.062	1.670	0.096	11%	0.027
Prior Felony Drug						
1	0.051	0.023	2.220	0.027	5%	0.211
2	0.114	0.054	2.110	0.035	12%	0.033
3	0.192	0.055	3.500	0.000	21%	0.032
Prior Juvenile						
3	0.066	0.024	2.790	0.005	7%	0.259
Legally Restrained						
3	-0.004	0.031	-0.120	0.907	0%	0.261
4	-0.009	0.029	-0.300	0.761	-1%	0.391
Amount of Embezzelment						
24	0.575	0.149	3.860	0.000	78%	0.006
30	1.322	0.133	9.940	0.000	275%	0.003
Departure						
Aggravating	0.454	0.050	9.020	0.000	57%	0.152
Mitigating	-0.601	0.053	-11.380	0.000	-45%	0.034

Extra-Guideline Factors						
Trial	0.100	0.031	3.240	0.001	11%	0.153
Sex and Race						
Black Male	0.023	0.027	0.850	0.393	2%	0.457
Black Female	0.000	0.043	-0.010	0.994	0%	0.092
White Female	0.106	0.049	2.160	0.031	11%	0.083
Region						
Near DC	0.045	0.036	1.230	0.219	5%	0.131
Southeast	-0.068	0.031	-2.220	0.026	-7%	0.214
Richmond	0.016	0.037	0.440	0.663	2%	0.125
Constant	3.227	0.067	48.210	0.000		
lambda	-0.193	0.028				
Number of obs	5494					
Censored obs	4052					
Uncensored obs	1442					
LR Test of Independence(Chi Sq with 1 df)			49.48	0.00		

	Wald Block Tests		
Sets of Variables	**Chi Sq.**	**df**	**p-value**
Primary Offense	266.31	8	0.000
Additional Counts	2.21	2	0.331
Additional Offenses	10.63	4	0.031
Prior Convictions	23.72	3	0.000
Prior Felony Larceny	15.1	4	0.004
Prior Felony Property	1.5	2	0.472
Prior Felony Person	11.3	3	0.010
Prior Felony Drug	8.09	3	0.044
Prior Juvenile	7.76	1	0.005
Leggally Restrained	0.11	2	0.946
Amount of Embezz	110.52	2	0.000
Departure	220.02	2	0.000
Extra Legal	26.78	7	0.000
Trial	10.48	1	0.001
Sex and Race	5.11	3	0.164
Sentencing Circuit	8.83	3	0.032
R2 -- Full Model	31.5%		

Table 6A-5: Prison/No Prison Model – Narcotics

Variable	Coef.	Robust Std. Err.	z	P>|z|	Probability Change*	Mean
Section A Variables (with points)						
Primary Offense						
1	-1.730	0.078	-22.190	0.000		0.554
3	-1.390	0.122	-11.420	0.000		0.035
8-12	-1.804	0.185	-9.750	0.000		0.011
13	-1.280	0.126	-10.190	0.000		0.023
14+	-0.752	0.066	-11.430	0.000		0.234
Additional Counts						
1	0.100	0.216	0.460	0.643	0.006	0.007
2	-0.075	0.421	-0.180	0.860	-0.004	0.001
3-5	0.175	0.205	0.860	0.392	0.011	0.007
Addiitonal Offenses						
1	0.313	0.071	4.410	0.000	0.023	0.079
2	0.491	0.176	2.790	0.005	0.043	0.016
3	1.290	0.358	3.600	0.000	0.215	0.003
4	0.360	0.153	2.350	0.019	0.028	0.013
5	0.495	0.197	2.510	0.012	0.043	0.008
Knife or Firearm in Poss.						
2	0.724	0.140	5.190	0.000	0.078	0.038
Mandatory Firearm						
7	1.727	0.350	4.930	0.000	0.369	0.015
Prior Felony Convictions						
1	0.170	0.075	2.260	0.024	0.011	0.179
2	0.462	0.081	5.700	0.000	0.039	0.125
3	0.810	0.075	10.750	0.000	0.094	0.195
Prior Incarcerations						
2	0.132	0.058	2.270	0.023	0.008	0.564
Prior Felony Drug						
1	0.098	0.058	1.680	0.093	0.006	0.263
2	0.477	0.097	4.920	0.000	0.041	0.056
3	0.717	0.188	3.810	0.000	0.077	0.011
4	0.630	0.163	3.880	0.000	0.062	0.009
Prior Juvenile Record						
1	0.145	0.051	2.820	0.005	0.009	0.176
Legally Restrained						
1	0.144	0.051	2.810	0.005	0.009	0.265
4	0.454	0.061	7.460	0.000	0.038	0.176
Two or More Prior Fel						
2	0.110	0.073	1.510	0.131	0.007	0.113
Prison Threshold						
	0.836	0.063	13.190	0.000	0.099	0.393

Extra-Guideline Factors

Sex and Race						
Black Males	0.105	0.050	2.090	0.037	0.006	0.582
Black Females	-0.147	0.084	-1.750	0.080	-0.007	0.089
White Women	-0.200	0.097	-2.060	0.040	-0.009	0.076
Region						
Region 1	0.023	0.062	0.370	0.711	0.001	0.116
Region 5	-0.159	0.051	-3.100	0.002	-0.007	0.253
Region 6	-0.044	0.063	-0.700	0.486	-0.002	0.139
Constant	-0.722	0.066	-11.020	0.000		

**Probability change is calculated as the change from the baseline. The baseline is the constant plus the mean values of the points for the primary offense (Baseline Probability of Prison = .023)*

Goodness of Fit -- Narcotics Selection Equation

	Wald Block Tests		
Sets of Variables	**Chi Sq.**	**df**	**p-value**
Primary Offense	509.70	5	0.000
Additional Counts	0.98	3	0.806
Additional Offenses	46.52	5	0.000
Knife or Firearm	26.90	1	0.000
Mandatory Firearm	24.28	1	0.000
Prior Felony Convictions	149.43	3	0.000
Prior Incarcerations	5.13	1	0.024
Prior Felony Drug	38.49	4	0.000
Prior Juvenile	7.97	1	0.005
Legally Restrained	57.02	2	0.000
Two or More	2.28	1	0.131
Prison Threshold	173.95	1	0.000
Prior Record	319.39	12	0.000
Extra Guideline Factors	30.97	6	0.000
Sex and Race	10.99	3	0.012
Sentencing Circuit	5.22	3	0.156

Percent Correctly Predicted	
Null Model	67.7%
Augmented Model	84.5%
PRE	52.0%
% Correct No Prison	91.4%
% Correct Prison	65.9%

Table 6A-6: Prison Length Model – Narcotics

Variable	Coef.	Robust Std. Error	z	P>|z|	% Change	Mean
Section C Variables (with points)						
Primary Offense						
1-5	-0.679	0.062	-10.960	0.000		0.099
6-10	-0.578	0.062	-9.310	0.000		0.080
11-15	-0.538	0.057	-9.500	0.000		0.292
16-18	-0.407	0.064	-6.390	0.000		0.077
19-21	-0.235	0.068	-3.430	0.001		0.049
22-35	-0.133	0.063	-2.100	0.036		0.082
36-59	0.175	0.063	2.760	0.006		0.104
60+	0.601	0.073	8.270	0.000		0.080
Additional Counts						
1	-0.136	0.113	-1.210	0.227	-13%	0.005
5	0.195	0.073	2.690	0.007	22%	0.016
Addiitonal Offenses						
1	0.101	0.027	3.730	0.000	11%	0.143
2	0.156	0.051	3.030	0.002	17%	0.040
4	0.213	0.077	2.750	0.006	24%	0.005
5	0.159	0.048	3.300	0.001	17%	0.036
Firearm in Possession						
5	0.536	0.045	11.820	0.000	71%	0.078
Prior Convictions						
1	-0.043	0.038	-1.140	0.254	-4%	0.065
2	-0.002	0.037	-0.050	0.959	0%	0.064
3	0.024	0.041	0.580	0.562	2%	0.039
4	-0.029	0.027	-1.090	0.278	-3%	0.132
Prior Felony Drug						
2	0.044	0.024	1.780	0.075	4%	0.195
3	0.095	0.029	3.290	0.001	10%	0.125
5	0.151	0.032	4.710	0.000	16%	0.078
7	0.278	0.042	6.620	0.000	32%	0.044
8-10	0.267	0.040	6.740	0.000	31%	0.051
Prior Felony Person						
3	0.103	0.029	3.500	0.000	11%	0.118
6	0.159	0.044	3.600	0.000	17%	0.031
9	0.177	0.106	1.670	0.096	19%	0.011
12	0.344	0.076	4.530	0.000	41%	0.008
Felony Property						
1	0.032	0.024	1.310	0.189	3%	0.188
2	0.032	0.047	0.690	0.487	3%	0.032
3	0.103	0.028	3.690	0.000	11%	0.080
Prior Juvenile						
1	0.030	0.020	1.490	0.137	3%	0.282
Legally Restrained						
3	0.039	0.022	1.760	0.078	4%	0.588
Sale/Quantity Cocaine						
36	0.749	0.050	14.920	0.000	112%	0.035
60	1.149	0.104	11.090	0.000	215%	0.008

Departure						
Aggravating	0.366	0.035	10.390	0.000	44%	0.177
Mitigating	-0.577	0.043	-13.520	0.000	-44%	0.067
Extra-Guideline Factors						
Trial	0.151	0.024	6.350	0.000	16%	0.217
Sex and Race						
Black Male	-0.021	0.030	-0.690	0.491	-2%	0.696
Black Female	-0.055	0.044	-1.250	0.213	-5%	0.057
White Female	-0.083	0.056	-1.480	0.139	-8%	0.042
Region						
Region 1	0.020	0.031	0.650	0.517	2%	0.219
Region 5	0.036	0.028	1.300	0.195	4%	0.131
Region 6	-0.027	0.031	-0.890	0.371	-3%	0.075
Constant	3.440	0.064	53.630	0.000		
lambda	-0.218	0.019				
Number of obs	7269					
Censored obs	5415					
Uncensored obs	1854					
LR Test of Independence			106.27	0		

Wald Block Tests

Sets of Variables	Chi Sq.	df	p-value
Primary Offense	1201.62	8	0.000
Additional Counts	8.71	2	0.013
Additional Offenses	34.50	4	0.000
Firearm in Possession	139.74	1	0.000
Prior Convictions	2.89	4	0.576
Prior Felony Drug	78.52	5	0.000
Prior Felony Person	33.36	4	0.000
Felony Property	13.70	3	0.003
Prior Juvenile	2.21	1	0.137
Legally Restrained	3.10	1	0.078
Sale Cocaine	336.03	2	0.000
Departure	304.48	2	0.000
Extra Legal	49.03	7	0.000
Trial	40.32	1	0.000
Sex, Race	3.09	3	0.378
Sentencing Circuit	3.56	3	0.313
R2 -- Full Model	37.1%		

Table 6A-7: Prison/No Prison Model – Robbery

Variable	Coef.	Robust Std. Err.	z	P>|z|	Probability Change*	Mean
Section A Variables						
Primary Offense						
1	-2.151	0.368	-5.840	0.000		0.105
2	-1.747	0.396	-4.410	0.000		0.110
4	-1.751	0.455	-3.850	0.000		0.110
6	-1.864	0.437	-4.260	0.000		0.571
Additional Counts						
2	0.144	0.190	0.760	0.450	0.046	0.149
Addiitonal Offenses						
2	0.816	0.148	5.520	0.000	0.302	0.510
Weapon						
1	-0.192	0.199	-0.970	0.334	-0.055	0.155
3	0.045	0.193	0.230	0.815	0.014	0.514
Victim Injury						
1	0.093	0.182	0.510	0.608	0.029	0.567
2	0.445	0.231	1.920	0.054	0.156	0.183
3	-0.209	0.460	-0.450	0.649	-0.059	0.029
Prior Convictions						
1	0.367	0.165	2.220	0.026	0.126	0.520
Prior Incarcerations						
1	0.481	0.160	3.010	0.003	0.169	0.574
Prior Juvenile Record						
1	-0.488	0.136	-3.600	0.000	-0.122	0.337
Legally Restrained						
1	0.102	0.144	0.710	0.478	0.033	0.470
Prison Threshold						
	1.494	0.342	4.370	0.000	0.545	0.839
Extra-Guideline Factors						
Sex and Race						
Black Male	-0.189	0.142	-1.330	0.183	-0.054	0.667
Black Female	-0.264	0.285	-0.930	0.355	-0.073	0.040
White Female	-0.328	0.274	-1.200	0.232	-0.088	0.036
Region						
Near DC	0.242	0.178	1.360	0.174	0.080	0.141
Southeast	-0.010	0.154	-0.070	0.947	-0.003	0.222
Richmond	-0.045	0.184	-0.250	0.806	-0.014	0.116
Constant	0.948	0.245	3.870	0.000		

Goodness of Fit -- Robbery Selection Equation

	Wald Block Tests		
Sets of Variables	**Chi Sq.**	**df**	**p-value**
Primary Offense	38.22	4	0.000
Counts/Add Off.	0.57	1	0.450
Additional Offenses	30.50	1	0.000
Weapon	1.67	2	0.434
Victim Injury	5.60	3	0.133
Prior Convictions	4.94	1	0.026
Prior Incarcerations	9.03	1	0.003
Prior Juvenile	12.99	1	0.000
Legally Restrained	0.50	1	0.480
Prison Threshold	19.11	1	0.000
Extra Guideline Factors	4.51	6	0.608
Sex and Race	2.48	3	0.479
Urban Courts	2.23	3	0.526

Percent Correctly Predicted	
Null Model	84.3%
Augmented Model	88.5%
PRE	26.7%
% Correct No Prison	29.5%
% Correct Prison	98.2%

Table 6A-8: Prison Length Model – Robbery

Variable	Coef.	Robust Std. Error	z	P>|z|	% Change	Mean
Section C Variables (with point values)						
Primary Offense						
1-20	-1.239	0.142	-8.730	0.000		0.038
21-38	-0.774	0.122	-6.330	0.000		0.143
39-58	-0.289	0.116	-2.480	0.013		0.157
59-64	-0.188	0.115	-1.640	0.102		0.141
65-92	0.194	0.121	1.610	0.107		0.122
93-128	0.357	0.123	2.920	0.004		0.092
129-168	0.547	0.123	4.440	0.000		0.093
169+	0.930	0.127	7.350	0.000		0.104
Additional Counts						
5	0.150	0.188	0.800	0.425	16%	0.014
19	0.262	0.105	2.500	0.013	30%	0.018
Addiitonal Offenses						
1	-0.080	0.032	-2.480	0.013	-8%	0.151
2	-0.075	0.106	-0.710	0.479	-7%	0.026
5	0.032	0.056	0.570	0.568	3%	0.058
10	0.149	0.064	2.340	0.019	16%	0.052
14	-0.005	0.229	-0.020	0.984	0%	0.004
19	0.181	0.083	2.190	0.029	20%	0.016
Weapon Used						
7	-0.055	0.096	-0.570	0.567	-5%	0.043
9	0.164	0.054	3.030	0.002	18%	0.049
16	0.377	0.103	3.670	0.000	46%	0.001
Prior Incarceration						
7	0.071	0.036	1.960	0.050	7%	0.590
Legally Restrained						
5	0.081	0.032	2.540	0.011	8%	0.503
Prior Juvenile						
8	0.119	0.032	3.710	0.000	13%	0.330
Victim Injury						
2	0.119	0.071	1.670	0.095	13%	0.048
6	0.247	0.049	5.080	0.000	28%	0.134
23	0.414	0.093	4.440	0.000	51%	0.023
Prior Conviction						
1	0.005	0.052	0.100	0.922	1%	0.036
3	-0.095	0.053	-1.780	0.074	-9%	0.038
5	0.012	0.052	0.230	0.821	1%	0.065
6	0.074	0.078	0.940	0.345	8%	0.015
23	0.032	0.055	0.590	0.553	3%	0.098
Prior Felony Person						
3	-0.067	0.046	-1.450	0.146	-7%	0.121
7	0.108	0.053	2.060	0.040	11%	0.070
10	0.130	0.063	2.080	0.038	14%	0.087

Kidnapping						
57	-0.441	0.086	-5.130	0.000	-36%	0.001
Departure						
Aggravating	0.367	0.086	4.270	0.000	44%	0.114
Mitigating	-0.794	0.045	-17.720	0.000	-55%	0.202
Extra-Guideline Factors						
Trial	0.091	0.045	2.000	0.045	9%	0.214
Sex and Race						
Black Male	0.022	0.043	0.500	0.615	2%	0.668
Black Female	0.172	0.101	1.700	0.088	19%	0.036
White Female	-0.108	0.076	-1.410	0.158	-10%	0.031
Region						
Near DC	0.022	0.061	0.360	0.716	2%	0.143
Southeast	-0.070	0.045	-1.570	0.116	-7%	0.224
Richmond	0.020	0.052	0.380	0.704	2%	0.113
Constant	4.394	0.111	39.560	0.000		
lambda	-0.187	0.054				
Number of obs	928					
Censored obs	132					
Uncensored obs	796					
LR Test of Independence(Chi Sq with 1 df)			11.19	0.00		

Wald Block Tests

Sets of Variables	Chi Sq.	df	p-value
Primary Offese	897.52	8	0.000
Additional Counts	7.04	2	0.030
Additional Offenses	21.91	6	0.001
Weapon Used	24.79	3	0.000
Prior Incarceration	3.83	1	0.050
Legally Restrained	6.44	1	0.011
Prior Juvenile	13.77	1	0.000
Victim Injury	41.06	3	0.000
Prior Conviction	4.90	5	0.428
Prior Felony Person	11.70	3	0.008
Kidnapping	26.31	1	0.000
Departure	370.90	2	0.000
Extra Legal	15.54	7	0.030
Trial	4.01	1	0.045
Sex and Race	6.21	3	0.102
Sentencing Circuit	3.77	3	0.287
R2 -- Full Model	57.0%		

CHAPTER 7: CONCLUSIONS AND POLICY IMPLICATIONS

PURPOSE OF THE CURRENT RESEARCH

Seminal to American jurisprudence is the importance of every case receiving individual attention and review by a judge. Understanding the issues in dispute is essential for a judge to make a correct decision and for litigants to know they are receiving adequate treatment and services from the court. To achieve this goal, judicial discretion is required; judges have the latitude to make fine distinctions in how they handle cases both in scanning sources of information and in weighing different elements. Yet, judicial discretion is not a perfect good. With no constraints or monitoring, extra-legal elements, such as age, gender and race, might possibly influence judicial decision-making and thereby skew decisions and orders in a discriminatory manner against the rights and interests of some litigants. As a result, the pursuit of rendering individual attention to cases, which many observers regard as the essence of justice, calls for a balancing of discretion and some form of controlling judicial decision-making. Nowhere is this creative tension more visible than in the critically important area of criminal sentencing.

Experts agree the process of sentencing has undergone fundamental changes during the past several decades as policy makers following and sometimes leading their constituencies have enacted a variety of ways to direct judicial decision making on the issues of who is sentenced to prison and the length of prison terms. Policies popularly known as, three strikes, truth-in-sentencing and mandatory minimum imprisonment, have taken hold in some states, but a more widespread and substantial modification is the introduction of sentencing guidelines in at least 20 states and the District of Columbia. Frequently accompanied by the creation of independent commissions to maintain and refine operation, structured sentencing is now an integral feature of

the criminal justice landscape in the American states. Yet, despite the extensive interest by policy makers, judges, researchers and others in the general topic of criminal sentencing, the role of sentencing guidelines in achieving a balance between discretion and controlled decision making is still not fully understood either in the literature or in policy related discussions.

On the one hand, discussion of the consequences of guidelines in law reviews is based more on theoretical and insightful reasoning than on systematic data and, on the other hand, social science studies of sentencing seldom make guidelines a critical independent variable in accounting for possible differential outcomes. There is a growing and substantial literature on the extent to which social characteristics of offenders, especially race, account for why some offenders receive harsher sentences than others, but limited treatment on the extent to which these sorts of differentials occur or do not occur under alternative guideline structures. As a result, even though the literature on sentencing is well established and revolves around commonly agreed upon questions, the role of conscious, yet different, policy choices to control judicial discretion under guidelines has not been included in the equation.

The objective of the current research is to address questions concerning sentencing guidelines and what affect these institutional arrangements have on two types of sentencing decisions of research and policy interest. Who is sentenced to prison? What determines the length of time an offender is sentenced to prison?

One decision is whether to punish a defendant convicted of a felony offense with a prison sentence or to impose a less severe penalty, typically involving some combination of jail, probation, fines, work release, therapeutic treatment, and restitution. The choice between these alternatives is commonly known as the “in/out” decision. The second decision is aptly characterized as the prison length decision.

In examining these two decisions, the current research process asks the question, to what extent do sentencing guidelines contribute to desirable patterns in the two sets of sentencing decisions? Three values are most salient. They are consistency, proportionality and a lack of discrimination. Hence, the overarching research question is: Under the aegis of alternative sentencing guideline systems, to what degree are sentences *consistent*—like cases are treated alike— *proportional*—more serious offenders are punished more severely-- and *non-discriminatory*—age, gender and race are insignificant in who goes to prison and for how long.

To address this question, all states with sentencing guidelines are examined and three state systems are selected as representatives of alternative ways of configuring the control of judicial discretion. They are Minnesota, Michigan and Virginia, which vary along critical dimensions of the presumptive versus voluntary nature of guidelines as well as basic mechanics. Minnesota, for example, tends to have tighter ranges on recommended sentences for similarly situated offenders than Michigan and Virginia, and, Virginia employs a list-style scoring system to determine appropriate offender punishment in contrast to the use of sentencing grids in Minnesota and Michigan.

With these three communities under study, the current research aims to conduct a comparative examination of fairness and effectiveness in sentencing in American states with guideline structures. A statistical model is developed that reflects the essential characteristics of each guideline system and addresses the common question, to what degree does each system promote *consistency* and *proportionality* and minimize *discrimination*? The findings from this inquiry and their policy implications constitute the contribution of this analytical effort.

RECAPITULATION OF MAJOR FINDINGS

A Continuum of Sentencing Guidelines

Given the genius of American federalism, it is understandable that not all states have adopted sentencing guidelines and those enacting them have made different conscious policy decisions on their design and operation. In Chapter Two, 21 different systems are classified along a single dimension that permits them to be seen in comparative perspective. A scheme is created by assigning points to states based on answers to six questions concerning each state guideline's basic organizational aspects. The questions are: is there an enforceable rule related to guideline use, is completion of guideline worksheets required, does a sentencing commission monitor compliance, are compelling and substantial reasons required for departure, are written reasons required for departure and is appellate review allowed?

Interestingly and importantly, the group of 21 guideline states can be arrayed on a single continuum with one pole emphasizing highly voluntary systems and the other pole emphasizing highly presumptive guidelines. Because research interest is in determining the effects of guidelines, strictly voluntary systems are not suitable for the current analysis. However, the three states selected as research sites for the current research do vary with Minnesota the most presumptive system followed by Michigan and Virginia being the least presumptive of the three.

Hence, the first finding revolves around a descriptive account of the basic orientation of existing guideline systems. Simply stated, guidelines operate with variable organizational features but a common dimension is the extent their structure and process are mandatory. Some states have put in place guidelines that more tightly control discretionary choices by judges through the application of close monitoring, requiring reasons for departures from recommended sentences and vigorous appellate review than have other states.

Critical Elements of Guideline Systems

The design and operation of the three selected guideline systems are important to describe because their mechanics are incorporated into a statistical model for analysis purposes. Additionally, understanding why guidelines affect consistency, proportionality and non-discrimination requires knowing the elements that either makes them work or not work effectively.

Because the mechanics of guidelines involves detailed considerations and calculations, they are comprehended most easily by viewing them in comparative perspective along common characteristics. They include how key information on offense seriousness and prior record is handled, sentences are determined, sentencing ranges are established, departures from recommended sentences are permitted, appellate review is conducted, and time served. In Chapter Three, similarities and differences among the three sets of guidelines are drawn from those criteria.

Thus, a second finding begins with three elements common to all guidelines, the manner in which offenders are categorized as similarly situated. Three variable elements framing the categorization of offenders are found in all guideline systems. They are the basic statutory conviction offense, prior record (or criminal history) and specific offense conduct.

However, whereas all guidelines operate with these elements, they do so with different degrees of differentiation and complexity. For example, Minnesota uses 11 basic offense classifications, Michigan's system has 9 and Virginia operates with 15 offense groups. Even differences exist among the three states in terms of the specifics of the instant offense with Minnesota incorporating specific conduct into the presumptive sentence by imposing mandatory minimum sentences for select cases involving weapons or second/subsequent offenses. In

contrast, Michigan evaluates the specifics in terms of 20 possible variables, including use of a weapon, psychological injury to a victim, the intent to kill or injure, multiple victims and victim vulnerability. Virginia, on the other hand, has some offense variables relating to particular offenses (e.g., Burglary/Dwelling) and those (e.g., weapon type) that apply across several crime groups. In addition, some common conduct variables are scored differently for different crime groups.

Another important pattern is that Minnesota and Michigan operate with a grid system into which similarly situated offenders are placed whereas Virginia scores each individual offender across a range of variables in a worksheet format. Concerning recommended ranges, Michigan and Virginia have wide ranges and base them on past practices. In contrast, Minnesota has narrow ranges based on policy prescriptions concerning what is appropriate and desirable from the point of view of controlling correctional resources.

On the subject of departures, Virginia allows them with stated reasons, although they are not subject to appellate court review. In Minnesota, judges may depart by disclosing reasons for such action, but the Minnesota Court of Appeals may review their decisions. Michigan is similar to Minnesota. Finally, in Minnesota, offenders generally serve two thirds of their sentence, in Virginia it is at least 85% and in Michigan the parole board determines the sentence between the judicially imposed minimum, which is served in its entirety (100%), and the statutory maximum.

Therefore, based on organizational structure and process, differences among the three state guideline systems are plausibly linked to different sentencing outcomes. As a result, it is reasonable to expect differences in the extent to which each state's system promotes consistency and proportionality and minimizes discrimination. To determine whether those expectations

correspond to reality, it is next necessary to construct a way to model each system and then to apply the model.

A Statistical Model of Sentencing Guidelines

The current research's methodology is the subject matter of Chapter Four. As such, the Chapter does not contain findings, but this material necessitates highlighting to facilitate understanding of the subsequent results from the model's application. Hence, without engaging in a discussion of the model's technicalities, the basic logic is worth stating.

The dependent variables or phenomena to be explained are twofold and correspond to the two types of sentencing decisions. The first is the in/out decision and the second is the length of imprisonment. A statistical model is constructed to establish the relationship between each of these two dependent variables and two sets of independent variables or possible explanatory factors (1) measures of the essential elements and mechanics of each guideline system and (2) measures of extra-legal or more specifically extra-guideline factors.

The first set of independent variables is tailored to fit the unique features of each guideline system but they generally include multiple measures of the basic offense at conviction, prior record or criminal history, specific conduct surrounding the basic offense, the type of grid (Michigan and Minnesota) or score (Virginia) in which the offender is located, the offender's habitual offender (Michigan) or modifier (Minnesota) status, and the invocation or not of a departure from the recommended range by the sentencing judge.

The second set of independent variables include measures on the offender's age, race, gender, including combinations of age, race and gender, as well as the geographic region of the state (Are offenders in all parts of a state treated similarly?) and whether the offender chooses the

right to a trial instead of pleading guilty (Are offenders punished additionally for exercising this right?).

The model is applied in two ways using data containing measures of both the dependent variables (i.e., whether sentenced to prison and if so, for how long) and the independent variables on guideline elements for each state. First, the model predicts the two sentencing decisions for each offender given their individual information and how the elements and mechanics of each guideline system are intended to use that information in producing recommended sentences to a trial court judge. Estimates can be made whether the information and guideline elements call for imprisonment and if so, for how long for every individual offender. Using these estimates, tests are conducted to determine whether each guideline system achieves *consistency* and *proportionality*.

By comparing the estimates based on how the guideline should work with actual sentences, the degree of correspondence is a test of the guideline's overall consistency; the greater the correspondence between the predicted and the actual sentences, the greater the overall consistency of the guidelines.

Concerning proportionality, variables representing each aspect of guideline structure gauge whether they actually serve to differentiate more serious from less serious offenders along the lines envisioned by the guideline designers. Proportionality exists if the variables representing these elements are statistically significant and their magnitude increases congruently with their policy-designed level of seriousness. Such results indicate the increasing levels of seriousness are in fact viable categories and the increasing size of the coefficients indicates the intended imposition of progressively greater punishment is working.

Finally, by examining the coefficients associated with the extra-guideline variables, each system is interpretable as to whether it minimizes *discrimination* in sentencing. The potential influence of age, gender, race and their interactions with each other (e.g., young, black men) and other variables (e.g., state geographic regions) are examined in considerable detail to determine if guidelines are sufficiently successful in promoting consistency and proportionality to the point that discrimination is minimized.

Analytical Findings and Recommendations

The statistical models provide a technique to evaluate consistency, proportionality and non-discrimination in the application of the guidelines and whether they are employed as designed. Table 7-1 summarizes a number of key similarities and differences among the three sentencing systems.

Table 7-1: Comparing Minnesota, Michigan, and Virginia

			Virginia	
Comparative Factor	**Minnesota**	**Michigan**	**Assault**	**Burglary**
Sentencing Commisison	Active	Abolished	Active	
Guideline Type	Grid	Grid	List	
Number of "cells"	77	258	No cells	
Average Range within Cell	10-15%	50-67%	60-66%	
Degree of Cell Overlap	very low	high	high	
Percent to Prison	24%	16%	51%	49%
Average Prison Sentence	45.54	40.46	57.21	48.46
Truth in Sentencing	67%	100%	85%	
Departure Policy	Firm	Firm	Form Only	Form Only
Departure Frequency	High	Low	Moderate	Moderate
Departure Magnitude	Low	High	Moderate	Moderate
% Above	47.8%	121.0%	77.0%	42.0%
% Below	-29.1%	-48.5%	-55.0%	-55.0%
Proportionality	High	High	Low	Low
Percent Correctly Predicted	87.0%	89.9%	75.3%	81.4%
PRE	55.8%	45.8%	59.2%	68.5%
Percent Prison Correct	92.5%	99.0%	70.7%	83.6%
Percent No Prison Correct	69.5%	54.0%	80.1%	79.2%
Estimated R2	86.1%	67.2%	55.4%	49.3%
Hazard rate	Insignificant	Significant, Positive	Significant, Negative	Significant, Negative

Based on the statistical analysis, there is a battery of findings. First, the essential value of consistency is achieved in all three guideline systems based on the number of in/out decisions predicted correctly with Michigan registering the highest score (89.9%) followed by Minnesota (87%) and Virginia where 75% of the decisions for Assault offenses are correctly predicted and 81% in the case of Burglary. Similar degrees of success are exhibited by all three states on the Proportional Reduction in Error measure and the percentage of offenders sentenced to prison and those offenders not sentenced to prison, although the percentage of no prison predictions is

greater in Virginia than in either Minnesota or Michigan. Concerning the prison length decision, the estimated R^2 values suggest greater consistency in Minnesota (86.1%) than Michigan (67.2%), which in turn, is associated with a higher value than Virginia's 55% for Assault and 49% for Burglary Offenders.

Second, a challenge for all three systems lies in proportionality, where the underlying policy distinctions among different levels of offense seriousness and criminal history categories are not uniformly significant in determining the recommendation for a prison sentence or the length of a recommended prison sentence. In fact, in Virginia many of the individual categories do not register a statistically significant impact, although the cumulative scores across all the categories shape sentencing decisions as intended.

Third, in all three systems there is evidence of statistically significant impacts for some potentially discriminatory factors. With respect to Race, the variable of Young Black Males is statistically significant for the in/out decision in both Michigan and Minnesota, but the substantive impact in terms of increasing the probability of prison is minor. In Virginia, the variable of Black Male registers an 11% increase in sentence length for the Assault crime group; given the average sentence of around 50 months, this equates to a 5-6 month increase in average sentence. With respect to Sex, there are consistent findings across all three guidelines systems that female offenders are treated more leniently both with respect to the in/out decision as well as the prison length decision. Michigan is the only system that shows an age impact and it is relatively minor.

Turning to trial, there is a statistically significant trial tax in Minnesota (11%), Michigan (17%), and in Virginia for Burglary (11%). Each of these results has limited substantive impact. What is troubling, however, is the role that location plays in at least two of the sentencing

systems. Large urban courts in both Michigan and Minnesota are more lenient with respect to the in/out decision; that is, there is a lower probability of prison holding all other factors constant. In Michigan, the large urban courts reduce the average sentence by over 20% compared to their non-urban counterparts. No indication of either pattern is found in Virginia.

In both Minnesota and Michigan, guidelines are being used differently in urban courts; that is, there is a statistically different set of weights attached to the sentencing relevant factors. Looking at the substantive implications of these differences, the problem in Minnesota is negligible. However, in Michigan, there is evidence that the guidelines are being used in a substantially different fashion. In fact, there are differences of 25-35% in the average sentences after controlling for the sentencing guideline factors.

Looking at these facts, refinement and closer monitoring of the guidelines in each state seems appropriate to achieve greater excellence rather than overhauling their structure and organization. Reitz (2005) observes that "the most obvious mediating levers of sentencing authority—the trial courts' departure policy and the intensity of appellate review—are not the only factors that matter. Other critical factors include the breadth or narrowness of guideline ranges and the simplicity or complexity of factual considerations that must be fed into guideline considerations." Michigan and Virginia judges are given more latitude in setting sentence than in Minnesota, but more steps are necessary to reach a guideline sentence recommendation. The current analysis provides policy and managerial insight into the trade-offs surrounding more detailed guideline structure and the breadth of guideline ranges in achieving consistency and proportionality.

*Detailed Guideline Elements***.** For Minnesota and Michigan, this topic focuses on the number of grid cells. Conventional thinking might suggest the greater the number of sets of

similarly situated offenders, the greater the degree of consistency. However, this notion is not supported by the data from the current research. A primary reason is that the extensive overlap between the different grid cells in Michigan means the different sets of similarly situated offenders do not really "sort" the offenders into subsets that warrant different punishment. In a parallel manner, the finely grained detail given by the Virginia guidelines does little to achieve agreement by judges on exactly what elements should be the basis for sentencing decisions. Minnesota's more compact set of elements is a direction for the other states to consider.

More specifically, in Michigan, policy makers should examine consolidating some offense severity levels (i.e., E and F, and G and H), combining prior record levels A and B into a single category, and reducing the number of offense seriousness levels by perhaps the top three levels into Level IV. Incorporating this complete set of changes would reduce the number of guideline cells from 258 to 180 (9 x 4 x 5) and serve to reduce the number of moving parts by streamlining the guidelines to include only distinctions that make a difference. In addition, consideration should be given to reducing the number of straddle cells. When contemplating the use of straddle cells, the Michigan Sentencing Commission believed they were identifying sets of offenders with a 50/50 chance of receiving a prison sentence. Reducing their number would very likely increase the consistency of sentencing with respect of who goes to prison.

In Virginia, a substantial number of the decision-making elements warrant scrutiny. Only a minority of the elements designated for judicial consideration for either Assault or Burglary demonstrates intended judicial application. Consistency in outcomes presumes some commonality in the selection of elements and their emphasis. Without abandoning the rationale or structure of scoring, a thorough review is warranted.

From a policy perspective, one type of change is worth considering by the Sentencing Commission in Minnesota based upon the current research. A reduction in the number of severity levels, especially at the bottom of the grid seems appropriate. Over 67% of all offenders fall into severity Levels I, II, III, and IV, but these levels are not entirely distinguishable in terms of either the in/out or sentence length decisions.

Ranges. There are dramatic differences between the size of the ranges in the guideline systems. To compare the recommended ranges between the three systems, the cell range is divided by the midpoint of the range**.** In Minnesota the range as a percentage of the midpoint runs from 3.3% to 16% with most of the cells below 10%. In Michigan, the same analysis shows that (out of 258 cells) there is only one instance in which the ratio is below 50%. For Virginia, the size of the ranges is 60%-66% for Assault and Burglary. Michigan's original policy intent was to formulate ranges that encompass 75% of current practice and in Virginia the aim was to include the middle 50% of past practices, while in Minnesota the ranges are driven by policy and a desire to gain predictive control over prison capacity. Given the dramatic differences in the size of the choice set (absent a departure), it is not surprising that the three models have rather different levels of explanatory power (in terms of variance explained): 86% in Minnesota compared to 67% in Michigan and 53% (Assault) and 49% (Burglary) in Virginia.

The relative magnitude of the ranges is also the likely source for the differences in the departure rates for the three systems as well as the magnitude of departures. In Minnesota, a departure above increases the predicted sentence by 48% while a departure below decreases the sentence by 29%. In Michigan, a departure above increases the predicted sentence by 121% while a departure below decreases the sentence by 49%. In Virginia, departures above increase sentences by 77% and 42% for Assault and Burglary, respectively. Departures below result in

correspondingly in decreases of 55% for each offense. The greater differences in the size of the ranges means that in Minnesota a minimal increase gets "outside" the range while in Michigan and Virginia the large ranges mean that a judge must substantially increase the sentence to get outside the range. Part of the agenda of a sentencing commission or relevant policy-making body should be to review and adjust sentencing policy to minimize departures.

Finally, all guideline systems benefit from periodic assessment of current practice and the extent to which the guidelines are achieving articulated goals and effective sentencing outcomes. Established policies are no more vibrant and self-sustaining overtime than they are self-executing at inception. Given the initial purposeful and deliberative investment made by policy makers and commissions to guide sentencing, judges, attorneys and policy makers should reconvene and reexamine basic decision making elements and thereby solidify past and current gains and reorient future resources in the most profitable manner.

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