

CHAPTER III.

ASSESSMENT OF INDETERMINATE SENTENCING PRACTICES IN THE DISTRICT OF COUMBIA, 1996-2001

Section 6 of the Advisory Commission on Sentencing Establishment Act of 1998, as amended by the Sentencing Reform Amendment Act of 2000, provides, in pertinent part:

“(c) The Commission shall analyze the data provided to it by the Court and shall submit to the Council in the 2001 annual report:

“(2) An assessment of sentencing practices within the District of Columbia for August 5, 1996 to August 5, 2000.”

D.C. Official Code § 3-105(c).

This chapter reports on the Commission’s study of sentencing practices for crimes committed before August 5, 2000. First, in the section called “Recapitulation of Sentencing Laws,” we briefly review the sentencing laws in effect during this period. Next, “Assessment of Old Law Sentencing Practices” is an overview of number and type of sentences for all offenses committed before August 5, 2000 and sentenced during the period January 1996 through December 2001.¹ Following this discussion, the Commission assesses sentencing practices in the District of Columbia under the former indeterminate sentencing system, for crimes committed before August 5, 2000 in the section headed “Understanding Sentencing Outcomes.”

¹ In our view, the period from January 1996 through December of 2001 provides a more complete view of recent sentencing practice than the period August 5, 1996 to August 5, 2000. The January 1996 through December 2001 data allows a discussion of trends based on complete calendar years. The August 5, 2000 through December 2001 period captures a large number of indeterminate sentences for crimes committed before August 5, 2000. For these reasons, the Commission has taken the liberty of expanding the period under study. However, the data analysis for old law cases is stopped after December 31, 2001, despite a small number of old law cases that continue to be sentenced in 2002. The 2002 old law cases are atypical cases, usually complex cases and often far more serious than the average case. For example, on an annualized basis, there are twice as many murder sentences in 2002 than in prior years. Therefore, the 2002 cases are not representative of old law cases seen in Superior Court under the indeterminate sentencing law and are not reported here.

In the next chapter the focus shifts to an assessment of sentencing practice under the new determinate sentencing system for crimes committed on or after August 5, 2000.²

Recapitulation of Sentencing Laws 1996 through 2001

A brief recapitulation of sentencing laws is necessary before reviewing indeterminate sentencing practice. For crimes committed before August 5, 2000, indeterminate sentencing is in effect. When judges under this “old law” system impose a term of imprisonment, the sentence includes two numbers, the minimum term and the maximum term, which must be at least three times the minimum term. The paroling authority and corrections officials determine the actual release date within this range. Eventually, the offender re-enters the community under parole supervision. For a more detailed discussion of indeterminate sentencing in the District, consult the Commission’s 1999 Report, Criminal Sentencing Practice in the District of Columbia, 1993-1998. *Old law sentencing is still in effect for crimes committed before August 5, 2000, but as of 2001, the number of cases has been steadily declining, as old law cases are concluded and new law cases are initiated.*

Determinate sentencing is in effect for offenses committed on or after August 5, 2000. When a judge sentences an offender to prison under this “new law” system, the sentence includes a single number for the term of imprisonment, and the offender is required to serve at least 85% of this term. The judge must also impose a term of supervised release to follow the term of imprisonment. In addition, judges can now order periods of custody (e.g. nights or weekends), not to exceed a total of one year, as part of probationary sentences as an intermediate sanction,

² A more complete study of this topic will be completed next year, because relatively few cases have been sentenced under the new law to date. Data on serious violent crimes, arguably the most important category to review in depth, are only now beginning to accumulate, and at least one more year of data is needed to provide a valid assessment of these sentences, as discussed later in this chapter. There are, however, a sufficient number of new law drug cases for analysis at this time, which we present in Chapter IV.

similar to work-release D.C. Code § 16-710(b-1). It was well into 2001 before a significant number of determinate sentences were imposed.

The rest of the chapter assesses old law sentencing practices within the District of Columbia, as mandated by the Council.

Assessment of Old Law Sentencing Practices, January 1996 through December 2001

The previous chapter provided information on sentencing data and a statistical description of all felony sentences during the period January 1996 through June 2002. This section reviews only the indeterminate sentences (“old law”) in the D.C. Superior Court during the period January 1996 through December 2001.³

The sentences imposed (disposition) by major offense categories under the old law are quite similar to the figures shown in the previous chapter for all offenders. This is because the number of new law sentences is relatively small (1,994 cases through June 2002, or 15% of all cases collected during the period).

³ See footnote 1 regarding the choice of the period of study.

Tables 3-1 and 3-2 describe the type of sentence that offenders received by year of the sentencing for the 11,096 felony offenders who were convicted and sentenced under the old law. In 2000 and 2001, the number of cases is smaller than for the same years in Tables 3-1 and 3-2. The previous tables had a total of 13,524 cases for the entire period, but that number included 1,329 cases sentenced in 2002, which have been removed, and 1,099 new law cases that began entering the Superior Court records following implementation of the new law on August 5, 2000 through December 2001. Tables 3-1 and 3-2 demonstrate that old law cases are gradually being phased out in 2001, as cases for crimes committed before August 5, 2000 are concluded and a proportionately larger number of new law cases reach the sentencing stage. For old law cases, the proportions of offenders sentenced to some form of incarceration are quite similar to the overall percentages presented in the previous chapter. The types of crimes are also similar to those reported in Chapter II.

Table 3-1. Trends in Sentences Imposed on Felony Defendants Sentenced Under Old Law, by Type of Sentence Imposed (Number)

Year	Total sentenced		Incarceration				
	Number	Percent by Year	Total Incarceration	Incarceration only	Split	Probation	Other
1996	1635	14.7	1180	1040	140	426	29
1997	1778	16.0	1234	1024	210	522	22
1998	1972	17.8	1347	1117	230	603	22
1999	2129	19.2	1308	1061	247	806	15
2000	2246	20.2	1196	853	343	1042	8
2001	1336	12.0	784	600	184	546	6
Total	11096	100.0	7049	5695	1354	3945	102

Table 3-2. Trends in Sentences Imposed on Felony Defendants Sentenced Under Old Law, by Type of Sentence Imposed (Percent)

Year	Total sentenced	Incarceration				
		Total Incarceration	Incarceration only	Split	Probation	Other
1996	1635	72.2	63.6	8.6	26.1	1.8
1997	1778	69.4	57.6	11.8	29.4	1.2
1998	1972	68.3	56.6	11.7	30.6	1.1
1999	2129	61.4	49.8	11.6	37.9	0.7
2000	2246	53.3	38.0	15.3	46.4	0.4
2001	1336	58.7	44.9	13.8	40.9	0.4
Total	11096	63.5	51.3	12.2	35.6	0.9

For those offenders receiving a sentence to a period of incarceration, we have used the minimum term of the sentence to represent the length of the sentence.⁴ When the offender is convicted of multiple crimes, the case is listed under the most serious crime, and the sentence length is the aggregate sentence for all crimes sentenced on that day. Table 3-3a shows the sentence length for Seriousness Level 1 violent offenses such as murder and armed crimes of violence. The minimum sentence to incarceration for Level 1 violent offenses varied from a mean of 284 months in 1996 to 231 months in 2001. Looking solely at the mean sentence, it may appear that overall sentences are declining, however this impression is somewhat misleading. The arithmetic average, or mean, is strongly affected by a few atypically high or low values. The median sentence, the point at which 50% of sentences are above and below and a statistic not skewed by unusually long and short values, ranged from 120 months to 216 months, but exhibited no trend in one direction or the other during the period. There was also no discernible trend in the inter-quartile range, the middle 50% of sentences from the 25th percentile to the 75th percentile. For Level 1 violent crime over the full period, the middle 50% of offenders were sentenced to minimum terms of at least 72 months and not more than 360 months, with little or no clear trend. In summary, sentence lengths for Level 1 violent crimes generally exhibited little or no trend during the period.

⁴ It must be emphasized that the minimum term does not equate to the time the offender would be expected to serve in prison. Instead, the minimum term of incarceration represents the minimum time to be served on the sentence before parole eligibility. While the average offender served approximately 110% of the minimum sentence, some offenders served far more. For more information, see the Commission's 1999 Report, Sentencing Practice in the District of Columbia, 1993-1998.

Table 3-3a. Minimum Felony Sentence in Months for Old Law Violent Level 1 Offenses, by Year

Disposition Year	Offenders sentenced	Mean	Standard Deviation	25th %tile	Median	75th %tile	Mode
1996	151	284	417	72	144	320	180
1997	165	475	921	96	192	360	180
1998	177	393	714	72	144	360	360
1999	133	331	433	84	216	360	360
2000	111	237	337	60	120	300	360
2001	83	231	255	72	168	360	360
Total	820	342	609	72	172	360	360

Table 3-3b shows the sentence length for Seriousness Level 2 violent offenses such as Robbery and Possession of a firearm during a crime of violence. The mean sentence to incarceration for Level 2 violent offenses was 81 months in 1996 and 49 months in 2001, but once again there is no discernable trend. Midway through the period, the mean sentence in 1999 was 96 months, the longest mean sentence during the period. The median sentence for Level 2 violent offenses declined from 60 months in 1996 and 1997 to 36 months in 2000 and 2001. However, for Level 2 violent crime during the entire period, the middle 50% of offenders were sentenced to minimum terms of at least 24 months and not more than 60 months, and there was little or no discernable trend in this range.

Table 3-3b. Minimum Felony Sentence in Months for Old Law Violent Level 2 Offenses, by Year

Disposition Year	Offenders sentenced	Mean	Standard Deviation	25th %tile	Median	75th %tile	Mode
1996	195	81	88	36	60	86	60
1997	168	67	81	24	60	60	60
1998	181	77	212	19	40	60	60
1999	193	96	254	24	40	60	60
2000	166	53	81	18	36	60	60
2001	100	49	63	24	36	60	60
Total	1,003	73	157	24	48	60	60

Table 3-3c shows the sentence length for Seriousness Level 3 violent offenses such as Attempt robbery. The mean sentence in Level 3 violent crimes was not uniform. The highest mean sentence for Level 3 violent offenses was 21 months in 1997, and the lowest mean sentence was 11 months in 2001. The median sentence was 12 months in most of the years, but peaked at 20 months in 1997, and dipped to 8 months in 2001.

Table 3-3c. Minimum Felony Sentence in Months for Old Law Violent Level 3 Offenses, by Year

Disposition Year	Offenders sentenced	Mean	Standard Deviation	25th %tile	Median	75th %tile	Mode
1996	41	17	17	10	12	18	12
1997	52	21	14	12	20	26	20
1998	54	16	15	5	12	20	12
1999	50	18	24	8	12	20	12
2000	35	15	9	9	12	22	12
2001	20	11	9	6	8	14	6
Total	252	17	16	9	12	20	12

The minimum sentence to incarceration for property offenses is shown in Table 3-4. A noticeable decrease in sentence length for property offenses occurs during the period. The median sentence, 24 months in 1996, decreased to 9 months by 2001, with what appears to be a precipitous decrease from 2000 to 2001. The mean sentence shows less of a downward trend, but nonetheless went from a high of 38 months in 1996 to a low of 13 months in 2001, with the largest change coming from 2000 to 2001.

Table 3-4. Minimum Felony Sentence in Months for Old Law Property Offenses, by Year

Disposition Year	Offenders sentenced	Mean	Standard Deviation	25th %tile	Median	75th %tile	Mode
1996	151	38	68	12	24	36	24
1997	142	30	44	12	20	36	24
1998	184	29	38	9	18	36	12
1999	147	35	71	8	18	30	24
2000	109	28	53	8	18	30	12
2001	85	13	15	4	9	15	12
Total	818	30	54	8	18	32	24

Table 3-5 describes the minimum sentence to incarceration given for drug offenses. As discussed in more detail in Chapter V, the typical drug distribution crime in Superior Court is a small street-level sale often made to support a drug habit, very unlike the extreme case of a large volume sale by a predatory kingpin in the drug distribution network. The median sentence length for drug offense steadily declines from 1996 (28 months) to 2000 (12 months) and remains steady in 2001. The mean sentence similarly declined from a high of 37 months in 1996 to a low of 15 months in 2001. This appears to be the result of a shift in emphasis toward treatment of drug offenders during the period and may also be attributable to the success of Drug Court.

Table 3-5. Minimum Felony Sentence in Months for Old Law Drug Offenses, by Year

Disposition Year	Offenders sentenced	Mean	Standard Deviation	25th %tile	Median	75th %tile	Mode
1996	231	37	32	12	28	48	24
1997	240	32	30	12	24	40	24
1998	234	28	28	12	19	36	24
1999	207	25	27	12	16	30	12
2000	242	20	27	6	12	24	12
2001	209	15	15	6	12	19	12
Total	1,363	26	28	10	18	36	12

The minimum sentence to incarceration for weapon offenses is listed in Table 3-6. The median sentence length is 12 months for every year except 1996.

Table 3-6. Minimum Felony Sentence in Months for Old Law Weapon Offenses, by Year

Disposition Year	Offenders sentenced	Mean	Standard Deviation	25th %tile	Median	75th %tile	Mode
1996	61	32	64	11	18	33	12
1997	82	19	21	6	12	24	12
1998	73	23	54	6	12	24	12
1999	66	32	57	6	12	33	12
2000	47	16	14	6	12	20	12
2001	45	14	11	4	12	20	20
Total	374	23	45	6	12	24	12

The minimum sentence to incarceration for public order offenses is shown in Table 3-7. The median sentence length for public order offenses remains fairly consistent at 4 to 5 months. In general, there is little variation in the periods of incarceration for these offenses, with the vast majority of offenders receiving a minimum sentence of well short of one year.

Table 3-7. Minimum Felony Sentence in Months for Old Law Public Order Offenses, by Year

Disposition Year	Offenders sentenced	Mean	Standard Deviation	25th %tile	Median	75th %tile	Mode
1996	204	8	8	3	4	9	4
1997	199	7	9	3	4	8	4
1998	254	7	8	3	4	8	4
1999	298	10	53	2	4	8	4
2000	253	8	14	2	4	8	4
2001	118	7	6	3	5	10	4
Total	1,326	8	26	3	4	8	4

In general, with regard to old law sentencing trends, sentence lengths for non-violent crime declined during the period. However, sentence lengths for violent crime did not experience the same clear decline, and sentences for the most serious violent crimes (Level 1) remained relatively constant, varying only slightly from year to year. As discussed in Chapter II, there was

a gradual increase in probation and decline in incarceration for non-violent offenses – a pattern that also holds for indeterminate sentences only.

Understanding Sentencing Outcomes

A number of factors may affect the sentence that an individual offender receives, including, most importantly, the seriousness of the conviction offense. We saw in the preceding section that offenders convicted of crimes of violence are more likely to be sentenced to a term of incarceration than other types of offenders. However, other factors may also influence the sentence that a particular offender receives. This section discusses factors associated with felony sentencing outcomes in Superior Court, January 1996 through December 2001.

Sentencing studies have consistently demonstrated that the strongest determinants of sentencing outcomes are the seriousness of the current offense and the criminal history of the offender (Kramer and Steffensmeier, 1993; Steffensmeier et al., 1998; Sampson and Lauritsen, 1998). Not surprisingly, the most severe sentences are typically imposed on those offenders who commit the most serious crimes and have the longest and most serious criminal records (Sampson and Lauritsen, 1998). Although the severity of the offense and the defendant's prior record are consistently the strongest factors influencing the sentence (based on past studies of sentencing outcomes), other offense, offender and case related variables also typically play a role. Factors that judges may consider when making sentencing decisions include the extent of victim injury, if any; the use of a weapon and the type of weapon, if any; the role of offender in offense; criminal justice supervision status of the offender at the time of arrest and between arrest and sentencing; the amount of property lost or damaged as a result of the crime; the amount and type of drugs; the past drug use/drug dependence and treatment of the offender; the mental, emotional, and physical condition of offender (disability/illness); and other elements

relating to the social history and community and family ties of the offender (Kramer, 1996). A number of studies have demonstrated that “extra-legal” factors may also influence a criminal sentence, factors that would not be legitimate considerations, such as the offender’s race, gender, or socio-economic status. Differences in judicial philosophy may play a role as well.

Sentencing Outcome as a Two-Stage Decision Process

Sentencing has at least two distinct and somewhat independent components. The first involves the judge deciding whether to incarcerate the offender or not -- the “in-out decision.” Secondly, if the decision is made to incarcerate the offender, the judge must then determine the length of the incarceration. Research suggests that these decisions may be empirically distinct. In other words, different factors may play a role in each decision (Spohn, Gruhl, and Welch, 1981-1982; Spohn and Cederblom, 1991). Therefore, we looked at both 1) the in-out decision and 2) for prison sentences, the length of minimum sentence imposed in months.

Data for the Present Study

The present study was limited to the variables available through the Superior Court’s CIS system, supplemented by PSA prior record information. As a result, a number of factors that have been shown to be related to the sentencing outcome in other studies were unavailable for the Commission’s analysis of District of Columbia cases.

Regarding the current offense, the Commission had data on the specific charge(s) at conviction, their number, and whether the crime was an attempt. However, the Commission did not have other important factors relating to the current offense – whether the conviction resulted from a plea agreement, including whether any sentencing concessions were made by the

prosecutor; the extent of victim injury, if any; weapon use and type of weapon, if any; role of offender in offense; the amount of property lost or damaged as a result of the crime; and the amount and type of drugs.

The Commission had the number and severity of prior felony convictions and prior prison terms served by the offender who was sentenced. However, the criminal justice supervision status of the offender at the time of arrest and between arrest and sentencing was not available in the data.

Regarding offender and other characteristics that may affect sentencing decisions, the Commission examined age, gender, race, and the year of the sentence. The Commission did not have a detailed social history for offenders, including such factors as the offender's past drug use; the offender's drug dependence and treatment; mental, emotional, and physical condition of offender (handicap/illness); and other elements of community and family ties.

Method for Studying Sentencing Outcome

The Commission was concerned about the number of missing factors, factors that elsewhere are correlated with the in-out decision and/or the sentence length decision. The Commission conducted some preliminary tests using multivariate analysis.⁵ These tests convinced the Commission that the analysis was incomplete, and would be misleading until at least some of the missing factors could be collected. Additionally, multivariate analysis is most often used to examine key factors after a court has decided what factors are legally acceptable, such as prior record and offense seriousness, and wishes to examine system-wide compliance,

⁵ The most common statistical approach employed to examine the sentencing outcome decision is multivariate statistical analysis. Using multivariate techniques allows the researcher to evaluate the relationship of a certain factor to the sentence imposed, while "controlling" for other factors that may be related to the sentencing outcome. Therefore, we see the relative impact of the severity of the offense, for example, on the length of sentence, holding constant all other factors such as the prior record of the offender.

even in the absence of some relevant factors. Another occasion for multivariate analysis is before and after implementation of a sentencing policy change, such as before and after implementation of sentencing guidelines. In this case, the absence of key variables is less important because the same factors are consistently used before and after the change, providing an “apples-to-apples” comparison even if other key factors are missing. The Commission is currently engaged in a data collection effort for new law cases, described in Chapter IV, which will supplement the CIS data and provide a number of factors that should help ameliorate this problem.

Since multivariate analysis at this point is likely to be incomplete or misleading, the Commission has opted to describe old law sentencing practice using the factors available in the CIS data. However, the following tables suffer from the opposite problem. Without multivariate analysis, the results of each table do not control for the influence of factors that are almost certainly operating on the sentence. Accordingly, the tables must be studied with caution, and it would be a mistake to conclude that any sentence can be “explained” by the factor isolated in any particular table.

Analysis of the Decision to Incarcerate (Old Law Only)

The Commission analyzed the relationship between various factors and (1) the decision to incarcerate, and (2) the length of incarceration. The analysis was conducted for old law cases only. Results for new law cases will be discussed in Chapter IV.

The decision to incarcerate (the in-out decision) is examined beginning in Tables 3-8 and 3-9. Once again, violent crimes are broken down to three sub-categories: seriousness level 1, seriousness level 2, and seriousness level 3. Violent seriousness level 1 consists of the most serious violent felonies (first and second degree murder and armed crimes of violence).

Seriousness level 2 consists of violent crimes such as assault with a deadly weapon, robbery, and possession of firearm during crime of violence. Examples of seriousness level 3 offenses are attempt robbery and assault with intent to commit any offense.

When examining factors that influence the decision to incarcerate in Tables 3-8 and 3-9, prior felony convictions appear to make a difference. Offenders with a criminal record that includes at least one previous felony conviction are more likely to receive some term of incarceration than offenders without a prior felony. In contrast, the presence of multiple charges on the current docket appears to have little effect on the in-out decision (although it does effect the length of incarceration, shown in the next section).

Table 3-8 shows that for all offenders, those with prior felony convictions were more likely to receive some term of incarceration (72.4%) than offenders without any prior record (55.5%). This finding holds true when the incarceration rates are broken out by major offense categories. For example, 58.3% of the drug offenders who had prior felony convictions received a term of incarceration versus 35% of drug offenders who did not have any prior felony convictions. Similarly, offenders sentenced for the less serious violent offenses (Level 3) were more likely to be incarcerated if they had a prior felony conviction (82.7%) than those who did not have any prior felony convictions (55.5%). In every crime category, offenders with prior felony convictions were more likely to be incarcerated than those with no felony record.

Table 3-8. Incarceration Rate by Offense Category and Prior Felony Convictions for Old Law Cases, 1996-2001

Offense Category	No Priors		Priors	
	Total	%	Total	%
Violent				
Seriousness Level 1	632	95.7	267	99.6
Seriousness Level 2	767	78.9	516	91.5
Seriousness Level 3	236	55.5	174	82.7
Property	665	54.4	796	76.2
Drug	1859	35.0	1659	58.3
Weapon	640	46.9	208	71.6
Public Order	802	58.6	1564	73.6
Other	198	44.9	98	69.3
Total	5799	55.5	5282	72.4

On the other hand, the number of offenses sentenced in the current sentencing event does not seem to be related to the decision to incarcerate (Table 3-9). Overall, there was very little difference in the incarceration rates for single versus multiple charge cases (63.1% and 63.8%, respectively). When examining incarceration rates by the specific offense categories, the presence of multiple charges also appears to have little or no effect on the in-out decision.

Table 3-9. Incarceration Rate by Offense Category and Number of Charges for Old Law Cases, 1996-2001

Offense Category	Single Charge		Multiple Charge	
	Total	%	Total	%
Violent				
Seriousness Level 1	214	96.9	685	96.9
Seriousness Level 2	404	81.2	879	85.2
Seriousness Level 3	221	69.7	189	64.0
Property	471	67.3	990	65.9
Drug	1706	46.7	1812	45.4
Weapon	167	55.1	681	52.4
Public Order	1731	71.1	635	61.4
Other	111	43.2	185	58.9
Total	5025	63.1	6056	63.8

The Decision to Incarcerate and Other Factors

In order to investigate the relationships between the decision to incarcerate and several other factors, each factor was examined controlling for (1) the type of offense and (2) prior felony conviction. In general, both the type of offense and prior convictions continued to have a strong relationship to the decision to incarcerate.

Table 3-10 compares incarceration rates for single and multiple offenses by offense, controlling for prior record. The table illustrates that the presence of multiple charges in the current sentence has little impact. Among offenders with no prior felonies, the incarceration rate for multiple charge cases is higher than single charge cases (58.0% and 52.3%, respectively). However, when examining specific offense categories, there is no consistent pattern. Also, multiple charge cases are slightly *less* likely to receive a sentence to incarceration than single charge cases among offenders with prior felonies, which further suggests that the number of charges has little effect on the in-out decision.

Table 3-10. Incarceration Rate by Offense Category, Prior Felony Convictions, and Number of Charges for Old Law Cases, 1996-2001

Offense Category	Total sentenced	No Priors				Priors			
		Single Charge		Multiple Charge		Single Charge		Multiple Charge	
		Total	%	Total	%	Total	%	Total	%
Violent									
Seriousness Level 1	898	145	94.7	486	96.2	69	100.0	198	99.3
Seriousness Level 2	1281	223	76.0	543	80.7	181	91.2	334	91.9
Seriousness Level 3	410	122	57.9	114	53.4	99	84.1	75	80.8
Property	1461	213	52.1	452	55.5	258	79.8	538	74.5
Drug	3516	905	34.5	953	35.5	799	60.4	859	56.3
Weapon	848	127	48.8	513	46.4	40	75.0	168	70.8
Public Order	2366	581	61.6	221	50.7	1150	75.9	414	67.1
Other	296	78	35.9	120	50.8	33	60.6	65	73.8
Total	11076	2394	52.3	3402	58.0	2629	72.8	2651	71.3

Note: Total does not equal the actual number of old law cases (11,096) because some cases contained missing values on one or more of the presented variables.

Table 3-11 shows the incarceration rates by race of the offender, controlling for major offense category and prior felony convictions. It is important to note that non-blacks account for a very small proportion of all offenders (5.9%), and in many categories the number of non-blacks is too small to support any conclusions. Overall, there was very little difference in the incarceration rates for non-blacks and blacks. Among offenders without prior felonies, there is no difference in the incarceration rates of blacks and non-blacks. For those with prior felonies, non-blacks are slightly more likely to be incarcerated (74.0% and 72.3%, respectively). For drug offenders (the largest offense category) with prior felonies, 58.0% of black offenders and 59.1% of non-blacks sentenced received a term of incarceration. For drug offenders with no prior felonies, 35.2% of both non-black and black offenders were incarcerated.

While the vast majority of offenders sentenced to a term of incarceration were black, after controlling for offense and prior record there was little difference in incarceration rates by race. The over-representation of black offenders in prison, then, does not appear to be due to the sentencing decision.

Table 3-11. Incarceration Rate by Offense Category, Prior Felony Convictions, and Race of Offender for Old Law Cases, 1996-2001

Offense Category	No Priors				Priors			
	Non-black		Black		Non-black		black	
	Total	%	Total	%	Total	%	Total	%
Violent								
Seriousness Level 1	50	96.0	537	95.9	3	100.0	238	99.6
Seriousness Level 2	86	68.6	644	80.1	26	96.1	450	91.6
Seriousness Level 3	30	60.0	189	57.1	5	80.0	164	82.3
Property	64	51.6	564	54.8	29	69.0	727	77.0
Drug	91	35.2	1658	35.2	22	59.1	1531	58.0
Weapon	68	39.7	552	48.5	3	100.0	191	73.3
Public Order	64	54.7	702	58.7	52	71.1	1383	73.5
Other	18	33.3	173	45.1	6	50.0	86	70.9
Total	471	55.0	5019	55.6	146	74.0	4770	72.3

Table 3-12 shows the incarceration rates by the gender of the offender, controlling for the major offense category and prior felony conviction. Overall, males are more likely to receive

an incarceration sentence than females, whether the offender had no record or had one or more prior felony convictions. Those with prior felony convictions were again more likely to be incarcerated than those with no prior convictions across gender groups. Males with prior felony convictions had the highest incarceration rates (73.6%) followed by males with no prior felony convictions (58.2%) and females with prior felonies (57.1%). Female offenders with no prior felonies had the lowest incarceration rate (36.6%). Turning to drug cases as an example, females with prior felony convictions had lower incarceration rate (38.5%) than male offenders with priors (60%), and females with no prior felonies had an incarceration rate of 21.1% compared to 37.2% for males. This relationship between gender and incarceration held true for virtually all combinations of offense and prior record (the only exceptions are cases with too few females to provide a basis for a reliable comparison).

Table 3-12. Incarceration Rate by Offense Category, Prior Felony Convictions, and Gender of Offender for Old Law Cases, 1996-2001

Offense Category	No Priors				Priors			
	Female		Male		Female		Male	
	Total	%	Total	%	Total	%	Total	%
Violent								
Seriousness Level 1	34	91.2	598	96.0	6	100.0	261	99.6
Seriousness Level 2	73	56.2	694	81.3	22	86.4	494	91.7
Seriousness Level 3	37	37.8	199	58.8	7	57.1	167	83.8
Property	85	22.3	580	59.1	26	69.2	769	76.6
Drug	256	21.1	1603	37.2	135	38.5	1524	60.0
Weapon	23	30.4	617	47.5	2	100.0	206	71.4
Public Order	185	49.7	617	61.3	163	66.3	1401	74.4
Other	51	27.4	147	51.0	10	30.0	88	73.9
Total	744	36.6	5055	58.2	371	57.1	4910	73.6

Table 3-13 shows the incarceration rates by the age of the offender, controlling for major offense category and prior felony conviction. Offenders have been divided into three age categories; 24 years old and under, 25-39 years old, and 40 years old and over. In general, the likelihood of incarceration decreases as age increases, and offenders in every age category with prior felony convictions were again more likely to be incarcerated than those with no priors.

Again using drug offenses as an example, 71.1% of offenders 24 years old and under who had prior records received a term of incarceration versus 60.1% of 25-39 year olds and 50.6% of those 40 years old and older. For those without prior felonies, the incarceration rates were 44.8%, 32.4%, and 23.7%, respectively.

Table 3-13. Incarceration Rate by Offense Category, Prior Felony Convictions, and Age of Offender for Old Law Cases, 1996-2001

Offense Category	No Priors					
	24 and Under		25-39		40 and Over	
	Number	%	Number	%	Number	%
Violent						
Seriousness Level 1	400	97.2	166	93.4	65	92.3
Seriousness Level 2	340	85.3	324	74.1	103	72.8
Seriousness Level 3	63	60.3	125	55.2	48	50.0
Property	245	60.8	308	51.6	111	47.7
Drug	667	44.8	796	32.4	396	23.7
Weapon	306	56.2	235	39.6	99	35.3
Public Order	168	60.7	425	58.1	209	57.9
Other	52	65.4	94	42.5	51	29.4
Total	2241	65.7	2473	51.1	1082	44.1

Offense Category	Priors					
	24 and Under		25-39		40 and Over	
	Number	%	Number	%	Number	%
Violent						
Seriousness Level 1	58	98.3	168	100.0	41	100.0
Seriousness Level 2	73	95.9	345	90.7	98	90.8
Seriousness Level 3	17	94.1	115	79.1	41	87.8
Property	84	70.2	485	79.0	226	72.6
Drug	197	71.1	917	60.1	545	50.6
Weapon	63	68.2	125	76.0	20	55.0
Public Order	101	77.2	935	73.7	524	72.5
Other	12	83.3	52	75.0	34	55.9
Total	605	78.2	3142	74.1	1529	66.4

Table 3-14 shows the incarceration rates by armed and unarmed conviction offenses, controlling for major offense category (for crimes of violence and drug crimes)⁶ and prior felony convictions. Overall, offenders sentenced for armed offenses were more likely to receive

⁶ Some offenses (public order and other offenses) did not contain any cases that were sentenced as armed offenses. There were also no “armed” offenses in the “weapons” category, which involve simple possession charges such as carrying a pistol without a license.

incarceration sentences than those who were sentenced for unarmed offense. This pattern was found within both the “priors” (65.9% for unarmed, 96.8% for armed) and “no priors” (46.6% for unarmed, 87.4% for armed) categories. It is important to note that an unspecified number of armed convictions involved operable firearms, for which incarceration is mandatory. The same is true for all convictions of possession of a firearm or imitation firearm during commission of a crime of violence or dangerous crime, which is one of the crimes listed in violence seriousness level 2.

Table 3-14. Incarceration Rate by Offense Category, Prior Felony Convictions, and Unarmed/Armed Offense Convictions for Old Law Cases, 1996-2001

Offense Category	No Priors				Priors			
	Not Armed		Armed		Not Armed		Armed	
	Total	%	Total	%	Total	%	Total	%
Violent								
Seriousness Level 1	188	94.1	443	96.6	72	100.0	195	99.5
Seriousness Level 2	325	78.5	441	79.1	308	89.9	206	94.2
Seriousness Level 3	234	55.1	2	100.0	174	82.8	.	.
Drug	1850	35.0	8	37.5	1652	58.2	5	100.0
Total	2597	46.6	894	87.4	2206	65.9	406	96.8

Analysis of the Sentence Length (Old Law)

When examining factors that influence the sentence length decision, Tables 3-15 and 3-16, the evidence to date suggests that the presence of multiple charges, which had a minimal effect on the “in-out” decision, appears to have an influence on the length of sentence. Offenders with multiple charges are, in general, more likely to receive a longer sentence than offenders with single charges. In contrast, the presence of a prior felony conviction, which was shown to have a major effect on the decision to incarcerate, has less effect on the sentence length.

In Table 3-15, the sentence length decision (minimum sentence in months) for old law cases is examined by offense category and number of charges. Overall, cases with multiple charges receive a 32-month median sentence, while the median sentence for single charge cases is 10 months. As previously noted, the median sentence is the point at which 50% of sentences are above and below, and is a statistic not skewed by a small number of unusually long or short values. In each offense category, the sentence length for multiple charge cases is higher than the sentence in single charges, usually by a substantial margin.

Table 3-15. Median Old Law Sentence Length in Months by Offense Category and Number of Charges, 1996-2001

Major offense category and seriousness level	Offenders sentenced	Single Charge		Multiple Charge	
		Number	Months	Number	Months
Violent					
Serious level 1	820	200	69	620	216
Serious level 2	1,003	302	24	701	60
Serious level 3	252	142	12	110	20
Property	818	268	12	550	24
Drug	1,363	678	12	685	24
Weapon	374	79	10	295	14
Public Order	1,326	1001	4	325	8
Other	139	39	12	100	19
Total	6,095	2709	10	3386	32

Table 3-16 shows the sentence length for old law cases by offense category and prior felony convictions. Overall, offenders with no prior felonies received a median sentence of 24 months, and offenders with a prior felony received a median sentence of 16 months. However, this counterintuitive result is explained primarily by the mix of offenses with prior record. Violent offenders are the least likely to have a prior record, and disproportionately skew the statistics in the no prior record category, because they receive the most severe sentences. In the opposite direction, public order offenders are most likely to have a prior record and among the lowest sentences, disproportionately skewing the prior record category. Therefore, it is important to examine Table 3-16 by specific offense category. For every category, offenders with prior felonies receive median sentences that are as long or longer than those without priors, except for violent level 1 offenses. For the most serious violent crimes, sentence length appears to be driven by the seriousness of the current offense more than the prior record of the offender.

Table 3-16. Median Old Law Sentence Length in Months by Offense Category and Prior Felony Convictions, 1996-2001

Major offense category and seriousness level	Offenders sentenced	No Prior Felony		Prior Felony	
		Number	Months	Number	Months
Violent					
Serious level 1	820	578	180	242	144
Serious level 2	1,003	575	48	428	48
Serious level 3	252	124	12	128	12
Property	818	306	15	512	20
Drug	1,363	569	12	794	24
Weapon	374	244	12	130	16
Public Order	1,326	373	4	953	4
Other	139	81	12	58	20
Total	6,095	2850	24	3245	16

To summarize, the number of charges has a stronger effect on sentence length than prior felony convictions, although both appear to be influencing the sentence length decision. Therefore, the number of charges is used as a control variable in the following tables, along with the major offense category of the offense.

Length of Sentence and Other Factors

Other factors affecting sentence length were examined. Table 3-17 shows the sentence length in each major crime category by prior felony convictions taking into account the number of charges in the current case. Overall, offenders with prior felony convictions receive shorter sentence lengths than offenders with no prior felony convictions regardless of the number of charges, but this is again the result of the mix of offenses, with violent crimes (with longer sentences) disproportionately falling in the no prior category and public order offenses (with shorter sentences) in the prior category. As with Table 3-16, all major crimes, except violent level 1 crimes, receive shorter sentences when they involve no prior felony conviction. Again, prior record is less of a factor than the seriousness of the crime for violent level 1 crimes.

Table 3-17. Median Old Law Sentence Length in Months by Offense Category, Number of Charges, and Prior Felony Convictions, 1996- 2001

Major offense category and seriousness level	Offenders sentenced	Single Charge				Multiple Charge			
		No Prior Felony		Prior Felony		No Prior Felony		Prior Felony	
		Number	Months	Number	Months	Number	Months	Number	Months
Violent									
Serious level 1	820	135	72	65	60	443	240	177	192
Serious level 2	1,003	152	24	150	27	423	60	278	60
Serious level 3	252	67	12	75	12	57	16	53	20
Property	818	94	10	174	12	212	18	338	24
Drug	1,363	283	12	395	12	286	24	399	30
Weapon	374	53	7	26	12	191	12	104	18
Public Order	1,326	280	4	721	4	93	8	232	8
Other	139	23	7	16	12	58	13	42	34
Total	6,095	1087	12	1622	9	1763	36	1623	28

The next table examines the sentence length by race of the offender, controlling for major offense category and number of charges. Table 3-18 shows that there is no difference in the overall sentence length between black and non-black offenders in single charge cases (the median sentence is 10 months). However, black offenders receive longer sentences (31 months) than non-black offenders (24 months) in multiple charge cases. For multiple charge cases, the difference between black and non-black offenders occurs in violent level 1 and 3 cases, and drug cases. An important caveat is that there are very few multiple charge cases involving non-blacks (206 cases). Non-black offenders receive longer sentences for multiple charge cases involving property crimes.

Table 3-18. Median Old Law Sentence Length in Months by Offense Category, Number of Charges, and Race, 1996- 2001

Major offense category and seriousness level	Single Charge				Multiple Charge			
	Not Black		Black		Not Black		Black	
	Number	Months	Number	Months	Number	Months	Number	Months
Violent								
Serious level 1	13	84	178	69	36	132	529	216
Serious level 2	25	24	259	24	54	60	604	60
Serious level 3	11	12	126	12	9	7	97	20
Property	10	8	252	12	35	24	482	23
Drug	12	11	641	12	31	18	596	24
Weapon	4	11	75	10	18	12	267	14
Public Order	44	4	897	4	16	8	269	8
Other	2	9	35	12	7	28	86	18
Total	121	10	2463	10	206	24	2930	31

Table 3-19 shows the sentence length by gender, controlling for major offense and number of charges. Male offenders receive longer median sentences; 10 months for single charge cases and 36 months for multiple charge cases, as compared to 4 months and 23 months for females, respectively. For single charge cases, males receive longer sentences for violent level 2, property, weapon and “other” crimes. Conversely, females receive slightly longer

sentences for violent serious level 1 offenses in single charge cases.⁷ Males receive longer median sentences than females for multiple charge cases for 5 of the 8 offense categories, including violent level 1 (222 months versus 144 months), violent level 2 crimes (60 months versus 40 months), and drug offenses (24 months versus 20 months). Males and females receive the same sentence for multiple charge property offenses, and females receive a slightly longer sentence for violent level 3 and public order offenses.

Table 3-19. Median Old Law Sentence Length in Months by Offense Category, Number of Charges, and Gender, 1996- 2001

Major offense category and seriousness level	Single Charge				Multiple Charge			
	Female		Male		Female		Male	
	Number	Months	Number	Months	Number	Months	Number	Months
Violent								
Serious level 1	10	72	190	69	25	144	595	222
Serious level 2	19	18	283	24	37	40	664	60
Serious level 3	9	12	133	12	8	21	102	20
Property	12	6	256	12	21	24	529	24
Drug	40	12	638	12	51	20	634	24
Weapon	4	7	75	10	4	10	291	14
Public Order	132	4	869	4	30	12	295	8
Other	5	2	34	12	10	10	90	20
Total	231	4	2478	10	186	23	3200	36

The next table shows the difference in sentence length by age, controlling for crime type and number of charges. Table 3-20 consists of 3 age categories: 24 years old and younger, 25 to 39 years old, and 40 years old and over. For both single and multiple charge cases, the length of the sentence decreases as age increases. Overall, offenders 24 years of age and younger receive the longest sentences (12 months), and offenders 40 or older receive the shortest (8 months). For violent level 1 offenses with a single charge, offenders 24 and younger receive a median sentence of 72 months, offenders 25-39 receive 65 months and offenders 40 and older receive 60 months. For single charge drug crimes, the median sentence was 12 months, regardless of age.

⁷ Only 10 cases were recorded involving women, making this result less reliable.

Overall, for multiple charge cases, offenders 24 years of age and younger receive the longest sentences (48 months) and offenders 40 and older receive the shortest (24 months). For violent level 1 crimes, the youngest category of offenders receive a median sentence of 240 months, offenders 25-39 years old receive 180 months and offenders 40 years old and older receive 152 months. For multiple charge drug crimes, the median sentence was 24 months regardless of age.

Table 3-20. Median Old Law Sentence Length in Months by Offense Category, Number of Charges, and Age Category, 1996- 2001

Major offense category and seriousness level	Single Charge						Multiple Charge					
	24 and Younger		25-39		40 and Older		24 and Younger		25-39		40 and Older	
	Number	Months	Number	Months	Number	Months	Number	Months	Number	Months	Number	Months
Violent												
Serious level 1	88	72	83	65	29	60	336	240	219	180	64	152
Serious level 2	67	24	170	24	65	30	271	60	344	60	86	48
Serious level 3	27	12	80	12	34	12	22	18	67	18	21	24
Property	48	12	155	12	65	12	126	18	307	24	115	24
Drug	191	12	337	12	150	12	191	24	342	24	152	24
Weapon	37	10	38	10	4	6	140	12	122	16	33	12
Public Order	105	4	580	4	313	4	36	8	196	8	93	8
Other	12	12	17	12	10	3	28	19	55	18	17	20
Total	575	12	1460	9	670	8	1150	48	1652	30	581	24

The sentence lengths given to armed and unarmed crimes are examined in Table 3-21, controlling for crime type (for crimes of violence and drug crimes) and number of charges. Armed offenses receive longer sentences than unarmed offenses for both single and multiple charge cases. Overall, for single charge cases, offenders receive 56 months for armed and 18 months for unarmed offenses. The largest difference for single charge offense occurs in the violent seriousness level 1 (84 months for armed versus 60 months for unarmed) and drug offenses (60 months versus 12 months). Overall, for multiple charge cases, armed crimes receive 154 months and unarmed crimes receive 45 months. The largest difference in sentence length for multiple charges cases occurs in violent level 1 (240 months versus 144 months).

Table 3-21. Median Old Law Sentence Length in Months by Offense Category, Number of Charges, and Armed, 1996- 2001

Major offense category and seriousness level	Single Charge				Multiple Charge			
	Not Armed		Armed		Not Armed		Armed	
	Number	Months	Number	Months	Number	Months	Number	Months
Violent								
Serious level 1	80	60	120	84	160	144	460	240
Serious level 2	212	24	90	20	285	48	414	60
Serious level 3	140	12	2	12	110	20	0	.
Drug	675	12	2	60	679	24	5	60
Total	1107	18	214	56	1234	45	879	154

Conclusion

The examination of sentences to incarceration reveals that sentence lengths have been declining for non-violent crime during the period 1996 to 2001. However, this trend is not present for serious violent crime. Sentences for these crimes held relatively steady during the period.

Regarding analysis of sentencing outcomes, differences in sentencing outcomes emerge based on the type of crime committed, the prior record of the offender, the number of charges (sentence length only), and whether the conviction is an armed crime or not. The type of crime appears to be a strong factor in both the in-out and the length of sentence decision. The prior record of the offender appears to be a particularly strong factor in the in-out decision, but not as strong for the sentence length decision. The number of charges appears to be a strong factor in the length of sentence decision, but appears to have little or no influence on the in-out decision.

There are differences in sentencing outcome by the demographic characteristics of age and gender, but little evidence of differences in sentencing outcome by the race of the offender. As previously noted, blacks constitute 94% of all felony offenders sentenced in Superior Court. The evidence presented here simply suggests that after controlling for the factors discussed above, the sentences that blacks receive are relatively close to similarly situated non-black offenders, who make up a small proportion of all cases.

It is important to keep in mind the caveats presented earlier in the Chapter. A number of potentially important factors could not be studied at this time – for example, the extent of victim injury, weapon use, criminal justice status of the offender, and plea agreements. As a result, a complete multivariate analysis -- one that controls for all or most relevant factors when examining the sentencing decision -- is not presented here. Therefore, the factors we have been able to isolate from the data and have presented here offer only a partial and incomplete description of the sentences studied. As more information about sentences is gathered over time, the Commission hopes to be able to present in future years an analysis of sentences that takes account of some of the other factors that are thought to influence sentences, which operate at lower levels of visibility and are more difficult to uncover and analyze.