

CHAPTER IV

Impact of the Sentencing Guidelines on Sentencing Practice in Superior Court

In this Chapter we examine in more detail recent sentencing practice in Superior Court, with particular focus on the period before and after the introduction of the voluntary sentencing guidelines in June of 2004. Our analysis is necessarily preliminary. The guidelines apply to guilty pleas and verdicts entered on or after June 14, 2004, but most of these cases were not sentenced and did not begin to appear in the database until August of 2004, at the earliest. Therefore, we have accumulated less than two years worth of data available for analysis in this report, and not nearly enough of the most serious and complex cases. Nonetheless, based on the information available to date, there is reason for optimism that the guidelines are having the intended effect of reshaping some aspects of sentencing practice without any apparent unintended consequences.

As noted in *Chapter III*, while the guidelines were certainly intended to eliminate the extremes in sentencing and to reduce unexplained variation, they were not intended to change the balance of guilty pleas versus trials, to incarcerate more or fewer defendants, or to increase or decrease average length of sentences. In this Chapter we will examine, at least preliminarily, the extent to which the

guidelines appear to have been successful in achieving their primary goal of reducing disparity in sentencing without altering case processing or other sentencing practices in unintended ways. The early evidence is positive. First, the guidelines do not appear to be altering the rate at which cases are resolved by guilty plea and by trial. Second, there is strong evidence that the guidelines are reducing unexplained variation in sentences for similar crimes. Third, the guidelines do not appear to have changed the overall rates of probation and prison as sentencing options, but they may be redistributing the use of these options in ways that were intended. Finally, although it is too early to tell for most serious crimes, for which not enough data exist, it does not appear that guidelines are causing any changes in the length of prison sentences imposed on average.



The Impact of Guidelines on Plea Rates

Before looking at sentencing practices, it is important to look at case processing. The guidelines were not intended to change the manner in which felony cases are disposed of in Superior Court. Historically, the vast majority of felonies are resolved by plea dispositions. If the guidelines changed that rate dramatically, it would be cause for some alarm.

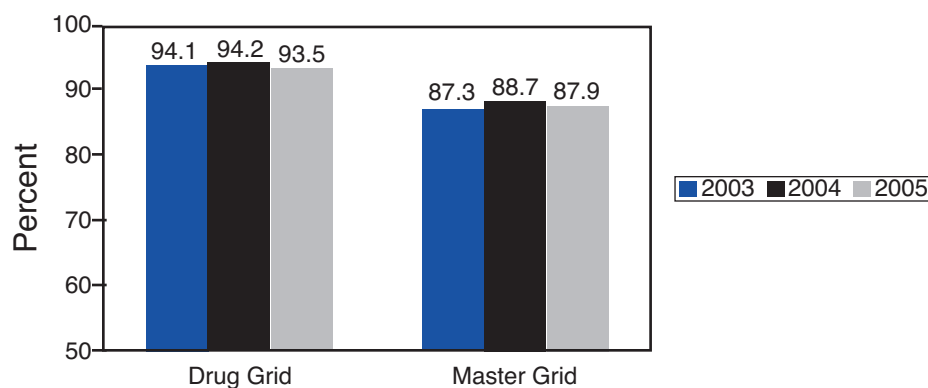
The Commission examined the impact of sentencing guidelines on case processing by looking at the annual rate at which convictions in all offense severity groups resulted from the entry of a guilty plea compared to the annual rate at which convictions were the product of a guilty verdict at trial. If the rate of guilty pleas has not changed in the guidelines period,

then the guidelines system can be said to be neutral with respect to this important aspect of criminal case processing.¹

The overwhelming majority of defendants enter a plea of “not guilty” at arraignment, and the case is scheduled for trial. Between arraignment and trial, the prosecutor and the defense counsel typically engage in plea negotiations and, if the parties reach a plea agreement, the defendant waives his or her right to a trial and enters a plea of guilty to one or more charges. As reported in the Commission’s 1999 Report, 89 % of cases are resolved with the entry of a guilty plea. That number has changed little in the intervening years, with 90.5 % of the cases resolved with the entry of a guilty plea in 2005.

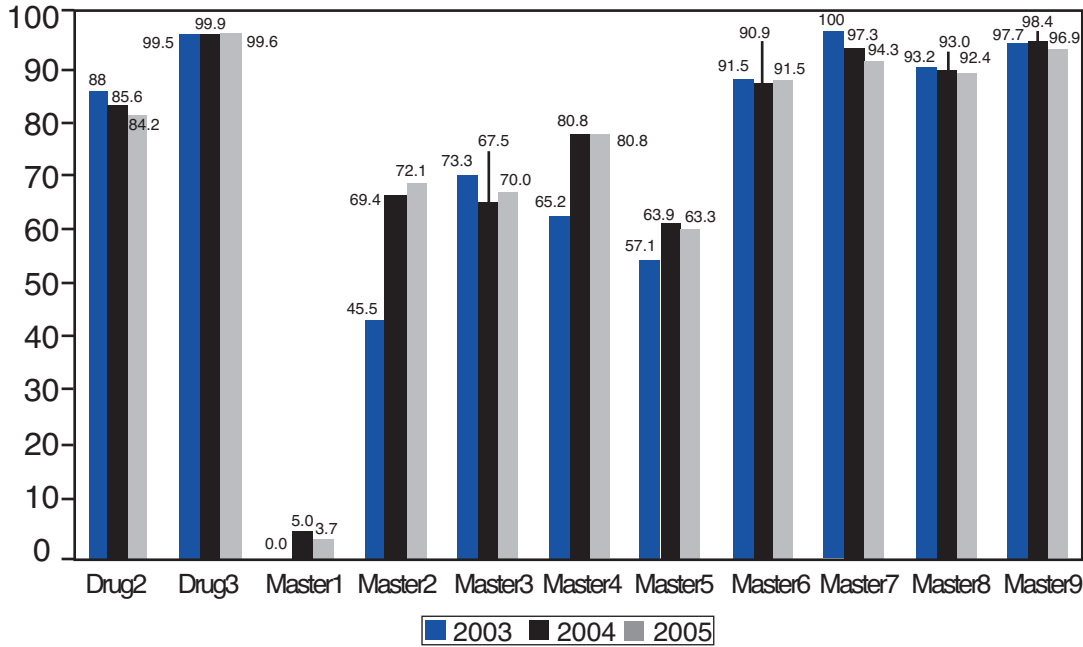
Figure 4-1 displays the aggregated guilty plea rate for all of the Drug and Master Grid

Figure 4-1: Percent of Guilty Pleas by Grid, 2003-2005



¹This conclusion requires the assumption that all other factors remained roughly constant between 2003 and 2005, allowing one to conclude that any observed change in the percentage of guilty pleas would be attributable to the guidelines and not some other factor. For example, one must assume that the average offender’s characteristics, such as criminal history score and other factors that might influence a defendant’s decision to plead guilty or go to trial, remained generally constant during the three-year period.

Figure 4-2. Percent of Guilty Pleas by Offense Severity Group. 2003 to 2005



cases. As previously noted, the sentencing guidelines went into effect in June 2004. Thus, 2003 is a pre-guideline year and 2005 is a guideline year, while 2004 is a mixed year with some pre-guideline pleas and trials and some guideline pleas and trials. As shown in *Figure 4-1*, the plea rate remained largely unchanged between 2003 and 2005. The guilty plea rate in drug cases was almost unchanged, from 94.1 % in 2003 to 93.5 % in 2005, while the guilty plea rate for non-drug offenses rose very slightly from 87.3 % in 2003 to 87.9% in 2005.

Figure 4-2 displays the pre-guideline and guideline plea rates by offense severity

groups. Seven of the 12 offense severity groups show no significant change in plea rates. An increase in the plea rates is seen in Master Groups 1, 2, 4 and 5, and a very slight decrease in Master Group 7, but of these, only Master Group 5 contains a sufficient number of cases for analysis.² In Master Group 5, the increase in plea rate occurred between 2003 and 2004, and held constant from 2004 to 2005, so the increase is not likely to be attributable to the introduction of the guidelines in the middle of 2004.³ The same can be said of the modest decrease in the plea rate seen in Drug Group 2, most of which occurred between 2003 and 2004, before the guidelines were introduced.

²Master Group 1 had no reported pleas in 2003.

³Even Master Group 5, with slightly over 100 cases per year, reflects only a few more pleas in 2004 and 2005 as compared to 2003, suggesting a very modest change. Drug Group 1 cannot be discussed, as it had only two cases reported in 2003 and no cases reported in 2004 and 2005. This anomaly cannot be explained, but appears to be a coding problem in the data received from Superior Court.

The Commission anticipated that increased uniformity and predictability in sentencing under the guidelines might bring with it a corresponding change in the process by which the parties decide to dispose of a case by guilty plea or by trial.⁴ There is some anecdotal evidence from the focus groups and other sources that guilty pleas are easier to negotiate under guidelines, at least for some crimes, because both the prosecution and the defense have a clearer picture of the likely sentence range in typical cases. However, apart from any salutary effect on the negotiation of plea agreements, to date the guidelines do not appear to have had any measurable impact on the percentage of cases resolved by guilty plea and by trial. Taken together, these preliminary results suggest that plea rates have changed little if at all since the advent of guidelines, and the pilot guideline program appears to be neutral with regard to this important aspect of case processing.

Reduction in Sentencing Variation

In its 2003 Report, the Commission made the case for sentencing guidelines as follows:

The Commission's primary rationale for proposing structured sentencing rests on a concern for basic fairness in sentencing. Substantial unexplained variability in sentencing exists.... Basic fairness requires that similarly situated offenders should receive similar sentences for similar crimes.

Since the guidelines were proposed as a means of reducing this unexplained variation, one measure of the success should be evidence that variation is reduced after the introduction of sentencing guidelines.

The 2005 Report found that in drug cases, unexplained sentence variation appeared to be reduced post-guidelines through the elimination of some of the more extreme sentences. This evidence suggested that guidelines were having their intended effect, the reduction in unwarranted disparity, at least for the sentencing of drug crimes during the first year of the pilot phase. Now, with more data available for analysis, the Commission examined all Master and Drug Grid cases for evidence of reduced sentence variation.⁵

One way to measure whether the guidelines have reduced disparity is to compare the distance between actual sentences that

⁴Others speculated that the plea rate might actually go down, because the guidelines deliberately did not build in any explicit sentencing benefit for pleading guilty and, of course, could not impose any burden on a defendant for exercising his or her right to a trial. On the other hand, the sentencing options for many crimes and the relatively wide prison ranges for all crimes allow judges to take into consideration a defendant's genuine display of remorse.

⁵The Commission drew its data from the Superior Court Information System (CIS). The CIS system is a comprehensive database containing all felony sentences occurring during the study period before and after guidelines. The CIS system does not allow the Commission to disaggregate the data by criminal history score, because out-of-state convictions are not recorded in the CIS database. This produces a distorted picture of true criminal history. Therefore, the analysis assumes that criminal history and other factors not in the database remained relatively constant during the three-year period from 2003 through 2005 and that, therefore, any changes in sentencing disparity are attributable to the guidelines and not these other factors.



were imposed in a given group and the mean sentence for the whole group.⁶ If the average distance between the actual sentences and the group mean has declined in the guidelines period, then it can be presumed that the guidelines system reduced unexplained sentence variation.

A simple example can be used to illustrate the point. Assume that in Year 1 the mean sentence in a particular offense severity group is 18 months and that within the group there are three sentences of 10 months, 14 months, and 30 months. The average distance from the mean of these three sentences is 8 months, calculated as follows:

$$\begin{array}{r}
30 \text{ month sentence} - 18 \text{ month mean} = 12 \text{ months} \\
18 \text{ month mean} - 14 \text{ month sentence} = 4 \text{ months} \\
18 \text{ month mean} - 10 \text{ month sentence} = 8 \text{ months} \\
\hline
24 \text{ months}
\end{array}$$

$$24 \text{ months divided by three sentences} = 8 \text{ months average distance from the mean}$$

Assume that in Year 2 the mean sentence for the offense severity group is again 18 months and that there are three sentences,

of 12 months, 20 months, and 22 months. The average distance from the mean of these three sentences is now 4 months, calculated as follows:

$$\begin{array}{r}
22 \text{ month sentence} - 18 \text{ month mean} = 4 \text{ months} \\
20 \text{ month sentence} - 18 \text{ month mean} = 2 \text{ months} \\
18 \text{ month mean} - 12 \text{ month sentence} = 6 \text{ months} \\
\hline
12 \text{ months}
\end{array}$$

$$12 \text{ months divided by three sentences} = 4 \text{ months average distance from the mean}$$

If the mix of cases and offenders within the offense severity group remained constant from Year 1 to Year 2, and the only significant change from year to year was the introduction of sentencing guidelines, it could be inferred that the guidelines had reduced the average distance from the mean sentence in the group from 8 months to 4 months, thereby reducing unexplained variability by pulling more sentences toward the middle. Of necessity, we have simplified this example using only three sentences, when in most offense severity groups there would be dozens, if not hundreds. But this example illustrates one method by which we can measure how successful the guidelines have been.⁷

⁶The “mean” is the sum of a list of numbers, divided by the total number of numbers in the list (also called arithmetic mean or average). The average distance methodology used here is also known as “absolute mean difference,” the absolute value of the difference between each offender’s prison sentence and the average prison sentence imposed in that year for the associated offense severity group. It is a measure of statistical dispersion (also called statistical variability), similar to, and simpler to explain than, standard deviation.

⁷Probation sentences are excluded from this calculation, as the distance from the average sentence cannot be computed on the same metric with prison sentences. However, when probation sentences are treated as a sentence of zero months and included in the analysis, the conclusion that guidelines appear to reduce variation is reinforced

As previously noted, the sentencing guidelines were introduced in June of 2004, making 2003 a pre-guideline year, 2005 a guideline year, and 2004 a hybrid year. *Figure 4-3* demonstrates that the average distance from the mean has decreased between 2003 and 2005 for both Drug Grid sentences and Master Grid sentences. Average distance from the mean for Drug Grid sentences dropped from 12.3 months in 2003 to 7.3 months in 2004 and to 6.5 months in 2005, while average distance from the mean for Master Grid sentences dropped from 14.1 months in 2003 to 9.3 months in 2004 and to 8.5 months in 2005.

Figure 4-4 presents the same data broken down by offense severity groups on both grids.⁸ In five of the 12 offense severity groups, sentence variation between 2003 and 2005 has decreased;

Figure 4-3: Average Mean Difference in Sentences

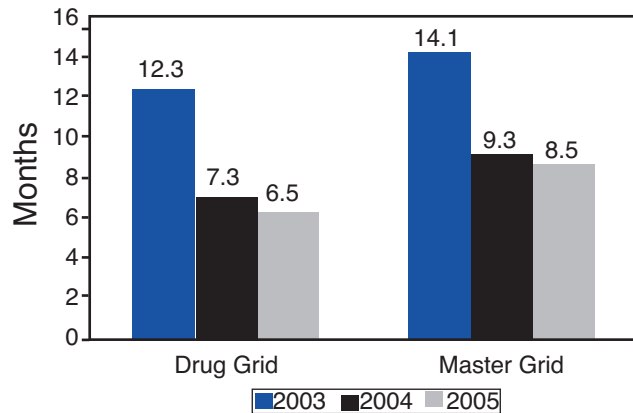
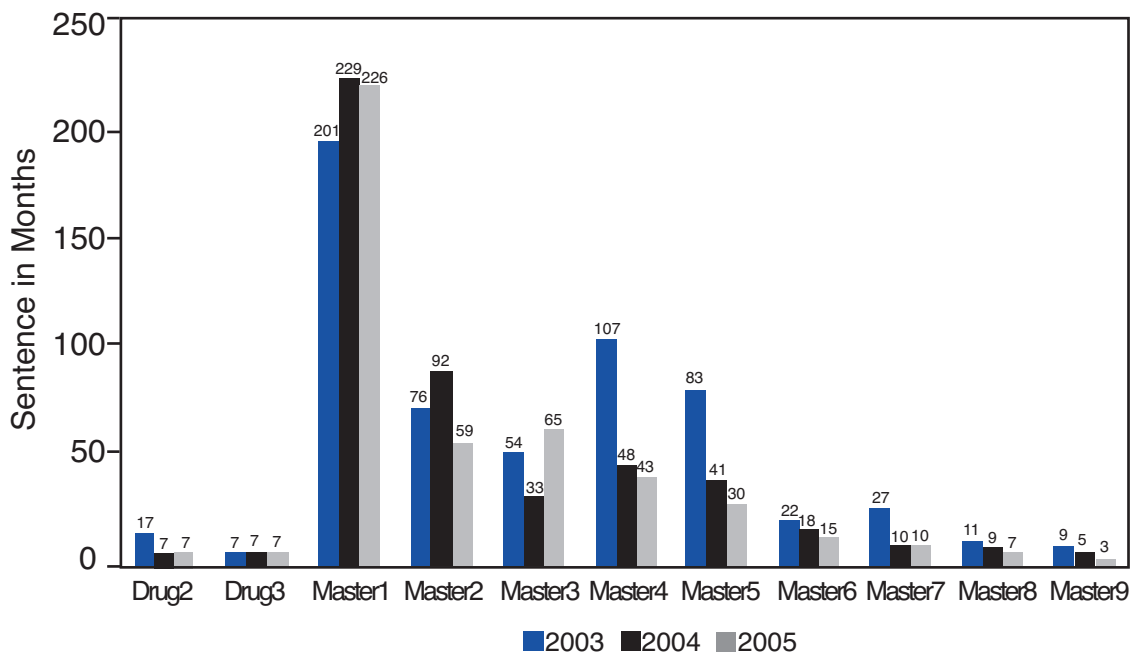


Figure 4-4. Mean Differences in Months by Offense Severity Group



⁸The number of cases with sentences to a period of incarceration are shown below.

Number of Incarceration Sentences by Offense Severity Group, 2003 to 2006												
Year	Drug 1	Drug 2	Drug 3	Master 1	Master 2	Master 3	Master 4	Master 5	Master 6	Master 7	Master 8	Master 9
2003	2	393	406	27	24	30	22	147	168	26	386	367
2004	0	374	535	20	36	40	24	117	201	34	377	318
2005	0	348	478	27	38	38	26	104	165	34	378	272

in one group (Drug Group 3), there is no change. Of the remaining groups, Master Groups 1, 2, 3, 4, and 7 and Drug Group 1 have too few cases for analysis.⁹ In the other Groups, the average distance from the mean for sentences in Master Groups 5 and 9 and Drug Group 2 fell dramatically: from 9 months in 2003 to 3 months in 2005 (67%) in Master Group 9; from 83 months in 2003 to 30 months in 2005 (64%) in Master Group 5; and from 17 months in 2003 to 7 months in 2005 (59%) in Drug Group 2. While not quite as dramatic, the reduction in the distance from the mean in Master Groups 6 and 8 still was significant: from 11 months in 2003 to 7 months in 2005 (37%) for Master Group 8; and from 22 months to 15 months (32%) in Master Group 6.

Taken together, these findings are the strongest evidence to date that sentence variation that cannot be explained by the current offense or the offender's prior criminal record has been reduced since the advent of guidelines, fulfilling the major stated purpose of the pilot guideline program.

The Impact of Guidelines on Sentence Options and Sentence Lengths

As previously noted, the guideline prison ranges and options for probation and short split sentences as alternatives to prison were built on the principle that guideline sentences should not incarcerate either more or fewer people than under the previous system.¹⁰ The Commission did not expect to see significant changes in the pattern after guidelines were introduced. The preliminary evidence, while not definitive, suggests that the guidelines appear to be meeting this goal.

We showed in *Chapter II* that the rates of probation and incarceration fluctuated within a relatively narrow range with no apparent trend between 2001 and 2005 (*Table 2-1 and Figure 2-1*), and there is no evidence that the introduction of guidelines in June of 2004 had any influence on the variations in the pattern from year to year.¹¹ Therefore, at this point in time, there is no reason to believe that the introduction of sentencing guidelines has either increased or decreased the use of incarceration or

⁹As a general rule of thumb, the Commission considers any group with fewer than 50 cases to be too small for reliable analysis. Under this standard, Drug Group 1 and Master Groups 1, 2, 3, 4 and 7 are too small, and further analysis must await more data. Drug Group 1 is omitted from the analysis because it had only two reported cases in 2003 and none in 2004 or 2005, perhaps due to an error in the automated file.

¹⁰For example, in constructing the guidelines, any cell in which probation was granted in 25% or more of the cases historically would be a probation-eligible box. This resulted in probation eligibility in 13 of the 60 boxes on the two guidelines grids. In these boxes, probation is a permissible option, but a prison sentence is also permitted. As expected, in the guidelines data we see a large number of both types of sentences in these boxes. The prison ranges were constructed using the middle 50 % of historical prison sentences with some adjustments for consistency and proportionality. As we discussed in Chapter II, sentences were not static between 1996 and 2003, the historical period used, and the guidelines were constructed to reflect the average of the entire period.

¹¹The guidelines went into effect for guilty pleas and verdicts entered on or after June 14, 2004. Thus, the calendar year 2004 data include many more pre-guideline than guideline sentences. Court records do not allow a clear delineation between pre-guideline and guideline cases in that year. Calendar year 2005 data are almost entirely guideline sentences. With less than two years of experience under the guidelines, any conclusions are necessarily preliminary, but if the guidelines did cause a large spike or depression in the incarceration rate, one would expect to have seen it in the 2005 data.

probation, although more time is needed to be certain. However, as we demonstrated in *Chapter III*, the extremely high rate of judicial compliance with the guidelines appears to have channeled the probation sentences to the cases where we would expect to find them – the probation-eligible boxes on both Grids and, even where they are “outside the box,” predominately in cases involving less serious crimes and offenders with little or no prior record. Accordingly, it seems fair to say, preliminarily at least, that the guidelines appear to have succeeded in not incarcerating either more or fewer offenders than in the past, while at the same time distributing the prison sentences to the most violent offenders convicted of the most serious crimes and the probation sentences to offenders most deserving of alternatives to incarceration, which is the goal of any fair and rational structured sentencing system.

As previously noted, the prison ranges in the guideline grids were based on the principle that the guideline sentences should reflect historical sentencing practices as closely as possible. Therefore, overall average prison sentence lengths should not have changed dramatically in response to the introduction of sentencing guidelines in June of 2004, although we would expect to see, and do see, some of the longer and shorter sentences being pulled closer to the mean. We showed in *Chapter II* (Table 2-3 and Figure 2-2) that sentence length, like the rate of incarceration, fluctuated in a relatively narrow

range between 2001 and 2005 with no clear pattern, and it does not appear that the introduction of guidelines in June of 2004 had any discernible impact on average sentence length for any major offense group. In this regard, sentences under the guidelines appear to be proceeding as expected, based on our preliminary data. However, it may be too soon to detect any impact the guidelines may have, particularly in the most serious crime categories, and the Commission will continue to monitor sentence length trends in future years as we accumulate more data.

In sum, because of the short time the guidelines have been in effect and the relatively small sample of guideline cases available for analysis, particularly in the more serious and complex cases, it is too soon to know for sure whether the implementation of the pilot sentencing guidelines system in June 2004 has affected the overall trends in sentencing. What can be said is that guidelines appear to have reduced disparity without altering significantly historical sentencing patterns for the in/out decision or for average sentence length. This preliminary result is consistent with the stated principle that the guideline sentences should reflect historical sentencing practices as closely as possible. In future years, the Commission will continue to study sentencing trends, expanding the analysis to include how sentencing appears to have changed under the guidelines both for individual offenses and within offense severity groups.