



National Institute of Justice

P r o g r a m F o c u s

Managing Prison Growth in North Carolina Through Structured Sentencing



Managing Prison Growth in North Carolina Through Structured Sentencing

by Ronald F. Wright

Not long ago, North Carolina's prison cells were full, but they held too many of the wrong people—nonviolent, low-priority felons. The sentencing system was variable and uneven. Offenders served very small portions of the sentences that judges imposed. A typical offender, after remaining in detention for several

weeks or months between the time of arrest and the judge's imposition of sentence after conviction, often had no time remaining to be served on the sentence, even for a relatively serious felony. Hence, the Parole Commission was forced to release many violators almost immediately after their sentences were imposed. The Parole

Highlights

This Program Focus discusses how the North Carolina General Assembly and the State's Sentencing and Policy Advisory Commission, working together, were able to build on the experiences of other States to design a sentencing structure that increased the certainty and the length of imprisonment for the most serious felonies while creatively using community and intermediate sanctions for lesser offenses to control increases in corrections costs.

By 1990, concerns about discrepancies between the sentences then required by statute in North Carolina and the length of sentences actually being served, as well as about crowding in State prisons and the drop in the incarceration rate relative to other States, led to a decision to institute structured sentencing guidelines. The Sentencing and Policy Advisory Commission was created to study new guidelines and to present recommendations to the General Assembly. The commission's recommendations, which called for lengthier prison terms for the most serious offenses and for an increase in the State's prison population, had to be balanced against the legislature's desire to limit any increase in corrections costs to levels already funded. During the 1993 legislative session, a consensus was reached to enact structured sentencing guidelines

while taking steps to control corrections costs. An important part of the decision involved strengthening existing community corrections and intermediate sanctions programs as less costly alternatives to prison for less serious offenses and for offenders without long criminal histories.

This legislative consensus supporting the guidelines was maintained during the 1994 and 1995 legislative sessions, despite a change in the party controlling the State House of Representatives. The methods used to maintain this consensus included:

- The sentencing commission's use of legislatively mandated impact statements to inform legislators of the prison construction costs associated with amending sentencing statutes. These statements have reduced significantly the increase in prison population and costs that would have resulted from amendments to the guidelines.
- Training in using the guidelines for members of the criminal justice community.
- Cooperation and collaboration by the sentencing commission and criminal justice professionals.
- Integration of community corrections agencies' budget requests into a single unified budget proposal.

During the 1994 and 1995 sessions, the sentencing guidelines were further refined by increasing penalties for the most serious offenses, including rape and statutory rape, and for offenses involving the use of a gun; by amending the existing habitual-felon statute to increase penalties for violation and to convert it into a three-strikes law; and by allowing judges to impose prison terms for certain categories of misdemeanor assault.

The new sentencing guidelines have led to an increase in the sentences imposed and served for the most serious felonies while limiting the projected increase in the prison population to about 5,000 over the next 10 years. Unexpected effects include a reduction in grants of parole to prisoners sentenced under the previous guidelines and the greater use of jails to handle increases in the prison population.

Many features of North Carolina's system could be replicated in other States, especially the use of cost impact statements to inform legislators of the costs of amending sentences and the use of community and intermediate sanctions as cost-effective alternatives to prison for less serious offenses by less experienced offenders.

Commission was also obliged to release more felons more quickly because admissions to prison were increasing much faster than prison capacity.

The problems of the system also extended to probation, restitution, and other nonprison punishments. Offenders sentenced to nonprison sanctions had every reason to violate the terms of their probation because the threatened prison time for probation revocation was so brief—often only a few days or weeks. Most offenders would choose to spend a few days in jail rather than deal with a treatment program or a probation officer for a few years. In the view of some judges and prosecutors, this situation effectively decriminalized misdemeanors and trivialized felony convictions.

North Carolina's system today is turning around. Not all the problems have disappeared, and new ones keep emerging. But the reliance on guidelines to structure decisions about the use and duration of confinement has created a more promising future for criminal justice in the State. Structured sentencing appears to have matched correctional resources to sentencing policy. It has maintained equilibrium through the first few legislative sessions even when the political conditions favored much more dramatic growth in prison capacity.

Structured sentencing has proved stable and attractive to a changing cast of State policymakers for two basic reasons. First, the North Carolina Sentencing and Policy Advisory Commission was able to provide accurate and objective information to legislators of

all political persuasions. The information simply laid out the fiscal and penal consequences of proposed policies. Second, State and local officials were able to develop intermediate sanctions as alternatives to prison and to control access to those sanctions. The availability and credibility of these sanctions, which still allowed the State to maintain some serious control over offenders outside prison, made the lack of prison terms for lower-level crimes more palatable. The combination of believable cost projections and credible nonprison sanctions appears to have slowed prison population growth.¹

Conditions Before 1993

By the late 1980s, almost everyone had reason to be unhappy with North Carolina's sentencing and correctional system. The prisons were full, and nonprison sanctions worked poorly without the threat of prison time.

This was not the first difficult time for North Carolina's sentencing system. Prison crowding and concern about uneven sentencing practices led to the passage of the 1979 Fair Sentencing Act, which specified the presumptive sentences assigned to each felony. The Act resembled similar reform statutes passed about the same time in California, Illinois, Colorado, and other States. Judges could sentence offenders to prison terms longer or shorter than the presumptive sentence if they adequately explained their decision on the record.

Message From the Director

North Carolina's correctional system was strained to the breaking point in 1990; today it appears to have turned the corner. This Program Focus describes how North Carolina's legislators created a new, rational foundation for sentencing decisions. Their fundamental shift to a structured system imposed "truth in sentencing" policies that sought to eliminate early release, channel career criminals into longer prison stays, and divert less serious offenders to less expensive community-based sanctions.

The path North Carolina took to overhaul its sentencing policies was neither smooth nor straight. Success came largely because leaders with vision and determination worked hard to base their decisions on empirical models and to collaborate with and learn from one another and from other jurisdictions. The result is a noteworthy achievement that brought the State a 1997 award from the Ford Foundation and the John F. Kennedy School of Government at Harvard University for outstanding innovations in government.

The conflicts North Carolina officials faced and the tradeoffs they made—and continue to make—typify situations other States face. We hope readers can learn from North Carolina's experiences described in this Program Focus.

Jeremy Travis
Director
National Institute of Justice

The Act promised to bring more uniformity and predictability to felony sentences in North Carolina, but it delivered on these promises for only the first 2 or 3 years. As the State's population rose, the number of convictions increased; this, coupled with the longer presumptive sentences in the statutes, led to crowded prisons.²

The State did not respond to the crowding by increasing prison capacity. For most of the 1980s, virtually no new prison beds were added. Instead, as more and more prisoners entered the system, the Parole Commission released some felons earlier than they might have otherwise. Sentencing judges became frustrated as they watched the gap grow between the sentences they imposed and the time offenders served. They responded by taking advantage of the Fair Sentencing Act to impose longer sentences than the presumptive levels. The gap grew larger still.

As the time served for prison sentences declined, offenders sentenced to nonprison punishments (with suspended prison terms) also began to view a short prison term as the most attractive sentence available. These defendants opted for shorter prison terms rather than longer probation terms (a right guaranteed to them under the State constitution) or intentionally violated the terms of their probation so it would be revoked and they could finish their punishment with a shorter, easier prison term. When the prison system had to make room for the increasing number of probation revocations, crowding only got worse.

The Structured Sentencing Movement

Structured sentencing is best described by contrasting it with traditional indeterminate sentencing systems at work through most of the century. In an indeterminate sentencing system, the legislature specifies a broad range of potential punishments for crimes. The judge selects the type of punishment and the length of the sentence. Administrators (for example, the parole commission) gather information about offenders' histories and their conduct in prison, to decide whether to release them before their maximum terms are completed. They might release the offenders because they have achieved rehabilitation or because they are less dangerous to society than other offenders entering a crowded prison system.

Many jurisdictions have rejected the indeterminate sentencing system because it leaves the public uncertain about the length of sentences offenders will actually serve. Indeterminate sentencing may also result in differences in the sentences served by similar offenders and make it difficult for the legislature and others to anticipate the correctional resources needed to carry out sentences.

States have developed two basic alternatives to indeterminate sentencing. A few States—such as Illinois in 1977 and California in 1978—adopted legislatively mandated determinate sentencing. Under this system the legislature specifies a sentence, or a much narrower statutory range than is customary, for the judge to impose on those who commit a particular crime. The power of a parole commission to release early is either abolished or severely limited. Legislatively mandated determinate sentencing replaces the individualized sentences of the traditional system with more uniform treatment of all those committing the same crime.

Legislatively mandated determinate sentencing has not proved to be a workable alternative to the traditional indeterminate system. Because uniform punishments assigned to each crime lead to unjust results in many cases, prosecutors and judges find ways to adjust the charges accordingly.

Structured sentencing is the second alternative to indeterminate sentencing. It is a compromise between the individualized administra-

tive assessment of each offender under the traditional system and the uniform treatment of all those charged with an offense under legislatively mandated determinate sentencing. Structured sentencing creates a set of sentencing rules (usually called "guidelines") that consider both the offense committed and a few personal characteristics of the offender (most important, the prior criminal record). The general rules of a structured sentencing system make sentences more uniform and less subject to the individual discretion of judges or parole boards. Yet the structure allows a judge to impose different sentences in special cases so long as the judge explains how the case is special. Structured sentencing makes it possible to plan the necessary correctional resources, without waiting to react after a crowding problem develops.

Almost half the States—starting with Minnesota and Pennsylvania in 1978, Washington in 1981, and Florida in 1982—have created structured sentencing systems over the past 15 to 20 years. The Federal Government also moved to a structured system in 1987. Because of the lengthy time required to draft sentencing rules and to project their impact on correctional resources, and because sentencing rules must be adjusted over time as crime rates or other factors change, most States have given the job of proposing and monitoring sentencing rules to permanent commissions.

North Carolina's structured sentencing system has received an unusual amount of attention among the "guideline" States for several reasons. First, it is a State with a relatively large population and a sizable prison system. Second, the State's political atmosphere on questions of crime and punishment is well within the national mainstream. These two features suggest that North Carolina's experiences may be transferable to other States of similar size and political outlook.

Third, North Carolina has been able to incorporate and build on the practices of earlier guideline States such as Pennsylvania and Washington. In that sense, North Carolina embodies a consensus among criminal justice and corrections officials about the basic structure and direction of sentencing guidelines.

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The Development of Sentencing Guidelines (1990–93)

By 1990, the system had deteriorated so badly that an overhaul was necessary. Recognizing the complexity of the system, which had many connected parts, the General Assembly created a Sentencing and Policy Advisory Commission to propose comprehensive changes. After 2 years of study, the commission proposed a sentencing structure now familiar in other “guideline” States. (See “The Structured Sentencing Movement.”)

Photo courtesy N.C. General Assembly



The General Assembly (Senate is shown here) passed legislation to ensure that judges had a wide range of well-funded community corrections as alternatives to prison for less serious offenders.

The proposed guidelines ranked felony offenses using levels of severity that reserved long prison sentences for violent offenders causing bodily harm. The guidelines also used three levels to rank misdemeanors in an effort to prevent uncontrolled use of jails to bypass prison limits.

How the sentencing commission ranked offenses. The rankings for offense seriousness created the vertical

Exhibit 1. Felony Punishment Chart in Months
(Effective for Offenses Committed On or After 12/1/95)

Felony Type	Prior Record Level					
	I 0 Pts	II 1–4 Pts	III 5–8 Pts	IV 9–14 Pts	V 15–18 Pts	VI 19+ Pts
Murder 1	D/LWP	D/LWP	D/LWP	D/LWP	D/LWP	D/LWP
Rape	P	P	P	P	P	P
	240–300	288–360	336–420	384–480	LWP	LWP
	192–240	230–288	269–336	307–384	346–433	384–480
Murder 2	P	P	P	P	P	P
	157–196	189–237	220–276	251–313	282–353	313–392
	125–157	151–189	176–220	201–251	225–282	251–313
Kidnaping	P	P	P	P	P	P
	73–92	100–125	116–145	133–167	151–188	168–210
	58–73	80–100	93–116	107–133	121–151	135–168
Armed Robbery	P	P	P	P	P	P
	64–80	77–95	103–129	117–146	133–167	146–183
	51–64	61–77	82–103	94–117	107–133	117–146
Voluntary Manslaughter	I/P	I/P	P	P	P	P
	25–31	29–36	34–42	46–58	53–66	59–74
	20–25	23–29	27–34	37–46	42–53	47–59
Involuntary Manslaughter	I/P	I/P	I/P	P	P	P
	16–20	19–24	21–26	25–31	34–42	39–49
	13–16	15–19	17–21	20–25	27–34	31–39
Burglary Second Degree	I/P	I/P	I/P	I/P	P	P
	13–16	15–19	16–20	20–25	21–26	29–36
	10–13	12–15	13–16	16–20	17–21	23–29
Breaking and Entering	C/I/P	I/P	I/P	I/P	I/P	P
	6–8	8–10	10–12	11–14	15–19	20–25
	5–6	6–8	8–10	9–11	12–15	16–20
Possession of Cocaine	C	C/I	I	I/P	I/P	I/P
	6–8	6–8	6–8	8–10	9–11	10–12
	4–6	4–6	5–6	6–8	7–9	8–10
	3–4	3–4	4–5	4–6	5–7	6–8

Disposition

Aggravated

Presumptive

Mitigated

Dispositions:

D = Death

LWP = Life Without Parole

P = Prison

I = Intermediate Sanction

C = Community Corrections

Notes: • Slash in dispositions means the judge can choose among the disposition options.
• Numbers shown are in months and represent the range of minimum sentences.

Source: North Carolina Sentencing and Policy Advisory Commission, revised 8/4/95 and adapted for this Program Focus. Although North Carolina uses the term “active punishment” to denote a prison sentence, the term “prison” has been used here.

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Exhibit 2. Form for Scoring Prior Record for Felony Sentencing

Number of Occurrences	Prior Conviction	Calculation	Total Points
	Murder 1	x 10	
	Rape	x 9	
	Murder 2, Kidnaping, or Armed Robbery	x 6	
	Voluntary Manslaughter, Involuntary Manslaughter, or Burglary Second Degree	x 4	
	Breaking and Entering or Possession of Cocaine	x 2	
	Prior Misdemeanor Class A1 or 1*	x 1	
		Subtotal	
If all the elements of the present offense are included in the prior offense:		+1	
If the offense was committed while on probation, parole, or postrelease supervision; or while serving a prison sentence; or while escaping:		+1	
		Total	

*Misdemeanors are categorized as Class 1, 2, and 3 based on the length of punishment assigned to them before the guidelines were implemented. Recently, a fourth class, Class A1, was created to categorize violent assaults and a few other serious misdemeanors.

Source: North Carolina Sentencing and Policy Advisory Commission, adapted for this Program Focus.

Exhibit 3. Misdemeanor Punishment Chart
(Effective for Offenses Committed On or After 12/1/95)

Offense Class	Prior Conviction Levels		
	I	II	III
	No Prior Convictions	One to Four Prior Convictions	Five or More Prior Convictions
A1*	1-60 days C/I/P	1-75 days C/I/P	1-150 days C/I/P
1*	1-45 days C	1-45 days C/I/P	1-120 days C/I/P
2*	1-30 days C	1-45 days C/I	1-60 days C/I/P
3*	1-10 days C	1-15 days C/I	1-20 days C/I/P

P = Prison
I = Intermediate Sanction
C = Community Corrections

Note: Slash means the judge can choose among the disposition options.

*Misdemeanors are categorized as Class 1, 2, and 3 based on the length of punishment assigned to them before the guidelines were implemented. Recently, a fourth class, Class A1, was created to categorize violent assaults and a few other serious misdemeanors.

Source: North Carolina Sentencing and Policy Advisory Commission, adapted for this Program Focus.

axis of a sentencing grid (see exhibit 1), a format now used in almost all guideline States. The prior criminal record of the offender—the second major variable in the sentence—created the horizontal axis of the grid. The commission’s proposal assigned points for every prior felony or misdemeanor, with more points assigned for more serious offenses (see exhibit 2). Offenders with lengthier prior records would move from left to right on the grid. A simplified point system measured the prior criminal records of misdemeanants (see exhibit 3, “Misdemeanor Punishment Chart”).

Most boxes in the proposed grid specified a single type of sentence or disposition. The three dispositions were “community” punishments (programs such as outpatient drug treatment or unsupervised probation that provided minimal control of the offender), “intermediate” punishments (nonprison sanctions requiring more intensive supervision, such as boot camp or day reporting centers), or “active” punishment (a prison term that must be served rather than suspended). Community sanctions were available in the lower areas of the grid, the cells involving the least serious crimes and the least extensive prior records. Grid boxes on the border between community sanctions and intermediate sanctions or on the border between intermediate sanctions and prison gave the judge the option of choosing between the two sanctions.

In most cases, the new guidelines gave judges no power to depart from the sentencing range but did allow judges to choose among three different sentencing ranges: an ordinary or “pre-

sumptive” range, an “aggravated” range, and a “mitigated” range of authorized sentence lengths. The judge could choose from the aggravated or mitigated range (spanning 25 percent above and below the presumptive range) after explaining on the record why the case was unusual. Both the prosecutor and defense attorney could appeal such a decision.

Keeping costs down. The durations of the sentences specified in the guidelines would ultimately determine both the cost and the political feasibility of the plan. The commissioners started with durations based on their collective estimates of what different crimes deserved. Those first durations produced shocking cost estimates of the amount of prison space necessary—more than \$1 billion in construction costs. After several months of further study and deliberation, the commission revised the durations downward.

When the commission submitted its interim report to the General Assembly in 1992, the legislators returned a clear signal that new prison costs should be kept to a minimum. They instructed the commission to submit at least one proposal that required no immediate prison construction beyond the new facilities already financed by a recent bond issue of \$250 million. The voters had approved prison construction bonds by the slimmest of margins.

The commission reluctantly complied with the legislature’s instructions, and in its 1993 report recommended that the legislature adopt a plan that called for more than 10,000 new prison beds during the first 5 years to handle an

increase of 8,000 felony inmates (from 23,000 to 31,000), along with additional space that would be needed for those serving the longest misdemeanor sentences.³ A minority report argued that these increases were not enough.

The final pages of the report contained a “Standard Operating Capacity” (SOC) plan that required no new growth in prison capacity during the first few years of operation. The SOC plan reduced prison requirements by reducing both the impact of an offender’s prior record and the durations in all the grid boxes. The report stated that the SOC plan was “submitted without recommendation”; most commissioners felt that the SOC plan was not adequate to meet the State’s needs.

A relatively small leadership group in both houses of the General Assembly dominated the debate over the commission’s final proposals. Soon after the report was submitted, it became clear that the SOC plan would receive the closest attention. In a legislative session dominated by a search for health care and education dollars, there was no sentiment within the leadership group or elsewhere in the General Assembly for funding much new prison construction in 1993.

It is noteworthy that the General Assembly rather than the more politically insulated sentencing commission pressed for the more politically unpopular alternative punishments. In States that had passed guidelines before 1993, legislatures, not sentencing commissions, had shown the most enthusiasm for prison system growth. In North Carolina, however, the sen-

tencing commission called for faster growth in the prison system, while the General Assembly held out for cheaper alternatives to prison (at least for some lower level felons). Hence, North Carolina’s legislature and the sentencing commission reversed the roles typically played in sentencing reform.⁴ Perhaps the legislature’s need to balance spending on the correctional system with spending on health care and other needs gave it a broader perspective than the sentencing commission, which had devoted 2 years to one set of problems.

Community and Intermediate Punishments Under the Guidelines

The proposed sentencing guidelines were politically acceptable to the legislature in 1993 because they combined three attractive features. First, they increased both the percentage of serious felons receiving prison terms and the length of time they would serve. Second, they brought the sentence served much closer to the sentence imposed by the judge, rendering higher credibility for the sentencing judge and greater public confidence in the system. Third, the increases in sentences were to take place (at least under the original legislation) with no costly increase in the State’s prison capacity.

Using community corrections and intermediate sanctions to make punishment more cost-effective. The only way to accomplish all three objectives without a major increase in the prison system was to send fewer people to prison for lengthier terms.

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As a result, the guidelines prescribed diversion of some offenders from prison terms to community and intermediate sanctions. They did so by allowing most misdemeanants and the least serious felons to be sentenced to nonprison sanctions. (See exhibit 1 above.) Class I felonies committed by offenders with no serious prior criminal record, for example, could result only in community sanctions.

Limiting sentences for the least serious felonies was crucial if the system was to obtain its objectives of controlling prison costs while imposing lengthier, more certain terms on serious felons. The limit would prove unpopular with judges, prosecutors, and other important constituent groups, but commission members, who were also criminal justice professionals, practitioners, and policymakers, convinced their constituencies that the tradeoff was necessary. Commissioners and their staffs made presentations to other groups, such as the State's bar association, to explain how the range of punishments would allow confinement of the most serious felons for longer terms while keeping prison costs down.

The range of available options for community corrections made the tradeoff more palatable for many groups by giving the judge credible forms of nonprison sanctions. Too often the choice between prison and probation had been perceived as an "all or nothing" choice. In light of the ordinary probation officer's large caseload, it was probably true that probation had not been an onerous or effective punishment for many offenders.

Some of the sentencing grid cells called for intermediate sanctions such as electronic monitoring or residential treatment, which emphasize control of the offender outside the prison setting. Others called for community sanctions that include community service or outpatient drug treatment with components for skills development. Thus, under the guidelines, there was no immediate dropoff from active prison terms to unsupervised probation.

Building on existing community corrections programs. Another factor that made the guidelines more palatable was the familiarity and proven workability of the nonprison alternatives. Throughout the 1980s, State corrections officials had been developing community corrections programs that put North Carolina among the first to develop intensive probation, community service, and house arrest programs. Local community corrections activities, run by cities, counties, and private foundations, also thrived in some parts of the State. Judges had imposed these sanctions on smaller groups of offenders for several years before the guidelines were adopted.⁵

When the time came to integrate community corrections and intermediate sanctions into the new sentencing guidelines, the sentencing commission and the Department of Correction maintained the familiar existing programs, keeping the mix of State and local administration of programs. The guideline drafters showed early versions of the proposed guidelines to the administrators of the existing community corrections programs and asked for a 5-year plan for expansion under the new sentencing structure.

The planning process made it possible to present a unified vision and budget to the General Assembly that gave a realistic estimate of the capacity of the current programs to expand and the money necessary to do so.

The viability of the guidelines depended on the continued willingness of legislators, judges—and ultimately the public—to sentence some classes of offenders to nonprison sanctions. These efforts by the creators of the guidelines to increase the variety and number of program slots available—efforts that built on a history of workable community corrections programs in North Carolina—were an important first step. The willingness to continue funding and adjusting programs would be the next step toward a stable and healthy sentencing system.

Guideline Changes in the 1994 Legislative Session

The sentencing guidelines in North Carolina remain a creature of the legislature. The sentencing commission's primary role involves monitoring the operation of the guidelines, making recommendations about revisions and their likely consequences, and helping legislators draft bills.

After structured sentencing legislation passed in 1993, the sentencing commission began to plan its agenda for the future. The commission anticipated spending much of its time in 1994 training prosecutors, defense lawyers, judges, and court personnel to use the new guidelines. But events soon made it clear that training would not remain the center of attention.

North Carolina citizens, like those in many other States, became increasingly anxious about crime. After the 1993 murder of Michael Jordan's father and a spate of other violent crimes, Governor James Hunt called a special session of the legislature to address crime. For 7 weeks in February and March 1994, legislators introduced more than 400 new crime bills. Many dealt with punishments for sexual assault and the use of weapons. Others embodied some variety of "three strikes and you're out" punishments—sentencing repeat felons to life imprisonment without possibility of parole—which were gaining attention at the same time in about half the State legislatures.

Use of impact statements to inform legislative policy on corrections. A 1993 statute required the legislature to obtain a fiscal impact statement before making any change to sentencing laws.⁶ The sentencing commission prepared these impact statements with supplementary data supplied by the research arm of the State legislature. The impact statements estimated the number of new prisoners a sentencing bill would add to the system by determining the annual number of convictions in recent years for the relevant crime; projecting any increases in convictions for that crime in the near future using a multiplier figure suggested by an expert advisory committee; and calculating the number of prison beds necessary over different time intervals if the estimated number of those convicted were sentenced to the midpoint of the punishments designated in the bill.

The Persuasive Power of Numbers

During the special legislative session on crime in 1994, members of the General Assembly introduced more than 400 bills relating to crime, most of them creating new crimes or increasing punishments for existing crimes. Especially popular were bills relating to sexual assault, use of weapons, and habitual felons (known as "three strikes and you're out" laws). The story below of one three-strikes bill illustrates the importance of impact projections in the legislative process.

During the 1994 session, a bill was introduced calling for a life term in prison with no possibility of parole for any person convicted of a third serious felony. The bill defined "serious" to include a long list of felonies, including burglary and drug crimes. As with any other proposed legislation having an impact on criminal sentences, an impact projection was required for this bill.

Two State bodies combined their efforts to produce the impact projections. First, the sentencing commission estimated the number of additional prison beds that the State would need to carry out the longer sentences required under the bill. The commission used an empirical model with proven success in other States to generate the estimate. It was based on statistics on the numbers of felons in recent years who would qualify for such a punishment, together with estimates of future increases in

convictions. These projections all went into a single-page report showing the additional prison beds that the bill would require after 1 year, 2 years, and so on. The report provided yearly projections out to the 10-year mark and periodic projections beyond that out to 40 years.

A second impact projection from the Fiscal Research Office of the State legislature estimated the cost of building and operating the new prison facilities the bill would require.

With this impact projection in hand, the executive director of the sentencing commission visited the bill's sponsors in the legislature before the bill received any attention in committee or on the floor of the House. The report showed that the bill would enlarge the prison system by more than 17,000 prison beds over its first 10 years (the entire State prison system in 1994 held roughly 24,000 inmates).

At first, sponsors had difficulty believing the estimate. But after an explanation of the method used to create the projection, and some consultation with other legislators who had dealt with the sentencing commission in the past, they were convinced. They concluded that the bill was too costly and ultimately supported a related three-strikes bill that added no new prison beds for the first 10 years and fewer than 2,000 beds over 40 years.

Robin Lubitz, then executive director of the commission, delivered the impact statements in a way designed to make the cost of corrections a vital part of the lawmakers' deliberations rather than just an afterthought. Lubitz met privately with lawmakers as soon as possible after a sentencing bill was introduced. Delivering the impact statements early and in private made it easier for sponsors to alter or withdraw the bill before taking a public stand. (See "The Persuasive Power of Numbers.")

By the end of the session, the legislature had passed a three-strikes law as well as a law increasing penalties for crimes committed while using or carrying a gun and new punishments for rape.⁷ In each case, the commission's analysis had a sobering effect on the legislators, who amended all the bills to reduce their impact on prison population. The bills, as introduced, would have increased the population by well over 20,000 beds within 10 years, doubling current prison usage. The bills passed during the 1994 special

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session will require about 2,000 new beds within 10 years.

Amendments to the habitual-felon statute. One legislative change to the sentencing guidelines will have an effect more difficult to predict. The legislature amended the existing habitual-felon statute by changing conviction under the statute from a Class D to a Class C offense and allowing the statute to be applied after any three prior felonies.⁸

The commission did not publicly oppose this broadening of the habitual-felon statute, which now gave formidable power to prosecutors, perhaps because prosecutors had used the law sparingly in the past.⁹ The amended version enabled prosecutors to increase the presumptive sentence for almost all the offenders in about 20 of the 54 cells in the felony sentencing grid (see “Prior Record Level” in exhibit 1). It may be that prosecutors have been filing habitual-felon charges much more often than is reflected in the modest number of convictions. Many prosecutors believe that the habitual-felon charge gives them leverage during plea bargaining negotiations. As a result, the habitual-felon law may be quietly influencing the sentences imposed in a greater number of cases than the number of convictions would indicate. Habitual-felon prosecutions are likely to remain a pressure point in the system for years to come.

Funding for community corrections.

The sentencing commission spent most of its efforts during the 1994 legislative sessions reacting to the many proposals that would increase

the use of prison cells. By the end of the session, the General Assembly had fully funded the prison construction necessary to operate within the sentencing guidelines until 2001. Equally important, however, were appropriation decisions related to community corrections.

Corrections officials feared that legislators would perceive community corrections to have lower priority than prison and enforcement funding. In 1994, however, the legislature funded the expansion in community corrections without controversy and with few conditions, including full funding for probation personnel to support new community corrections and intermediate sanctions.

The sentencing guidelines determined the total number of intermediate sanctions and community corrections slots that would be necessary, but neither the guidelines nor the appropriations bills determined which intermediate and community corrections programs would be expanded. Corrections officials and local officials were free to develop proposals as they saw fit to anticipate the choices of judges and the needs of offenders across the State. Day reporting centers became one of the most quickly expanding types of programs.

There were a few explanations for the legislature’s willingness to pay for an expansion of community corrections and intermediate sanctions.

First, no organized opposition group believed that its interests would be harmed by funding community corrections. During the creation of the sen-

tencing guidelines, advocates of prison growth and advocates of alternative sanctions found common ground within the sentencing commission. The debates about sentencing guidelines convinced all parties that both prison and nonprison sanctions required attention and growth. This perspective was especially easy to hold during 1994 because the legislature passed new community corrections funding during the same session in which it made modest expansions to prisons, keeping everyone happy.

Second, the proposal for complete funding of community corrections received clear backing from county and municipal officials who understood that if the State did not fund the necessary programs, it would prove costly at the local level. The cities and counties would have to pay for the programs, in terms of either money or local jail cells or funds for local community corrections programs.

Third, the community corrections budget received unified support from the various State agencies and nonprofit groups that operated community corrections programs.

In the past, each of the existing community corrections programs had submitted independent budget proposals. Under the auspices of the sentencing commission and the Department of Correction, these programs submitted a unified budget to the legislature. What had been diffuse political support for community corrections was collected behind one budget proposal.

Guideline Changes in the 1995 Legislative Session

When October 1, 1994, arrived (the effective date for guideline sentencing), the new system faced tranquil and promising conditions. The sentencing commission had reached agreement on controversial choices in designing the guidelines and was working on much less divisive issues such as restitution. The State was receiving favorable attention in national newspapers in the wake of the 1993 decision to adopt guidelines. Both Robin Lubitz and Judge Thomas Ross, the chair of the commission, received national recognition for their work.

The November 1994 elections, however, introduced a large element of uncertainty for the upcoming 1995 legislative session. During the 1994 election campaign, some campaign literature claimed that the new sentencing laws were too lenient for crimes committed against children. Under the heading "NO REQUIRED PRISON TIME," a flier listed crimes such as child abuse, infliction of serious injury, and sale of drugs to a minor. The flier failed to mention that active prison terms were not required for these crimes under pre-1993 laws, either, nor did it point out that a prison sentence was authorized for these crimes (even if not required) under the new law. A number of veteran Republican legislators objected to the flier, some quietly and others more vocally. All but two of the Republican members of the General Assembly had voted in favor of structured sentencing in 1993 and considered it a real improvement over the pre-1993 laws.

In the face of this criticism, the flier got a lukewarm response. A few candidates used the flier actively, but the majority of candidates for legislative office, Republican and Democrat alike, kept their remarks about crime and sentencing at a more general level and did not rely on the literally true but misleading claims of the flier. In the end, the voters sent 24 Republicans to the Senate (out of a possible 50 seats) and 68 Republicans to the House (out of a possible 120 seats). For the first time since Reconstruction, Republicans gained the majority in the North Carolina House of Representatives, and the Democrats' majority in the Senate was reduced to two. Although Republicans had overwhelmingly supported the 1993 sentencing guideline legislation, a few new Republican candidates vigorously attacked them for being too lenient.

After the election, freshman Republican legislators softened their position; they suggested that wholesale repeal of sentencing guidelines was unlikely and aimed instead for larger sentencing changes than had been produced during the 1994 session.

The House Republicans claimed that North Carolina lagged behind other States in the punishment of criminals. National imprisonment rates confirmed their assertion. Whether by default or considered policy, North Carolina had expanded its prison system far less quickly than most other States during the 1980s and 1990s. In 1972, North Carolina incarcerated 160 citizens per 100,000, the third highest rate in the Nation (behind Georgia and the District of Columbia). While the rate of incarceration climbed steadily in the State over the next 20 years, it

grew far more quickly in other States. By 1987, North Carolina ranked 15th in the level of incarceration; in 1989, for the first time, the State's rate fell below the national average. By 1992, the State's rate of 290 per 100,000 placed it 22nd among the States, and 14th among 17 States in the region.¹⁰ These changes, it should be noted, occurred before the sentencing commission was established.

Despite the initial calls for harsher sentences and increases in prison capacity, the 1995 session ended with changes that had a larger impact than the 1994 statutes but were considerably less expensive than the bills initially proposed. The 1994 statutes carried a predicted increase of about 2,000 new prison beds over 10 years. The 1995 amendments combined for an estimated increase of about 2,100 prison beds over 5 years and about 3,200 beds over 10 years. At the end of the 1995 session, the commission estimated that the State's total prison population after 10 years would remain near 38,000.

One change in 1995 involved an increase in the duration of prison terms for the most serious offenses (Classes B2 through D), including statutory rape. Because relatively few offenders entering the system are convicted of these offenses, however, the fiscal cost of these new laws was projected to be small.

The largest increases in the use of prison under the guidelines came from changes in the handling of assault cases. Some misdemeanor assault crimes were assigned to a new "A1" misdemeanor category to allow judges to impose a prison term. The commission estimated, based on preguideline

sentencing practices, that the great majority of assault cases would continue to receive community or intermediate sanctions, but the availability of prison terms for these crimes removed one major complaint about the guidelines. The sentences that judges impose for assault crimes will bear watching in the next few years.

Explanations for Controlled Increases in Length of Sentences

What can explain the 1995 General Assembly's fairly modest changes to the sentencing guidelines and the prison system? As in the previous

year, cost estimates that the Sentencing Commission provided to legislators who sponsored important bills played a critical role.

When legislators saw the cost of their proposals, they made adjustments that preserved the intent of the policy but lowered the cost considerably. Budgetary concerns carried the day.

Some legislators in 1995 argued for repealing the statute that required them to obtain prison population and cost estimates for any proposed change in sentencing law. The cost estimates for building the required new prison facilities were especially suspect because construction design and cost could not be estimated precisely. Some legislators maintained that prisons could be built for a lower price even if they were only Quonset huts surrounded by fences.

Yet, by the end of the legislative session, most General Assembly members were convinced that the sentencing commission and the legislative staff researchers were making it possible for them to make more informed and responsible choices.

There was a second reason for the legislature's moderation in its sentencing amendments. It deferred, in the end, to criminal justice professionals with strong hands-on experience in sentencing practices—judges, prosecutors, and corrections officials. Although many proposals from many different sources were considered, the legislature gave final approval only to changes that had substantial support from these criminal justice professionals. Perhaps the only major group with

official responsibilities in the day-to-day processing of criminal cases that had no visible influence on the commission or the legislature consisted of criminal defense attorneys.

The influence of criminal justice system participants was especially apparent during debates over an integrated package of changes in assault laws that the commission had endorsed. The commission had formulated its assault crimes package after listening carefully to feedback on the guidelines from criminal justice practitioners. During the commission's training sessions for prosecutors, judges, probation officers, defense attorneys, and others on the use of the guidelines, many participants expressed concern about misdemeanor assaults. The number of complaints convinced the sentencing commission that change was necessary.

The real question about legislative moderation, however, is not how to explain the outcomes in 1994 or 1995. The real question must look to the future. Will the legislature continue to add 2,000 to 3,000 new slots to the prison system each year? If so, then growth that might appear modest in any given year would lead to huge increases over time. In Washington State, for instance, steady, incremental changes to the sentencing laws over many years have dramatically changed the corrections system and made it less predictable and much more difficult to manage.¹¹

As of 1997, there appear to be no serious difficulties with the North Carolina guidelines. If the legislature changes sentences in the near future, the impetus for change will probably



Photo courtesy N.C. Department of Correction

A larger proportion of violent offenders went to prison under the guidelines than before, but the availability of intermediate sanctions and community corrections for other offenders helped control corrections costs.

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not come from a broad coalition of criminal justice practitioners or the sentencing commission.

It is worth noting that legislation passed during 1994 and 1995 will result in spending and growth that match the sentencing commission's 1993 proposal to increase prison capacity to roughly 40,000 beds by 2004 rather than the "Standard Operating Capacity" proposal originally adopted by the legislature. Perhaps this is a consensus position about the proper scale of imprisonment in the State that will last for some time to come.

Early Results: Some Success, Some Jail Crowding

The original 1993 legislation has produced some encouraging results. The North Carolina Sentencing and Policy Advisory Commission's data from late 1994 through June 1996 indicate that the most serious felons are indeed receiving prison terms in a greater percentage of cases and are serving longer average prison terms. (See exhibits 4 and 5.) The data also show that in the great majority of cases judges are adopting the ordinary sentencing range rather than the aggravated or mitigated ranges. Early reports indicate heavy use of several intermediate sanction programs. These preliminary results suggest that the sentencing structure is effectively predicting the correctional resources that the State will need and is directing serious felons and misdemeanants to longer prison terms while sending less serious felons to nonprison punishments. An independent evaluation of the North Carolina law is currently being conducted with

Photo courtesy N.C. Dept. of Correction



By 2004, construction of new prison space is expected to increase prison capacity to 40,000 beds, far fewer than would have been necessary before the guidelines.

support from the National Institute of Justice. (See "Evaluating the Effects of Structured Sentencing.")

But the transition to structured sentencing has not gone exactly as the legislature and the sentencing commission had predicted. A large number of State prisoners who were sentenced under the old Fair Sentencing Act remain in the State system and are eligible for parole. The sentencing commission's prison population projections assumed that prisoners currently in the system would continue to be paroled at a more or less constant

Evaluating the Effects of Structured Sentencing

To understand more precisely the impact of North Carolina's sentencing reform, the National Institute of Justice has awarded an evaluation grant to the Research Triangle Institute. The study has three major components:

- Quantitative analyses of prosecution, court, and correctional data gathered by three North Carolina agencies: the Administrative Office of the Courts, the Sentencing and Policy Advisory Commission, and the Department of Correction.

- Interviews with prosecutors, defense attorneys, and court and correctional personnel who have roles in the charging, adjudication, sentencing, and correctional processes.

- Mail and telephone surveys of prosecution, defense, court, and correctional personnel.

The quantitative analyses of the data from the Administrative Office of the Courts will have a case-level focus. Analyses will compare the charging, plea negotiation, and adjudication process for cases prior to and after the effective date of North Carolina's structured sentencing law. Analyses of data from the Department of Correction will compare the work, program participation, and institutional in-

fraction experience of individuals sentenced under the old and new laws.

The interviews of State and local personnel will gather largely qualitative information about the effects that the new sentencing law has had on the process of charging, negotiating, and resolving cases and on the corrections process. The mail and telephone survey will gather detailed assessment information about the effects of the new law from those who are administering it and working with it.

The findings are expected to have implications for several aspects of the sentencing and correctional areas, including sentencing legislation, sentencing implementation guidelines, structures to support sentencing reform, resource needs, and correctional program development. The findings will be especially useful for other States considering changes to their sentencing laws.

The findings of the study can inform the content of legislation, the structures or resources needed to support new laws or changes to existing laws, and the manner in which new laws are implemented. State correctional authorities will be able to anticipate effects that changes in sentencing practices might have on prison populations.

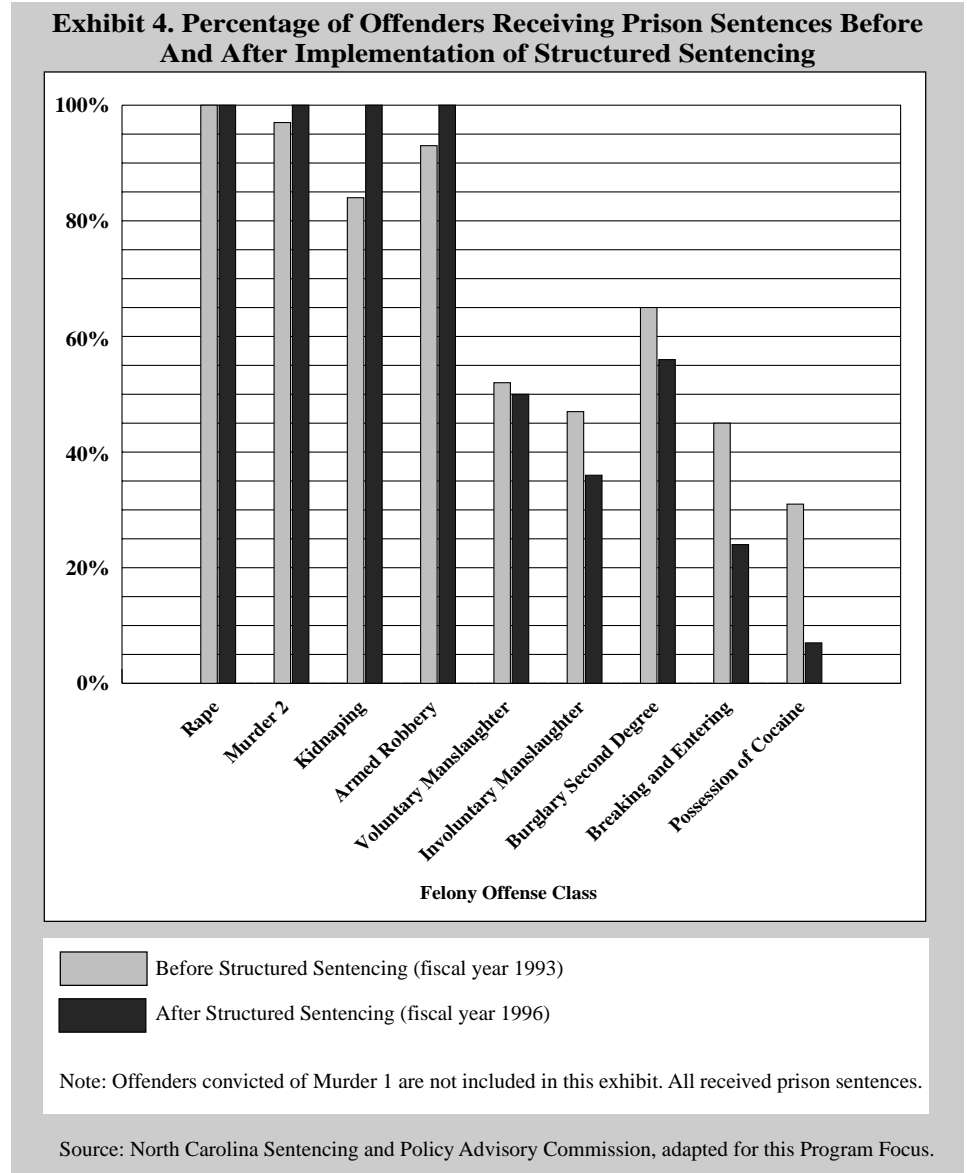
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rate. Any new capacity, therefore, could be devoted to prisoners sentenced under the new law. However, the Parole Commission began releasing far fewer inmates sentenced under the old law. The legislature provided some extra prison space for the “old law” prisoners by repealing the statutory prison cap (which limited the total prison population in the State) and allowing the population to increase up to the levels mandated by a Federal court decree. That extra space, however, did not become available until January 1996. The Parole Commission started using extra space (by slowing its rate of parole release) earlier than it became available.

The result has been too many prisoners for the State prison system to handle. The extra prisoners have, for the most part, ended up in county jails and rented out-of-State prison cells.¹² As the “old law” prisoners work their way through the system, and as the prisons now under construction become available for use, the problem should recede. If prison populations are as projected, the State should be able once again to take all the new prison admissions from the jails. In the meantime, jail administrators are left to wonder if the State will really be able in the long run to manage the prisons without constantly relying on local jails for reserve space.

Lessons for Other States

North Carolina has embraced some fundamental changes to its sentencing system that, all things considered, constitute a success story for the State. The funding and monitoring system now in



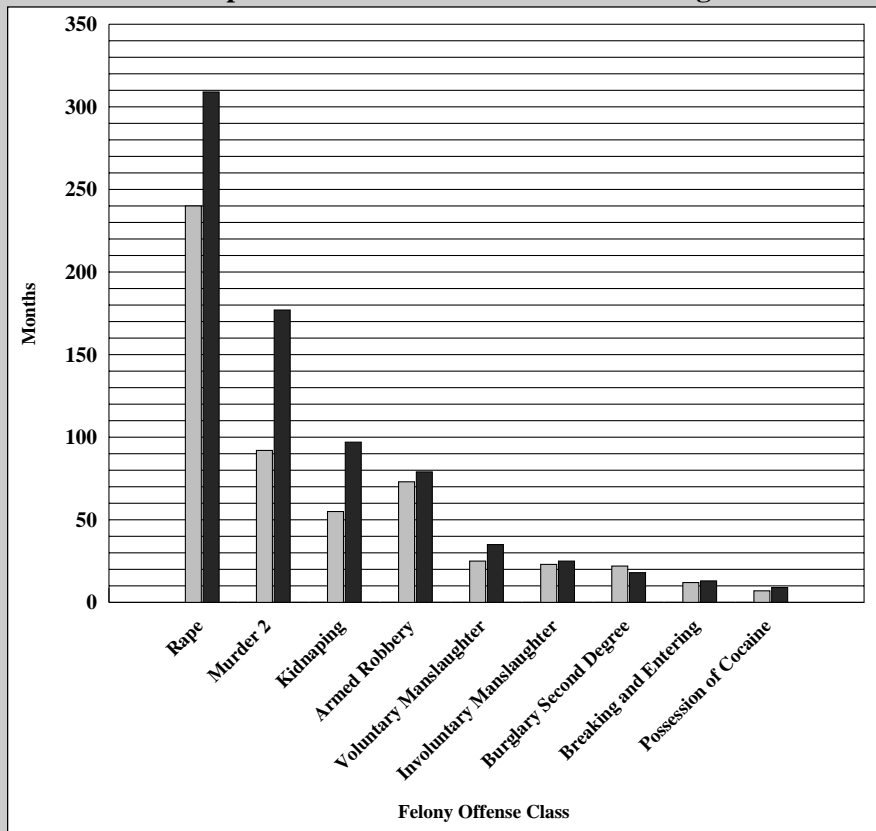
place should sustain the current sentencing policy for a number of years.

Which of North Carolina’s experiences might prove useful for other States? Perhaps the most important is the need for a sentencing commission or other full-time body to estimate the impact of changes, monitor and report on the effects of sentencing practices, and coordinate correctional resources. The commission must maintain credibility as an information source and recognize the legitimate policy role of the legislature.

Legislators need to see cost estimates for every proposed change to sentencing laws. The timing of the cost estimates is also important. The estimates must be made available to the legislators early in their deliberations, before political momentum can develop. When estimates based on credible models are routinely attached to sentencing bills (rather than whenever a legislator takes the initiative to request one), they ensure that legislators receive consistent, credible information and prevent the bill’s sponsor from

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Exhibit 5. Average Number of Months Served in Prison Before and After Implementation of Structured Sentencing



Before Structured Sentencing (fiscal year 1993)
 After Structured Sentencing (fiscal year 1996)

Note: Prison months served for Murder 1 are not included in this exhibit.

Source: North Carolina Sentencing and Policy Advisory Commission, adapted for this Program Focus.

claiming that cost estimates are merely a political weapon of the opposition.

Other lessons from the North Carolina experience relate to community corrections. The creators of sentencing policy must build support for community corrections as a critical part of sentencing, not as an afterthought or “frill.” The nonprison sanctions built into any sentencing structure make it possible to maximize the use of an affordable prison system. Community corrections garner public support only

if there is a range of sanctions available, from those emphasizing treatment and training to those emphasizing stricter control of offenders.

If the State cannot provide enough program slots of the right sort to meet the demands of the sentencing system, structured sentencing cannot last. It will not keep the support of prosecutors and judges, who will find ways to impose sanctions they believe are better matched to the offenders they encounter. As in other States, prosecutors and

judges in North Carolina hold the power to throw the system into imbalance through their decisions. If structured sentencing is to last, it must remain tolerable to those who spend the most time operating the system. Thus, the design and allocation of community corrections programs should remain decentralized.

No State will develop precisely along the lines that North Carolina has followed. But every State struggles with budget questions. The virtues of long-range planning and the matching of tomorrow’s correctional resources to today’s sentencing choices will apply anywhere. And every State struggles with questions of justice. A system that imprisons offenders either more or less than is necessary produces an injustice. Each State, like North Carolina, should ask itself about the justice of prison and nonprison sanctions, regardless of budget imperatives. Whether it takes place in a sentencing commission or elsewhere, this debate should find a forum in every State.

Notes

1. A conclusive finding would require a rigorous evaluation of sentencing impact. However, the changes in North Carolina sentencing patterns occurred soon after the guidelines went into effect and were consistent with the changes the commission intended to make. Hence, it is a reasonable hypothesis that the guidelines caused the changes.

2. Clarke, Stevens H., *Felony Sentencing in North Carolina, 1976–1986: Effects of Presumptive Sentencing Legislation*, Chapel Hill: University of North Carolina Institute of Government, 1987; Meyer, Louis B., “North Carolina’s Fair Sentencing Act: An Ineffective Scarecrow,” *Wake Forest Law Review*, 1993, 28:519.

3. Wright, Ronald F., and Susan Ellis, "A Progress Report on the North Carolina Sentencing and Policy Advisory Commission," *Wake Forest Law Review*, 1993, 28:421.
4. See Martin, Susan, "Interests and Politics in Sentencing Reform: The Development of Sentencing Guidelines in Minnesota and Pennsylvania," *Villanova Law Review*, 1983, 29:21.
5. See Citizens Commission on Alternatives to Incarceration, *Report*, 1982.
6. N.C. Gen. Stat. § 120–36.7(c).
7. See N.C. Gen. Stat. § 14–7.12 (three-strikes law).
8. N.C. Gen. Stat. § 14–7.6.

9. In the years just preceding the sentencing guidelines, the number of habitual-felon convictions increased but remained relatively small by comparison to the total number of felony convictions. North Carolina's courts complete more than 20,000 felony convictions each year. Prosecutors obtained convictions of 82 habitual felons charged in 1991, 136 in 1992, 164 in 1993, and 230 in 1994. That pattern of steadily increasing but small numbers seems to be continuing under the new law. Prosecutors obtained convictions on habitual-felon charges in about 262 cases during 1995, the first full year for any sentences to be imposed under the structured sentencing plan. Perhaps the number of convictions remains relatively low because prosecutors found it cumbersome to obtain the documents necessary to prove the prior convictions. North Carolina Sentencing and Policy Advisory

Commission, *1994 Felony Sentencing Practices in North Carolina*; North Carolina Sentencing and Policy Advisory Commission, *Final Report for Felons: January through June 1995*, 1996.

10. U.S. Department of Justice, Bureau of Justice Statistics, *1994 Sourcebook of Criminal Justice Statistics*, 1995, table 6.20. The State's incarceration rate for 1993 increased to 305 per 100,000 residents, but its ranking among States in the region remained unchanged.

11. Boerner, David, "The Role of the Legislature in Guidelines Sentencing in 'the Other Washington,'" *Wake Forest Law Review*, 1993, 28:381.

12. Neff, Joseph, "State Prisoners Burden County Jails," *Raleigh News & Observer*, May 26, 1996, at B1.

About This Study

This document was written by Ronald F. Wright, professor, Wake Forest Law School. To receive further information about the North Carolina Sentencing and Policy Advisory Commission, call 919–733–9543 or point your Web browser to <http://www.aoc.state.nc.us> and click on "commissions." The findings and conclusions of the research reported here are those of the author and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

On the cover: The North Carolina General Assembly (House of Representatives is pictured) tackled critical sentencing issues by creating a Sentencing and Policy Advisory Commission and then worked closely with the commission to make the resulting guidelines both fair and cost conscious. (Photo courtesy North Carolina General Assembly.)

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