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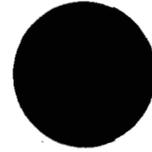
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Final Report

Evaluation of North Carolina's Structured Sentencing Law

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Errors of omission or interpretation are, of course, the responsibilities of the report authors.

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ABSTRACT

Effective on October 1, 1994, the State of North Carolina implemented a new structured sentencing law. Anyone committing an offense on or after that date became subject to prosecution and sentencing under the new law. The purposes of the new law were to increase the effectiveness of the sanctioning process to enhance public safety, to improve consistency and fairness for offenders, to promote truth in sentencing, and to make more efficient use of the State's prosecution, adjudication, and correctional resources.

The study we report on in this document will help build knowledge of the effects of sentencing reforms by looking at the effects of structured sentencing on multiple aspects of the adjudication and corrections processes in North Carolina. The study used multiple quantitative and qualitative techniques to examine the effects of the new sentencing law on charging, dismissals, plea negotiations, jury trials, adjudication time, and commission of institutional infractions while incarcerated. The study included three major components: (1) analysis of court data accumulated by the North Carolina Administrative Office of the Courts (AOC), (2) analysis of prison infractions data accumulated by the North Carolina Department of Correction (DOC), and (3) interviews with judges, prosecutors, defense attorneys, and clerks from three judicial districts in the State.

Using data from the AOC, we examined the number and type of charges, dismissal rates, three indicators of plea negotiations, jury trial rates, and adjudication time. A series of tables compare selected prestructured sentencing and structured sentencing defendants. Main findings from semistructured interviews with court personnel were used in the interpretation of our AOC findings and incorporated into the discussion of these results. Several modest but consistent changes were observed between defendants processed under the previous law and the structured sentencing defendants: an increase in the number of charges per defendant among misdemeanor defendants, an increase in the percentage of felony defendants charged with both felony and misdemeanor offenses, an increase in the percentage of defendant episodes resulting in a dismissal, an apparent increase in plea negotiations, and an increase in the median time required to adjudicate defendants. Responses from our interviews with court personnel varied, but overall, respondent's perceptions were similar to the findings from our analysis of AOC data. Respondents did not report major changes in the system resulting from the implementation of structured sentencing.

This study also compared overall involvement in infractions of inmates sentenced before structured sentencing and those sentenced under structured sentencing, and in five infraction categories (assault, drug/alcohol, profanity/disobedience, work absence, money/property offenses). Poisson regression analyses, conducted separately for males and females and that included numerous control variables, showed that both males and females sentenced under structured sentencing had a higher total infraction rate than those sentenced before structured sentencing. Both genders had higher assault infraction rates, and rates were higher for structured sentencing inmates in most rule violation categories. Many of the control variables were significantly associated with involvement in infractions, allowing the creation of profiles of inmates with high risks of committing infractions. Possibilities for correctional administrators to modify their practices to affect inmate's behavior while incarcerated are discussed.

Chapter 1. Introduction and Background

1.1 Introduction

Major reforms have occurred in U.S. adjudication and sentencing policies and practices over the past three decades. The Federal system has changed, and virtually every State has initiated changes, with many States implementing major reforms. Some studies of the impacts of sentencing reform have been conducted, but their foci have largely been limited to a few topics, such as compliance with changes, sentencing disparity, and sentencing patterns, as well as impacts on correctional populations. Research addressing the effects of sentencing reform on the criminal justice process itself has been limited.

Effective on October 1, 1994, the State of North Carolina implemented a new structured sentencing law. Anyone committing an offense on or after that date became subject to prosecution and sentencing under the new law. The purposes of the law were to increase the effectiveness of the sanctioning process to enhance public safety, to improve consistency and fairness for offenders, to promote truth in sentencing, and to make more efficient use of the State's prosecution, adjudication, and correctional resources. A sentencing commission developed recommended ranges of punishment for offense and offender categories and has developed a model to estimate correctional populations. The sentencing commission tracks sentences and other aspects of structured sentencing, but has limited resources to study the effects of the law on the criminal justice system.

The study we report on in this document will help to build knowledge of the effects of sentencing reforms by looking at its effects on multiple aspects of the sentencing and corrections process in North Carolina. The study used multiple quantitative and qualitative techniques to examine the effects of North Carolina's recently implemented structured sentencing law on charging practices, plea negotiations, jury trials, guilty plea and dismissal rates, adjudication time, and inmates' commission of institutional infractions while incarcerated. The study included three major components: (1) analysis of court data accumulated by the North Carolina Administrative Office of the Courts (AOC), (2) analysis of prison infractions data accumulated by the North Carolina Department of Correction (DOC), and (3) interviews with key individuals involved in the implementation of the new structured sentencing law. Figure 1.1 is a schematic

representation of the study design. Each of the three study components developed data to address *system impact* questions. The three components are related to each other as well. Quantitative analyses informed the interviews, and the key informant interviews helped inform the interpretation of the quantitative analyses. An integrative analysis of the quantitative and qualitative data was conducted to identify multiple short and medium term effects of the new law.

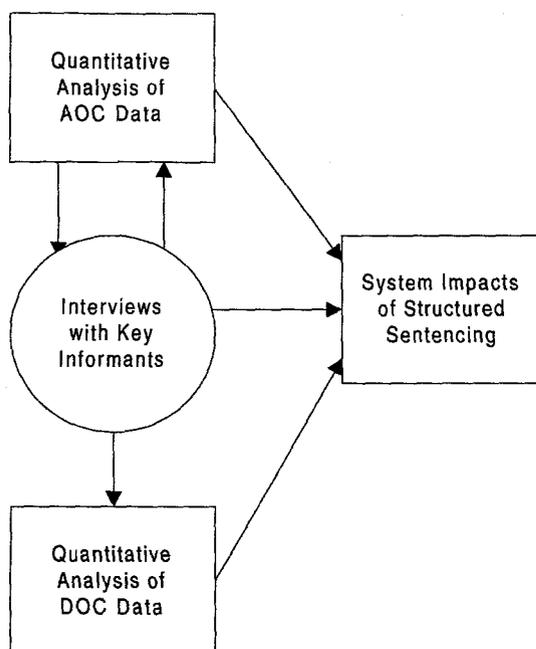


Figure 1.1 Schematic for Evaluation of North Carolina Structured Sentencing Law

North Carolina's structured sentencing law is a major criminal justice system innovation with potential implications for other States. The impacts of structured sentencing on the adjudication and corrections processes identified in the study will help North Carolina and jurisdictions around the country anticipate the likely effects of structured sentencing laws, design new laws that might better achieve their intended goals, and ultimately improve the potential of sentencing legislation to enhance public safety in an effective and equitable way.

1.2 Background and Effects of Sentencing Reforms

Since the 1970s, there have been extensive sentencing reforms in the United States. These reforms are grounded in a number of factors that were a source of dissatisfaction with the largely indeterminate form of sentencing that had characterized U.S. sentencing practices in the post World War II period (Blumstein, Cohen, Martin, & Tonry, 1983; Wicharay, 1995). Many felt that judicial sentencing discretion was excessive under the indeterminate model, and they pointed to the significant sentencing disparities that existed for individuals convicted of similar crimes. According to a report published by the Bureau of Justice Assistance (BJA), individuals convicted of similar offenses often received widely disparate sentences (Austin, Jones, Kramer, & Renninger, 1996). One of the goals of sentencing reform has been to reduce sentencing disparity. A change in correctional philosophy in the 1970s and 1980s from an emphasis on rehabilitation (which is consistent with an indeterminate sentencing approach), to one that emphasizes punishment and “just deserts,” has also helped to stimulate sentencing reforms.

Another goal of sentencing reforms has been “truth in sentencing” to make the length of time that individuals serve more commensurate with the sentences they receive. As a result of sentence reduction credits and parole release decisions, individuals sentenced to prison terms have typically served less than half of their sentences. According to a Bureau of Justice Statistics (BJS) study, for example, the average incarceration sentence imposed in 1990 was 65 months and the average time served was 22 months (34%) (Perkins, 1993). In 1994, State prison inmates were expected to serve 29 of the average 71-month sentence (41%) (Maguire & Pastore, 1997). “Truth in sentencing” laws have more impact as a greater percentage of inmates become subject to the requirements of these laws. A recent BJS report indicates that the expected time to be served by State prison inmates is increasing. For example, offenders admitted to state prisons in 1996 for robbery were expected to serve 7 months longer than inmates admitted for robbery in 1990 (Ditton & Wilson, 1999). A study of time served in prison by Federal offenders for the 1986-97 period indicates that length of sentences increased during this period; overall time to be served and actual time served increased (Sabol & McGready, 1999).

The predominant philosophy of crime control in recent times, particularly the emphasis on incarceration for purposes of incapacitation (Blumstein, Cohen, Roth, & Visher, 1986), has also created an impetus for sentencing reform. One effect of the incapacitation emphasis has

been an increased use of incarceration resulting in overcrowded prisons. Overcrowding in turn has resulted in Federal and State court requirements that correctional systems reduce or cap their inmate populations (Petersilia, 1987). The increased use of incarceration has also generated the need for States to spend large numbers of tax dollars to build new prisons to increase capacity. Some jurisdictions have reached the upper limit of resources they are willing to commit to the incarceration of offenders.

There have been two major kinds of sentencing reform: sentencing guidelines and mandatory minimum sentences. Mandatory minimum sentences have been legislated in all States for selected offenses and offenders (Austin et al., 1996, Table 3-3). Sentencing guidelines can be mandatory or advisory and typically involve use of a grid where one dimension details offense types ordered by seriousness, while the other indicates categories of criminal history severity (number of previous convictions). Within the cells of the grid are *presumptive sentences* that a judge is to use to sentence a convicted offender. Departures from the presumptive sentence are permitted for aggravating or mitigating circumstances, and the judge can also depart from the presumptive sentence within some limits. Judges are sometimes required to justify in writing departures from the presumptive sentence. Sixteen States operated under some form of sentencing guidelines as of 1994 (Austin et al., 1996, Table 3-2). North Carolina's 1994 structured sentencing law falls into the "sentencing guidelines" category.

Voluntary sentencing guidelines were the most common form of sentencing innovation between 1975 and 1980, but these changes had few significant impacts (Tonry, 1988; Wicharay, 1995). More recent reforms have generated more change. Tonry's analysis of the effects of sentencing reforms in Minnesota, Pennsylvania, the State of Washington, and in the Federal system suggests significant effects resulted. Reforms achieved high compliance, sentencing patterns were modified by the reforms, sentence lengths were slightly reduced, sentencing disparities decreased although early gains may have eroded, and the guidelines did not result in increased trial rates and processing times. There is also evidence, however, in Pennsylvania and Minnesota that there is some circumvention of the guidelines (Tonry, 1988). Austin et al. (1996) also indicated similar impacts of sentencing reforms, consistent with Tonry's findings. In a subsequent analysis, Tonry (1992) asserted that mandatory minimum penalties do not work; they serve the political and rhetorical needs of elected officials but do little good and much harm. Wicharay (1995) argued that sentencing reforms often do not achieve their aims because the

court community workgroup (judges, prosecutors, defense attorneys) often cooperate with each other to circumvent the new rules.

Typically, when sentencing reforms are being debated, prosecutors and judges complain that changes that reduce discretion in sentencing choices will have negative results, such as reductions in plea negotiations and increases in trial rates. According to available evidence, these predictions are not generally born out (Clarke et al., 1983), but the evidence is not conclusive. Moreover, the effects of structured sentencing on the balance of power and process of negotiation between parties to the sentencing process is not well understood. It is virtually certain that the changes brought by structured sentencing will have significant effects, but more evidence is needed to characterize the effects and their implications.

The general conclusion about the effects of structured sentencing on correctional populations is that the reforms have little effect (Austin et al., 1996; Clarke et al., 1983; D'Alessio & Stolzenberg, 1993; Marvell & Moody, 1995). However, this general conclusion masks some apparent effects, and the effects may be increasing. Marvell and Moody (1995) found that structured sentencing did increase prison populations in Indiana. D'Alessio and Stolzenberg (1993) stated that the Minnesota determinate sentencing law may not have increased prison populations because judges circumvented the guidelines when prisons were overcrowded. Clarke (1987) reported that the 1981 North Carolina determinate sentencing law slowed the growth of the State's prison population. Wicharay (1995, p. 159) found considerable variation in the impacts of sentencing reforms on incarceration rates for States. A total of 9 States experienced significant increases, 10 States had nonsignificant increases, 11 States had significant declines, and 16 States had nonsignificant declines. But overall, State prison populations have increased steadily since 1990. The 1990 year-end State prison population in the United States was about 690,000; the estimated 1997 year-end State prison population was about 1,200,000, a 74% increase (Ditton & Wilson, 1999, p. 3).

Virtually no research information is available about the effects of sentencing reforms on prisons, such as the frequency of inmate infractions while incarcerated. A priori, there are reasons to expect that the 1994 North Carolina law will have correctional impacts resulting from a higher level of certainty in connection with the time that will have to be served on a sentence. The result could be reduced incentives for inmates to earn reductions in sentence length by their good behavior.

Structured sentencing in North Carolina also eliminated “good time” and “gain time” and replaced these with “earned time.” Earned time is much less generous to the inmate in that it requires inmates to carry out prison assignments without infractions to avoid serving an additional 20% of their maximum sentences.

Parole also was eliminated for active (prison) sentences under North Carolina structured sentencing. These procedures had allowed inmates to achieve very substantial reductions in the amount of time they served in prison. Prior to structured sentencing between 1987 and 1993, North Carolina’s felons and misdemeanants served about 40% of their sentences; in 1993 (largely due to prison overcrowding), this percentage was 19% for felons and 9% for misdemeanants. In the early years of the new structured sentencing law, felons were serving no less than 100% of their minimum sentence and misdemeanants at least 86% of their sentence (North Carolina Sentencing and Policy Advisory Commission, 1996b).

There has been concern that the elimination or reduction of inmates’ opportunities to reduce the amount of time they remain incarcerated through good and gain time and parole might also reduce incentives for them to abide by institutional rules while incarcerated and to participate in educational and treatment programs. This expectation is logical, and there is anecdotal and quantitative empirical evidence from North Carolina’s correctional officials and correctional records that structured sentencing may be having such negative effects (Memory et al., 1998).¹ Managing the behavior of prison inmates is a challenge under the best of conditions, so any reduction in incentives for inmates to follow the rules could result in the deterioration of institutional order and safety. To the extent that additional infractions involve attacks against correctional personnel and other inmates, the dangerousness of the prison environment is increased. And even nonviolent infractions have the potential to diminish the stability and orderliness of the prison environment, raise levels of stress for staff and inmates, and increase the costs of operating prisons. Wooldredge (1991) noted that institutional disorder also can hinder the success of treatment programs.

Several factors make North Carolina an ideal location for a sentencing reform study: A structured sentencing law was recently implemented (1994), there is a history of sentencing reform evaluation in the State, the State’s key agencies were interested in seeing the 1994 law

¹The Memory et al. (1998) study is reviewed in Chapter 3 in detail. A summary version of the study was published by the North Carolina Governor’s Crime Commission (Memory, 1998).

evaluated, and two State agencies provided data to conduct the evaluation. To address questions regarding the effects of the new law on the adjudication process, we utilize case-level data from the North Carolina Administrative Office of the Courts (AOC), and interviews with judges, prosecutors, defense attorneys, and court clerks. We examine the relationship between structured sentencing and institutional infractions with data provided by the North Carolina Department of Correction (DOC) and have benefitted from the advice of DOC officials in designing this aspect of the study.

Examination of system impacts of the recent sentencing reform will help North Carolina and jurisdictions around the country resolve problems of implementation of structured sentencing laws, design modifications to current laws to enable them to achieve their intended efforts, and develop new laws with a better chance to enhance public safety in an effective and equitable way.

1.3 North Carolina's Structured Sentencing Law

The North Carolina Sentencing and Policy Advisory Commission was created in 1990 to make recommendations regarding State criminal sentencing policies. In 1993, the General Assembly reviewed recommendations made by the Commission and adopted the structured sentencing law, which applies to all felony and misdemeanor crimes (except driving while impaired [DWI]) committed on or after October 1, 1994. Changes in the law were made during the 1995 legislative session that apply to crimes committed on or after December 1, 1995. These changes were primarily modifications to sentences for particular offense types and did not modify the basic structure of the new sentencing law.

Structured sentencing represented a new way of sentencing offenders in North Carolina. Judges are provided with specific sentencing options for the type and length of sentence that may be imposed, derived from calculations of the severity of the crime and on the extent of previous criminal records (the presumptive sentence). The new law also eliminated parole and set priorities for the use of correctional resources.

Three types of punishments are stipulated under the new law: (1) active punishments (prison or jail), (2) intermediate punishments, and (3) community punishments. For active punishments, felons and misdemeanants with more than 3-month sentences are incarcerated in State prisons, and misdemeanants with fewer than 3 months of active time are placed in county jails. Intermediate punishments require that offenders be placed on probation and also that they

be restricted in a boot camp, by split sentence, a day reporting center, or other special conditions. Community punishments may include fines, restitution, treatment, or community service. Crimes are classified into letter classes ranging from Offense Class A through Class I. Crimes that involve injuries or risks of injuries to victims are in the highest categories, while property crimes are in the lower ones. Misdemeanors are classified into a descending hierarchy of four classes: Class A1, Class 1, Class 2 and Class 3. These are six levels of classifications for prior records for felons. The highest levels are used for felons with violent or extensive prior records. Misdemeanors are classified into three prior conviction levels. Judges must impose active punishments for felons convicted of crimes that are in the high offense categories or who have high prior record levels. They must impose intermediate or community sanctions for those who are in the low categories, and they can choose either an intermediate or active punishment for those who fall in between. Options for increasing or decreasing the "presumptive" sentence based on aggravating or mitigating factors are also specified (North Carolina Sentencing and Policy Advisory Commission, 1996a).

The North Carolina Sentencing and Policy Advisory Commission analyzed data from calendar year 1995 for offenders convicted of felonies under structured sentencing and reported the following (Meagher, Herrin, & Lubitz, 1996):

- A total of 15,071 offenders were convicted of felonies under structured sentencing during 1995.
- Approximately 29% of felony offenders receive active punishments; about 46% received intermediate punishments, and about 25% received community punishments.
- An estimated 81% of all sentences fell in the presumptive range; about 10% were aggravated and nearly 9% were within the mitigated range.

The Commission has also examined data from the first 6 months of 1995 and made comparisons to the situation under the "old" law (North Carolina Sentencing and Policy Advisory Commission, 1996b):

- Felons in 1995 were serving 100% of the minimum sentence imposed by the judge, and misdemeanants were serving 86% of their imposed sentence. Prior to 1993, felons were serving less than 19% of their sentence and misdemeanants less than 9%.

- Felons in 1995 were serving an average of about 33 months in prison compared to 15.7 months in 1993.
- Under structured sentencing, over 500 new probation positions had been funded to provide increased supervision, monitoring, and control of offenders.

Many of the goals of structured sentencing are being met. And by incorporating into the 1994 legislative debate about the law, consideration of the number of prison beds that would be required under various sentencing scenarios, projected growth of the prison population was controlled (Wright, 1998).

1.4 Advisory Group

The advisory group we formed for the project consisted of individuals familiar with the operations of the courts and prisons in the State from a variety of perspectives. A number of individuals were involved at State administrative and policy levels, and several were involved in local adjudication operations. Experienced evaluation researchers also were included in the group. The following individuals participated:

- Stevens Clarke, Institute of Government, University of North Carolina;
- Laura Donnelly, Administrative Office of the Courts;
- James Drennan, Institute of Government, University of North Carolina;
- David Freedman, Attorney at Law, White and Crumpler;
- Thomas Havener, Administrative Office of the Courts;
- Kitty Herrin, North Carolina Sentencing and Policy Advisory Commission;
- Susan Katzenelson, Executive Director, North Carolina Sentencing and Policy Advisory Commission;
- Robin Lubitz, Executive Director, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice (formerly Executive Director of the North Carolina Sentencing and Policy Advisory Commission);

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in 1997 and a second time in October 1997.
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At several points in the following report,
group.

Chapter 2. Effects of Structured Sentencing on the Adjudication Process

This chapter examines the effects of structured sentencing on aspects of the adjudication process, specifically charging; dismissal, plea negotiation, and jury trial rates; and adjudication time. Our study employed two methods. Our primary approach was the analysis of criminal case data provided by the North Carolina Administrative Office of the Courts (AOC). As a supplement to these analyses, we also conducted qualitative interviews with court personnel in three judicial districts in the State.

2.1 Literature Review

The debate leading up to sentencing reforms is usually spirited. Often, those who work in the adjudication process (judges, prosecutors, defense attorneys, others), express concern about the effects that major change will have on their roles and the capacity of the adjudication process to function efficiently and effectively. The U.S. adjudication process is an adversarial one, and concerns typically are expressed that changes will shift the balance of power and give an advantage to one's natural adversary, mainly prosecutor versus defense attorney. Concern is also typically expressed that change will require additional resources (staff, time, financial) to process cases. For example, if the incentive for defendants to plead guilty is reduced, an increase in jury trials and the substantial resources required to try cases in front of a jury may result. But one general observation about the predicted effects of sentencing reform is warranted: The effects of new legislation on the adjudication and correctional systems, and on the crime rate, are usually *less* than has been anticipated (Clark, Austin, & Henry, 1997; Parent, Dunworth, McDonald, & Rhodes, 1996; Tonry, 1987; Wicharay, 1995).

A major reason given why sentencing reforms do not typically have major impacts is the power of the "courtroom workgroup" (Eisenstein & Jacob, 1977). The courtroom workgroup consists of those individuals working in the court systems who cooperate in the processing of cases. These groups have a stake in the efficient processing of the large numbers of cases that most systems must dispose of. These groups "tend to develop ways of resisting, evading, circumventing, or adjusting to changes in their environment, such as new sentencing standards" (Wicharay, 1995, p. 167).

One clear effect of structured sentencing is a reduction in the sentencing discretion of judges. The structured sentencing grid, and the typical requirement that judges justify departures from presumptive sentences in writing, limit the sentencing flexibility of judges (Alschuler, 1991; Wicharay, 1995).

Structured sentencing might be expected to influence a prosecutor's charging practices, but the available evidence is mixed in this regard. Clarke et al. (1983) did not find an increase in charges per defendant as might have been expected following North Carolina's implementation of the 1981 Fair Sentencing Act; in fact, the number of charges per defendant decreased unaccountably. Tonry (1988) found in Minnesota that there were more negotiations around charges and less negotiating around sentencing following the new law. Overall, the number of cases resolved by negotiation increased from 21% to 31% (Tonry, 1988). Parent et al. (1996) concluded that under presumptive sentencing guidelines, the total proportion of cases concluded by guilty pleas and through plea negotiations remained fairly constant. Often, the expectation is that structured sentencing will displace discretion from the court to the prosecutor. There is little evidence that this has happened, but more research is needed to address this issue (Austin et al., 1996).

An increase in trial rates does not appear to follow the implementation of structured sentencing according to Tonry (1988). In fact, Clarke et al. (1983) found that jury trials dropped from 5.7% to 3.2% of all dispositions following North Carolina's 1981 sentencing reform, perhaps because there was an increase in the percentage of cases with a formal (recorded) plea bargain following determinate sentencing. Clarke et al. (1983) also found a decrease in case processing time after the change to determinate sentencing, although it is not certain that the reduction was a result of the reform. There is also little evidence that case processing time increases after sentencing reforms (Tonry, 1987).

2.2 Methods

2.2.1 Overview

To examine the effects of structured sentencing on the adjudication process in North Carolina, we employed two methods. Our primary approach was the analysis of criminal case data provided by the North Carolina AOC. This analysis activity focused on five outcomes:

charging, dismissals, plea negotiations, jury trials, and adjudication time. As a supplement to these analyses, we conducted qualitative interviews with court personnel in three purposively sampled judicial districts in the State. The main goal of the interviews was to investigate from another perspective the quantitative analysis questions being addressed with the AOC data. Sections 2.2.2 and 2.2.3 describe our activities in designing and carrying out each of these study components.

2.2.2 Analysis of AOC Data

2.2.2.1 Description of AOC Data. In the following paragraphs, we discuss the data files and materials we received from the AOC.

Samples. In May 1997, the AOC furnished on tape two disposition samples of case data to staff at the Research Triangle Institute (RTI). Using instructions from RTI staff, the AOC sampled their criminal case database and extracted cases that had at least one offense disposed within either of two sample time windows: January through June 1994 (before structured sentencing went into effect) and January through June 1996 (after structured sentencing had gone into effect). All of the offense records for each case selected were included in our sample file. Each record represented an offense processed in a specific court. Some cases contained multiple offenses, and some offenses included multiple records (if processed, for example, at both the district and superior court level). RTI received 273,651 case records and 432,183 offense records in the prestructured sentencing sample (January to June 1994) and 308,519 case records and 485,919 offense records in the structured sentencing sample (January to June 1996).

For each time period sampled, AOC staff provided RTI with 10 data files, each set of files consisting of approximately 300 variables. These files contained case-level information (e.g., demographic and other information about the defendant); offense-level information (e.g., charged and convicted offense codes, free-form offense details, special conditions, pleas and verdicts, dispositions, sentencing information, and dates such as disposition date); witness and defense attorney information; State Bureau of Investigation (SBI) information (e.g., SBI and Federal Bureau of Investigation [FBI] identifiers); and judgment data. All of the files were linked by key fields within each file.

One additional file, which was used for both time periods, identified the offense codes with a text descriptor and offense type (felony, misdemeanor, infraction, probation violation,

traffic) and listed the relevant statute for the code. This file was linked to every charged and conviction offense in our analysis file so that offense type could be used when we developed a most serious charge classification system (described below).

Data Materials and Support. AOC staff provided RTI staff with various database materials to facilitate our understanding of the data. These materials included test data files, sections of the “user’s manual” used by State employees who enter data into the AOC criminal case database, a description of the database, and an input statement to be used by RTI in reading the data files into SAS statistical software. Because the data were complex in size and structure and because the data documentation was not necessarily designed for external users of the data, RTI staff frequently called and corresponded with AOC staff by phone and e-mail about the format and content of the data. In addition, during the course of the study, RTI consulted advisory group members experienced in analyzing the AOC data, as needed.

2.2.2.2 Preparation of AOC Data for Analysis. Due to the complexity and size of the AOC data files, the preparation of the data for analysis evolved into a more time-consuming process than had been expected. This process involved numerous operational decisions and steps, the most significant ones described in further detail below.

Unit of Analysis. As described above, the prestructured sentencing and structured sentencing samples were selected at the case level, and all offense records for each sampled case were extracted for our sample files. Although the AOC data are organized at the case level, we created the unit of analysis at the *defendant* level, based on the recommendations of our advisory group. Because defendants may have multiple charges under multiple cases being processed at the same time within a prosecutorial district, the defendant was considered to be a more meaningful analytic unit. Although each individual criminal case is administratively processed and recorded by the courts, a multiple-charge defendant is typically adjudicated in connection with a collection of charges, regardless of whether the charges fall under more than one case. Multiple charges often can be “bundled” for disposition purposes.

For our analyses, we created “prosecutorial district defendant episodes.” We linked together all charges for a defendant (identified by defendant’s name) within a prosecutorial district, regardless of the case with which the charges were associated, for which the adjudication

interval (dates from initial charged offense to disposition) overlapped.² Under this approach, some defendants could have more than one defendant episode. For example, if a defendant had multiple offenses charged and disposed within a 6-week interval, then had another group of offenses charged 2 months later, we considered each set of offenses as a separate defendant episode and analytic unit.

Classification of Defendant Episodes by Most Serious Charge. Because we anticipated that our outcomes of interest would vary by type of defendant, we developed analytic groups based on defendants' most serious charge type (e.g., homicide, rape, drug trafficking). About 74% of our defendant episodes that consisted of only misdemeanor charges had only one charge, and 31% of those with at least one felony had only a single charge. These single-charge defendants, of course, were classified into a most serious charge category based on their only charge. To categorize multiple-charge defendant episodes into analytic groups, however, we identified one of their charges as their most serious charge.

Using the Uniform Crime Reporting (UCR) listing (Maguire & Pastore, 1997), we developed a "charge hierarchy" for multiple-charge defendants. The UCR includes two sets of offenses. Part 1 includes 8 offenses ranging from criminal homicide (most serious) to arson (least serious). Part 2 offenses (a total of 17 offenses) range from simple assaults (most serious) to vagrancy and "other" offenses (least serious) (Maguire & Pastore, 1997). For the purpose of our analyses, we combined Part 1 and Part 2 offenses, collapsed two of the Part 2 offense categories ("vagrancy" and "other"), eliminated the "driving under the influence" (DUI) category under Part 2 (because driving while impaired [DWI] offenses are not subject to structured sentencing guidelines in North Carolina), and split the Part 2 "drug abuse violations" category into two groups: "sales/trafficking" and "possession/use/unspecified." In addition, we reordered Part 2 offenses, so that the drug abuse violations preceded "prostitution and commercialized vice" and "sex offenses" in presumed level of seriousness. Our final hierarchy for classifying a multiple-charge defendant's most serious charge is presented in Table 2.1.

Our first step in assigning the modified version of the UCR listings as a most serious charge hierarchy was to determine if the defendant had any felony charges. We considered any

²After our analysis of data was completed, we discovered an error in how data from two counties were analyzed. Due to coding oversights, defendant episodes from Davidson County and High Point were created separately from their respective prosecutorial districts. The effects of this error on the results of our study are unknown, but we believe they are minimal.

Table 2.1 Hierarchy for Determining Most Serious Charge Within Defendant Episodes

Code	Offense Type
1	Criminal Homicide
2	Forcible Rape
3	Robbery
4	Aggravated Assault
5	Burglary/Breaking and Entering
6	Larceny/Theft
7	Motor Vehicle Theft
8	Arson
9	Other Simple Assaults
10	Forgery and Counterfeiting
11	Fraud
12	Embezzlement
13	Stolen Property
14	Vandalism
15	Carrying/Possessing Weapons
16	Drug Abuse Violations-Sales/Trafficking
17	Drug Abuse Violations-Possession/Use/Unspecified
18	Prostitution and Commercialized Vice
19	Sex Offenses
20	Gambling
21	Offenses Against the Family/Children
22	Liquor Laws
23	Drunkenness
24	Disorderly Conduct
25	Other

felony charge to be worse than any misdemeanor charge; therefore, the selection of the most serious charge was limited to felony charges if the defendant had at least one felony. Our second step was to assign to all charges within a defendant episode a modified UCR crime code ranging from 1 to 25 (1 being most serious [criminal homicide] and 25 being least serious [other]). We assigned a numeric code to each of the defendant's felony charges (if the defendant had at least one felony) and to each of the defendant's misdemeanor charges (if the defendant had only misdemeanor charges). Finally, of all charges assigned a modified UCR code, we flagged for each defendant episode the charge with the lowest code as the most serious charge. When a defendant had multiple counts of the same most serious code, we used random selection to identify a single charge as most serious.

Elimination of Out-of-Scope and Problematic Data. Because we wanted to focus our analyses on defendants with criminal charges, we eliminated traffic charges, infractions, and probation violations. We also eliminated all data for one county, Mecklenberg County. Our advisory board recommended that we omit these data from the analyses because data for this county were incomplete.

Restriction of Data to Establish Comparable Time Periods for the Two Samples. To make the time periods for each sample equal in duration, and to ensure "pure" prestructured sentencing and structured sentencing samples, we restricted each sample according to charged offense and disposition dates.

As indicated earlier, a case was sampled for our study when at least one of its offenses was *disposed* within one of our time windows (January through June 1994 or 1996). There was no restriction in our sampling approach pertaining to the charged offense date. Cases from both the January to June 1994 (prestructured sentencing) and January to June 1996 (structured sentencing) samples could have included a charged offense date at any time prior to the sample time window. To ensure that our 1996 defendant episodes consist only of structured sentencing cases, we eliminated defendant episodes that included charged offense dates before structured sentencing went into effect, or October 1, 1994. Likewise, to avoid incomparable time periods between our two samples, we also restricted our 1994 sample to defendant episodes with charged offense dates only on or after October 1, 1992.

Although a case had to have at least one offense disposed during our time period to be sampled for our study, *other* offenses within a sampled case may have been disposed later than

that 6-month period. Due to our sampling approach, the cases sampled within the January to June 1994 window had a longer time period in which to have other offenses disposed than did the cases sampled in the January to June 1996 window. In fact, the 1994 sample of cases may have had offenses that were not disposed until after the structured sentencing law changes began. Even though an offense is adjudicated under the rules that are in effect when the offense occurred, the change to structured sentencing may have impacted the court process enough to change the adjudication of older offenses in some ways. Thus, we decided to eliminate defendant episodes that would have included offenses that crossed over into structured sentencing. We restricted the 1994 sample to defendant episodes with all offenses disposed prior to October 1, 1994, and to be comparable, we also restricted the 1996 sample to defendant episodes with all offenses disposed before October 1, 1996.

In summary, charged offense and disposition dates for offense records were constrained to within the period from October 1, 1992, through September 30, 1994, for the prestructured sentencing sample and from October 1, 1994, through September 30, 1996, for the structured sentencing sample. Defendant episodes that included offenses with charged offense or disposition dates outside these time periods were eliminated from our analysis.

As a result of the restrictions described above, our final analysis files included a total of 124,324 prestructured sentencing and 130,540 structured sentencing defendant episodes.

Operationalization of Analytic Constructs. As indicated above, the aspects of the adjudication process that we focused on in our analysis of the AOC data are charges, dismissals, jury trials, plea negotiations, and adjudication time. The operationalization of the analytic constructs formulated to address these areas is discussed below:

- **Charges.** For each defendant episode, we calculated the number of charged offenses to determine whether the episode involved a single charge or multiple charges. In addition to identifying the most serious charge for every defendant episode (described above), we summarized the type of all charges (i.e., whether misdemeanor, felony, or both) in defendant episodes.
- **Dismissals.** For each defendant episode with only one charge, we determined whether the single charge was dismissed. For multiple-charge defendant episodes, we determined whether the most serious charge was dismissed and whether all of the charges were dismissed. The following dispositions were considered to be dismissals: dismissals by the court,

dismissals without leave after deferred prosecution, dismissals with and without leave by the prosecutor, dismissals by speedy trial, offenses never to be served, and offenses with no probable cause or no true bill returned.

- **Plea Negotiations.** Based on the suggestions from our advisory group, we created three indicators of plea negotiation. The first was to examine the reduction in the number of offenses between charges and conviction(s) (defined as the number of charges minus the number of convictions). The second was an indicator of *whether* the worst offense class³ of the conviction(s) was lower (or less serious) than the worst offense class of the charge(s). The third indicator was the *magnitude* of the reduction in offense class (i.e., the number of classes) between charge and conviction offenses. Using a listing provided by the AOC that identifies the class for specific offenses under structured sentencing, we assigned an offense class to each charge and conviction. Unfortunately, a class assignment was not available for offenses that could be assigned to more than one class (“split” across classes) or to offense codes that were obsolete when structured sentencing took effect. To compare offense classes, we applied the structured sentencing classification system to charges and convictions in both samples. It should be noted that classes for some offenses have been modified since the implementation of structured sentencing. For the purpose of our analyses, we used the classification specification in effect at the end our structured sentencing sample time window, June 1996.
- **Jury Trials.** For each felony defendant episode with only one charge, we determined if the single charge was tried in front of a jury. For each multiple-charge felony defendant episode, we determined whether the most serious felony charge was tried in front of a jury as well as whether any of the defendant’s felony charges resulted in a jury trial.
- **Adjudication Time:** For each defendant episode, we calculated the number of days from the date of the earliest charged offense to the latest date on which an offense was disposed.

2.2.3 Interviews with Court Personnel

In this section, we describe our instrumentation, sampling, and data collection and processing activities for the interviews we conducted with court personnel within selected judicial districts within the State.

³ “Offense class” refers to the seriousness of an offense and is used in determining the appropriate sentence length for a given offense under structured sentencing in North Carolina. Classes range from A-I for felonies, and A1-3 for misdemeanors, with Felony Class A and Misdemeanor Class A1 being the most serious.

2.2.3.1 Selection of Judicial Districts. Three judicial districts were selected as sites for the qualitative interviews. In consultation with our advisory group, the three districts were selected to represent different regions of the State, district/court structures, and caseloads. A district was selected from the western, central, and eastern sections of North Carolina. Two of the districts are single-county districts, and one is made up of more than one county. One district has a public defender's office, whereas the other two districts rely on the local bar for public defense. One of the districts is made up of small rural towns; another district contains a small city on the fringes of the largest urban area in the State; and the other district contains another large city in North Carolina and has a fast-growing and urban population. The annual trial caseloads for the selected districts range from approximately 1,400 to 6,300 for filed criminal superior court cases and approximately 6,300 to 39,000 for filed criminal district court (nonmotor vehicle) cases.

At each district, we attempted to interview at least one criminal district and/or superior court judge, district attorney, criminal defense attorney, public defender (if applicable), and clerk of superior court. Procedures for identifying and contacting individual respondents within each district are described in Section 2.2.3.3.

2.2.3.2 Development of an Interview Guide. In the fall of 1997, RTI staff developed a draft version of the interview guide to be used to collect qualitative information from semistructured, in-person interviews with judges, prosecutors, defense attorneys, public defenders, and court clerks. The draft instrument included questions about problems/barriers to the implementation of structured sentencing; changes in the roles of and relationships among parties in the adjudication process as a result of structured sentencing; and changes in charging practices, offense disposition, sentencing, appeals, plea negotiation, jury trials, and case processing time brought about by structured sentencing. The draft instrument was disseminated to our project advisors in advance of a meeting that fall, at which RTI presented plans for conducting these interviews. Following this meeting, the interview guide was revised and reduced based on suggestions by the advisory group. The final version of the questionnaire included questions concerning the following main topics:

- **Charging Practices.** Respondents were asked whether they have noticed any changes in the types or number of charges from law enforcement

officers and the prosecutor's acceptance/rejection of charges since the implementation of structured sentencing.

- **Dismissals.** Respondents were asked whether they think offenses are more or less frequently dismissed or whether they have observed no change in dismissals under structured sentencing.
- **Plea Negotiations.** Respondents were asked about observed changes in the way plea negotiations are conducted under structured sentencing and whether they have noticed any change in the frequency of plea negotiations since the new sentencing law took effect.
- **Jury Trials.** Respondents were asked whether they think the rate of jury trials is different under structured sentencing in comparison to the previous law.
- **Case Processing Time and System Resources.** Respondents were asked whether they have seen a change in the amount of time and the number of system actions (e.g., hearings, appeals) required to process a case since structured sentencing went into effect.

2.2.3.3 Data Collection Procedures. Interviews at each of the selected judicial districts took place between December 1998 and February 1999. For each district, we attempted to interview at least one criminal district and/or superior court judge, district attorney, criminal defense attorney, public defender (if applicable), and clerk of superior court.

Using the 1997-1998 State of North Carolina Courts Directory published by the AOC (1997) and available on the World Wide Web (<http://www.aoc.state.nc.us/www/copyright/aoc/adobe/adobe3.html>), we initiated our requests for interviews by attempting to contact the senior resident superior court judge in each district over the telephone. The purpose of this telephone call was to inform him/her of our project and to seek his/her approval to proceed with identifying and contacting potential respondents in the district.⁴ We then called the offices of the chief district court judge, district attorney, public defender (in one district), and clerk of superior court. Following these initial phone calls, we sent and/or faxed a letter of introduction to the potential respondents. The letter, signed by the project director, introduced RTI, the project, the purpose of the interviews, and the kinds of questions we would be asking. If the potential respondent did

⁴ We were not able to speak directly with the senior resident superior court judge in all districts. In such a case, we proceeded with contacting respondents as described in this report.

not contact us in response to our letter, we followed up with an additional telephone call in order to schedule an appointment or obtain a referral.

A total of 12 interviews were conducted across the three districts. Overall, three superior court judges, two district court judges, two district attorneys, two defense attorneys, one public defender, and two clerks of superior court were interviewed. Telephone and face-to-face interviews were conducted. For two of the districts, most of the interviews were done in person at the district's courthouse; all of the interviews for the third district were conducted over the telephone. Each interview was attended by two RTI staff members, one who administered the questionnaire and one who recorded responses into a word-processing program on a laptop computer. Interviews were not tape-recorded.

All interviews followed the same agenda. We began each interview with a brief oral review of a printed informed consent form to highlight the main points concerning the form and answer any questions. This form briefly summarized the project and the purpose of the interviews. It also indicated that a respondent's participation was voluntary, that a respondent may refuse to answer any of the interview questions, that responses would not be attributed to individual respondents in project reports, the approximate length of the interview, and phone numbers of key RTI staff for respondents to contact about the study if additional information was desired. Following the introduction, we administered the question items. At the end of our interviews with judges and district attorneys, we asked for referrals to local criminal defense attorneys who might have insight into the type of questions we were asking. Most interviews ranged from 30 to 60 minutes, with the majority of them taking 45 minutes to complete.

After conducting the interviews, RTI staff completed the transcription of notes from each interview. Both RTI staff present in each interview reviewed and revised the notes for completeness and accuracy. Final field notes were organized for each district by respondent type (judge, district attorney, etc.).

2.3 Findings

2.3.1 Analytic Approach

Using the AOC data, we generated cross-tabulations to compare the prestructured sentencing and structured sentencing defendant episodes for each of the outcomes of interest:

charging; dismissal, plea negotiation, and jury trial rates; and adjudication time. For these analyses, we focused on defendant episodes in the following 12 most serious charge categories: criminal homicide, forcible rape, robbery, aggravated assault, burglary/breaking and entering, larceny, motor vehicle theft, simple assault, stolen property, drug sales/trafficking, drug possession/use,⁵ and sex offense. Results were generated for single- and multiple-charge defendants and broken down for defendants with felony and misdemeanor most serious charges.

In this section, we present demographic and other basic information for each of the AOC samples and present the results from our analysis of these data for each outcome of interest. Main findings from our interviews with court personnel are summarized and used in the discussion of our quantitative results for each outcome.

Because our data constitute all cases satisfying the criteria for inclusion in the analysis, and because the numbers of cases are so large, we have not used tests of statistical significance to assess differences between prestructured sentencing and structured sentencing defendants. Even very small differences in estimates would satisfy criteria for inferring that differences between defendant types are statistically significant, even though the difference would not be considered substantively meaningful.

2.3.2 Description of AOC Samples

Table 2.2 provides demographic and other basic information for the defendant episodes in the 1994 and 1996 AOC samples. As indicated by the data in this table, the prestructured sentencing and structured sentencing defendants were similar in terms of their age, sex, and race/ethnicity distribution. Overall, the average defendant age in both samples was approximately 29 years, and just over three-fourths of defendants in both samples were male. Just under 45% of defendants in both samples were black, and roughly 50% were white.

The bottom of Table 2.2 provides the percentage of defendants in each sample whose case(s) was(were) processed at district court only, superior court only, or both courts. Typically, less serious cases are handled in district court although these cases can be transferred to superior court if the defendant requests a jury trial or appeals the district court outcome. More serious offenses are handled typically in superior court. For both the prestructured sentencing and

⁵The drug possession/use category also included defendants whose most serious charged offense was an unspecified drug charge.

Table 2.2 Comparison of Prestructured Sentencing and Structured Sentencing Defendant Episodes*

Characteristic	Prestructured Sentencing Defendants (%)			Structured Sentencing Defendants (%)		
	Misdemeanor (n=100,467)	Felony (n=23,857)	Total (n=124,324)	Misdemeanor (n=105,294)	Felony (n=25,246)	Total (n=130,540)
Mean Age in Years (Median)	28.9† (27.0)	27.3 (25.0)	28.6† (26.0)	29.1† (27.0)	27.6 (25.0)	28.8† (26.0)
Sex						
Female	20.6	16.1	19.7	22.0	18.2	21.3
Male	77.1	83.4	78.3	76.0	81.4	77.1
Unknown	2.4	<1.0	2.0	2.0	<1.0	1.7
Race						
Asian	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0
Black	41.0	56.7	44.1	40.1	55.7	43.1
Hispanic	<1.0	<1.0	<1.0	1.1	<1.0	1.1
American Indian	1.4	1.5	1.4	1.5	1.2	1.5
White	52.0	39.3	49.5	52.1	40.1	49.8
Other	1.7	<1.0	1.5	2.0	1.1	1.8
Unknown	3.5	1.0	3.0	3.1	1.0	2.7
Court(s) in Which Defendant's Case(s) Processed						
Superior Court Only	<1.0	2.7	<1.0	<1.0	2.8	<1.0
District Court Only	99.8	43.8	89.0	99.8	44.1	89.0
Both	<1.0	53.5	10.4	<1.0	53.1	10.4

Note: Cells may not total 100% due to rounding.

* Misdemeanor defendants represent those defendant episodes with a misdemeanor as their most serious charge. Felony defendants refer to defendant episodes with a felony most serious charge.

† Data are missing for ≥ 10% of defendant episodes.

structured sentencing defendant episodes, the percentages were 89%, less than 1%, and 10%, respectively. As expected, almost all misdemeanor defendants in both samples had their case(s) processed in district court only. About 44% of felony defendants in both samples had their case(s) processed only at the district court level, and over 50% of felony defendants also went to superior court as well.

Table 2.3 compares the distribution of most serious charges between the 1994 and 1996 samples. Overall, no major differences were observed in the breakdown of most serious charge types between the two samples. Of both prestructured sentencing and structured sentencing defendants, roughly 81% and 19% had a misdemeanor and felony most serious charge, respectively. Misdemeanor defendants in the structured sentencing sample were more likely than the misdemeanor prestructured sentencing defendants to have simple assault, drug possession/use, and disorderly conduct as their most serious charge. Felony defendants for the structured sentencing sample were less likely to have aggravated assault and burglary/breaking and entering, and more likely to have drug possession/use, as their most serious charge, but these differences also were modest.

2.3.3 Charges

In comparing charges between the prestructured sentencing and structured sentencing samples, we looked at both the number and type of charges within defendant episodes. Table 2.4 shows the overall percentages of defendant episodes that involved a single charge and multiple charges (categorized as either two or three and more charges) and the distribution of number of charges for our 12 analytic groups. Overall, the percentage of felony defendants with a single charge was the same for the 1994 and 1996 samples. Among felony defendants with multiple charges, there was a slight increase in the percentage of those with three or more charges, but this was offset by a slight decrease in the percentage of those with only two charges. One noticeable departure from this overall finding among the defendant types analyzed involves the stolen property defendants. For this group of felony defendants, a decrease in single-charge episodes was observed. In contrast, among misdemeanor defendants, we found a modest decrease (1.1%) in single-charge defendant episodes. Defendants whose most serious charge was a sex offense, for whom an increase in single-charge episodes was observed, were an exception to this overall finding for misdemeanor defendants.

Table 2.3 Distribution of Most Serious Charges for Prestructured Sentencing and Structured Sentencing Defendant Episodes*

Most Serious Charge	Prestructured Sentencing Defendant Episodes (%)			Structured Sentencing Defendant Episodes (%)		
	Misdemeanor (n=100,467)	Felony (n=23,857)	Total (n=124,324)	Misdemeanor (n=105,294)	Felony (n=25,246)	Total (n=130,540)
Criminal Homicide	<1.0	1.4	<1.0	0.0	1.1	<1.0
Forcible Rape	0.0	1.6	<1.0	0.0	1.6	<1.0
Robbery	0.0	6.4	1.2	<1.0	6.4	1.2
Aggravated Assault	5.5	7.7	5.9	5.0	6.7	5.3
Burglary/Breaking & Entering	1.4	20.4	5.0	1.2	18.7	4.6
Larceny/Theft	8.6	7.4	8.4	8.7	8.0	8.6
Motor Vehicle Theft	1.2	1.5	1.2	1.2	1.5	1.3
Arson	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0
Other (Simple) Assaults	19.4	<1.0	15.7	20.5	<1.0	16.6
Forgery and Counterfeiting	<1.0	5.3	1.0	<1.0	5.0	1.0
Fraud	3.0	6.1	3.6	3.1	7.0	3.8
Embezzlement	<1.0	1.8	<1.0	<1.0	2.0	<1.0
Stolen Property	3.8	4.7	4.0	3.3	4.2	3.5
Vandalism	4.1	<1.0	3.3	4.1	<1.0	3.3
Weapons	3.4	2.3	3.2	2.7	2.0	2.6
Drug Sales/Trafficking	0.0	19.5	3.7	<1.0	20.1	3.9
Drug Possession/Use	7.4	9.1	7.7	10.2	11.2	10.4
Prostitution	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0
Sex Offense	<1.0	1.9	<1.0	<1.0	1.7	<1.0
Gambling	<1.0	<1.0	<1.0	<1.0	<1.0	<1.0
Family/Child Offense	2.8	<1.0	2.3	2.7	<1.0	2.2
Liquor Law	8.5	0.0	6.9	8.0	<1.0	6.5
Drunkenness	2.8	0.0	2.2	2.3	0.0	1.8
Disorderly Conduct	8.1	<1.0	6.6	11.6	<1.0	9.4
Other	19.2	2.1	15.9	14.6	1.8	12.1
Total	80.8	19.2	100.0	80.7	19.3	100.0

Note: Cells may not total due to rounding.

* Misdemeanor defendants represent those defendant episodes with a misdemeanor as their most serious charge. Felony defendants refer to defendant episodes with a felony most serious charge.

Table 2.4 Number of Charges, by Most Serious Charge

Most Serious Charge	Prestructured Sentencing Defendant Episodes					Structured Sentencing Defendant Episodes				
	Single Charge		Multiple Charges			Single Charge		Multiple Charges		
	N	%	N	2 Charges (%)	3+ Charges (%)	N	%	N	2 Charges (%)	3+ Charges (%)
FELONY										
Criminal Homicide	174	51.2	166	19.4	29.4	140	49.5	143	19.4	31.1
Forcible Rape	119	30.8	268	22.2	47.0	118	29.7	279	25.7	44.6
Robbery	489	32.0	1,039	21.4	46.9	527	32.7	1,086	20.6	46.8
Aggravated Assault	931	50.9	898	20.0	29.1	821	48.6	867	21.3	30.0
Burglary/Breaking & Entering	433	8.9	4,439	25.3	65.9	429	9.1	4,288	21.2	69.7
Larceny/Theft	795	44.9	974	25.7	29.3	885	44.1	1,122	25.8	30.1
Motor Vehicle Theft	186	53.9	159	20.0	26.1	210	54.1	178	22.2	23.7
Simple Assaults	2	-	2	-	-	14	-	15	-	-
Stolen Property	594	53.6	515	21.3	25.2	496	46.7	566	21.9	31.4
Drug Sales/Trafficking	869	18.7	3,774	29.6	51.7	1,025	20.2	4,052	27.3	52.6
Drug Possession/Use	907	41.7	1,269	30.6	27.8	1,198	42.6	1,617	27.6	29.8
Sex Offense	200	45.3	242	26.0	28.7	206	48.5	219	24.5	27.1
Total†	5,699	29.3	13,745	25.6	45.1	6,069	29.6	14,432	24.2	46.2
All Defendant Episodes‡	7,444	31.2	16,413	25.1	43.7	7,930	31.4	17,316	23.9	44.7
MISDEMEANOR										
Criminal Homicide	0	-	1	-	-	0	-	0	-	-
Forcible Rape	0	-	0	-	-	0	-	0	-	-
Robbery	1	-	0	-	-	1	-	0	-	-
Aggravated Assault	3,166	57.6	2,333	24.8	17.6	3,006	57.1	2,262	24.1	18.9
Burglary/Breaking & Entering	598	43.6	775	29.6	26.8	557	43.3	730	27.5	29.2
Larceny/Theft	5,302	61.5	3,318	22.7	15.8	5,515	60.1	3,668	24.4	15.5
Motor Vehicle Theft	897	76.3	278	14.3	9.4	969	76.9	291	14.1	9.0
Simple Assaults	13,528	69.3	5,985	19.8	10.9	14,870	68.9	6,716	19.9	11.2
Stolen Property	3,186	83.5	631	11.5	5.1	2,925	83.5	578	11.6	4.9
Drug Sales/Trafficking	0	-	0	-	-	0	-	3	-	-
Drug Possession/Use	4,089	55.3	3,309	35.7	9.0	6,210	57.8	4,539	34.4	7.9
Sex Offense	112	70.9	46	16.5	12.7	141	75.4	46	13.4	11.2
Total†	30,879	64.9	16,676	22.9	12.2	34,194	64.5	18,833	23.5	12.0
All Defendant Episodes‡	74,638	74.3	25,829	17.6	8.1	77,092	73.2	28,202	18.4	8.4

† Refers to all relevant defendant episodes in selected analytic groups.

‡ Refers to all relevant defendant episodes in entire sample.

In Table 2.3, we compared the distribution of most serious charges between the prestructured sentencing and structured sentencing samples. As reported earlier, no overall difference between the two samples was observed: In both samples, about 81% had a misdemeanor offense as their most serious charge, and 19% had a felony. In addition to looking at the distribution of most serious charges to assess differences in charges, we summarized the types of all charges (whether only felony, only misdemeanor, or both felony and misdemeanor) in multiple-charge defendant episodes. Table 2.5 presents these results. Because defendant episodes with a misdemeanor as the most serious charge involved only misdemeanor charges, this table presents results for multiple-charge defendants whose worst charge was a felony. Overall, a modest decrease was observed in the percentage of multiple-charge felony defendant episodes charged with only felony offenses. About 2% more of the structured sentencing felony defendant episodes were charged with both felony and misdemeanor offenses. This finding was especially noticeable among stolen property defendants. Results for defendants whose most serious charge was a felony aggravated assault or larceny/theft varied from the overall findings in that an increase was observed in the percentage of these episodes that was made up of only felony charges.

Although prior research on sentencing reform effects on charging is not conclusive, we had anticipated that changes in the number and/or type of charges would be observed as a result of the implementation of structured sentencing. In fact, some of our interview respondents reported that some people expected that lessened ability to negotiate around sentencing would encourage district attorneys to become more involved in charging, spark more negotiation around charges (e.g., in an attempt to “squeeze” the defendant into a particular offense class on the structured sentencing grid), and therefore bring about changes in charging practices.

Our quantitative results, however, do not indicate major changes in charging, and these findings are in line with the results from our interviews with court personnel. Overall, the people we interviewed also indicated that, despite expectations, they had not observed any major changes in the number and type of charges against defendants. As an explanation, two respondents suggested that what dictates charging is the defendant’s alleged criminal behavior, not the sentencing policies in effect. One specific exception, provided by two of the court personnel we interviewed, has to do with second degree murder. These respondents commented that prosecutors may be more likely to add more charges or push for a first-degree murder charge

Table 2.5 Type of Charges, by Most Serious Charge (Multiple-Charge Felony Defendant Episodes Only)

Most Serious Charge	Prestructured Sentencing Defendant Episodes			Structured Sentencing Defendant Episodes		
	<i>N</i>	All Felony Charges (%)	Both Felony/Misdemeanor Charges (%)	<i>N</i>	All Felony Charges (%)	Both Felony/Misdemeanor Charges (%)
FELONY						
Criminal Homicide	166	67.5	32.5	143	64.3	35.7
Forcible Rape	268	61.6	38.4	279	60.6	39.4
Robbery	1,039	45.5	54.5	1,086	45.2	54.8
Aggravated Assault	898	29.2	70.8	867	32.3	67.7
Burglary/Breaking & Entering	4,439	51.7	48.3	4,288	51.0	49.0
Larceny/Theft	974	45.1	54.9	1,122	46.4	53.7
Motor Vehicle Theft	159	25.2	74.8	178	21.9	78.1
Simple Assaults	2	—	—	15	—	—
Stolen Property	515	24.1	75.9	566	18.4	81.6
Drug Sales/Trafficking	3,774	53.6	46.4	4,052	50.3	49.7
Drug Possession/Use	1,269	17.3	82.7	1,617	14.7	85.3
Sex Offense	242	60.7	39.3	219	55.7	44.3
Total†	13,745	45.8	54.2	14,432	43.5	56.5
All Defendant Episodes‡	16,413	46.2	53.8	17,316	44.6	55.5

† Refers to all relevant defendant episodes in selected analytic groups.

‡ Refers to all relevant defendant episodes in entire sample.

in pursuit of a sentence longer than what is indicated for second-degree murder in the structured sentencing grid. Indeed, the structured sentencing criminal homicide defendants in our AOC data were slightly more likely than those defendants in the prestructured sentencing sample to have multiple charges.

2.3.4 Dismissals

We anticipated that we would observe a decrease in dismissals for the same reason we suspected an increase in charges (i.e., the possible tendency among prosecutors under structured sentencing to pursue more charges in order to “piece together” a desirable sentence). On the other hand, an increase in dismissals, as a means for offsetting a suspected increase in jury trials and overall adjudication time, also was considered a possibility.

In Table 2.6, dismissal rates are presented for selected felony and misdemeanor defendants, broken down separately for single- and multiple-charge defendant episodes. For single-charge defendants, we present the percentage whose only charge was dismissed. For

Table 2.6 Dismissals, by Most Serious Charge

Most Serious Charge	Prestructured Sentencing Defendant Episodes					Structured Sentencing Defendant Episodes				
	Single Charge		Multiple Charges			Single Charge		Multiple Charges		
	N	Dismissed (%)	N	Most Serious Dismissed (%)	All Dismissed (%)	N	Dismissed %	N	Most Serious Dismissed (%)	All Dismissed (%)
FELONY										
Criminal Homicide	174	19.5	166	25.3	7.2	140	15.7	143	36.4	18.9
Forcible Rape	119	53.8	268	58.6	29.1	118	61.0	279	67.4	24.7
Robbery	489	43.6	1,039	39.4	14.7	527	42.7	1,086	39.7	16.2
Aggravated Assault	931	45.3	898	45.1	20.5	821	50.1	867	47.2	23.2
Burglary/Breaking & Entering	433	44.8	4,439	41.8	17.1	429	43.4	4,288	46.8	20.9
Larceny/Theft	795	46.2	974	46.1	22.7	885	44.1	1,122	51.2	25.2
Motor Vehicle Theft	186	59.1	159	50.9	20.1	210	64.3	178	46.6	19.1
Simple Assaults	2	-	2	-	-	14	-	15	-	-
Stolen Property	594	57.9	515	59.2	25.8	496	57.5	566	56.4	26.9
Drug Sales/Trafficking	869	44.3	3,774	46.9	18.8	1,025	43.6	4,052	48.4	19.5
Drug Possession/Use	907	44.5	1,269	53.3	20.2	1,198	43.2	1,617	50.2	21.3
Sex Offense	200	34.5	242	47.9	16.1	206	35.4	219	50.7	20.6
Total†	5,699	45.7	13,745	45.6	18.8	6,069	45.6	14,432	48.2	20.9
All Defendant Episodes‡	7,444	45.2	16,413	46.3	19.2	7,930	45.9	17,316	48.5	21.1
MISDEMEANOR										
Criminal Homicide	0	-	1	-	-	0	-	0	-	-
Forcible Rape	0	-	0	-	-	0	-	0	-	-
Robbery	1	-	0	-	-	1	-	0	-	-
Aggravated Assault	3,166	59.3	2,333	58.3	40.1	3,006	61.9	2,262	62.0	42.9
Burglary/Breaking & Entering	598	51.2	775	53.2	32.8	557	57.3	730	59.0	38.8
Larceny/Theft	5,302	43.2	3,318	39.1	25.4	5,515	46.2	3,668	43.4	30.5
Motor Vehicle Theft	897	68.3	278	66.2	36.0	969	71.8	291	66.3	39.9
Simple Assaults	13,528	53.9	5,985	51.5	35.5	14,870	58.6	6,716	58.2	41.2
Stolen Property	3,186	39.0	631	40.1	21.4	2,925	44.4	578	38.2	23.7
Drug Sales/Trafficking	0	-	0	-	-	0	-	3	-	-
Drug Possession/Use	4,089	38.4	3,309	40.9	25.5	6,210	43.6	4,539	46.9	31.9
Sex Offense	112	33.9	46	28.3	13.0	141	46.1	46	23.9	6.5
Total†	30,879	49.3	16,676	47.7	31.4	34,194	53.3	18,833	52.5	36.3
All Defendant Episodes‡	74,638	43.2	25,829	44.4	29.2	77,092	48.8	28,202	49.9	34.4

† Refers to all relevant defendant episodes in selected analytic groups.

‡ Refers to all relevant defendant episodes in entire sample.

defendants with multiple charges, we summarize both whether the defendants' most serious charge was dismissed and whether all of the defendants' charges were dismissed.

Overall, we observed increases in the rate of dismissals among structured sentencing defendants. These differences between the two samples range from approximately 1% to 6%. Of the specific defendant types analyzed, noteworthy exceptions to the modest, yet consistent, overall increases include several groups of single-charge felony defendants (particularly criminal homicide), multiple-charge defendants classified under felony forcible rape, motor vehicle theft, and drug possession/use, as well as multiple-charge defendants classified under misdemeanor sex offense. Instead, for these structured sentencing defendant episodes, decreases in dismissal rate were observed.

Although the overall increases in dismissals we observed in our AOC results were modest, the quantitative findings do differ from the perceptions of the court personnel we interviewed. Comments concerning dismissals from the respondents varied some, but generally the respondents thought they had not observed changes in dismissal practices since the implementation of structured sentencing. Only one respondent stated that there might be more dismissals under the new law. The overall perception of the respondents may stem from the thinking that different dynamics, such as the rationales for both an increase and a decrease in dismissals suggested above, are canceling each other out and/or may indicate a belief that the role of dismissals in the adjudication process has gone unaffected by the implementation of structured sentencing. For example, one respondent indicated that "dismissing charges has always been a carrot to sweeten the pot" and prosecutors have continued to dismiss charges as they have in the past as part of the negotiation process.

2.3.5 Plea Negotiations

As indicated in Section 2.2.2, we examined three indicators of plea negotiation. First, we determined the reduction in the number of offenses between charges and conviction(s) (defined as the number of charges minus the number of convictions). Second, we determined *whether* the worst offense class of the conviction(s) was lower than the worst offense class of the charge(s). Third, we examined the *magnitude* of the reduction in offense class between charged and convicted offenses.

Using a listing provided by the AOC that identifies the structured sentencing offense class for specific offenses, we assigned a class to each charge and conviction. We applied the structured sentencing classification system in effect at the end of our structured sentencing time window (June 1996) to charges and convictions in *both* samples. The purpose of using a single classification system is so that differences that were found would reflect differences in the data, not differences in the classification system. Unfortunately, a class assignment was not available for offenses that could be assigned to more than one class (“split” across classes) or to offense codes that were obsolete when structured sentencing took effect. As one would expect, the defendant episodes in our prestructured sentencing sample were more likely to have split and, in particular, obsolete offenses. Approximately 31% of the prestructured sentencing defendants had a split or obsolete most serious charge compared to only about 12% of the structured sentencing defendants.

Table 2.7 compares the reduction in number of offenses between charges and conviction(s) for selected prestructured sentencing and structured sentencing *multiple-charge* defendant episodes resulting in at least one conviction. Of our 12 analytic groups, we see a modest but consistent increase among structured sentencing defendants. That is, the structured sentencing defendants were more likely to have a reduction in the number of convictions than the prestructured sentencing defendants (76.5% vs. 74.3% for felony defendants and 53.1% vs. 48.4% for misdemeanor defendants). Exceptions to this overall trend among the specific defendant types analyzed include felony defendants whose most serious charge was criminal homicide or motor vehicle theft. Structured sentencing defendants in these categories were less likely to have a reduction in the number of offenses between charges and conviction(s) than their prestructured sentencing counterparts.

Tables 2.8 and 2.9 present the reduction in offense class between charges and convictions for selected single- and multiple-charge felony defendant episodes, respectively.⁶ These tables include results for only those defendants whose most serious charge was a felony, who were convicted of at least one offense, and for whom all charges could be classified. (If a defendant episode included at least one split or obsolete offense, it was omitted from these analyses.) A

⁶Because the majority of the misdemeanor defendant episodes did not involve a reduction in offense class between charge(s) and conviction(s), only results for felony defendants are presented.

Table 2.7 Reduction in Number of Offenses Between Charges and Conviction(s), by Most Serious Charge (Multiple-Charge Defendant Episodes with Conviction(s) Only)

Most Serious Charge	Prestructured Sentencing Defendant Episodes (%)					Structured Sentencing Defendant Episodes (%)				
	Reduction in Number of Offenses between Charges and Convictions					Reduction in Number of Offenses between Charges and Convictions				
	N	No Reduction	1	2	3+	N	No Reduction	1	2	3+
FELONY										
Criminal Homicide	150	24.0	34.0	18.7	23.3	116	25.0	38.8	14.7	21.6
Forcible Rape	178	25.3	28.7	15.2	30.9	206	20.4	35.4	21.8	22.3
Robbery	867	26.9	31.6	16.6	24.9	891	26.4	27.8	17.3	28.5
Aggravated Assault	700	25.9	33.1	19.0	22.0	648	23.5	38.3	17.4	20.8
Burglary/Breaking & Entering	3,651	25.7	25.4	20.3	28.6	3,367	19.8	24.4	22.7	33.1
Larceny/Theft	745	22.8	42.4	18.7	16.1	822	19.7	42.1	18.9	19.3
Motor Vehicle Theft	124	23.4	43.6	13.7	19.4	142	31.7	33.8	20.4	14.1
Simple Assaults	1	-	-	-	-	10	-	-	-	-
Stolen Property	376	25.3	39.6	18.4	16.8	408	22.6	36.5	18.1	22.8
Drug Sales/Trafficking	3,050	22.9	34.6	20.7	21.8	3,233	23.0	31.8	20.7	24.4
Drug Possession/Use	1,005	22.6	50.8	14.9	11.7	1,261	22.2	47.3	18.3	12.1
Sex Offense	196	36.2	31.1	19.4	13.3	170	32.4	37.7	13.5	16.5
Total†	11,043	24.7	33.3	19.2	22.8	11,274	22.2	32.6	20.2	25.0
All Defendant Episodes‡	13,121	25.7	33.3	18.5	22.5	13,503	23.5	32.5	19.2	24.8
MISDEMEANOR										
Criminal Homicide	1	-	-	-	-	0	-	-	-	-
Forcible Rape	0	-	-	-	-	0	-	-	-	-
Robbery	0	-	-	-	-	0	-	-	-	-
Aggravated Assault	1,210	35.2	38.4	15.3	11.1	1,098	28.5	37.3	18.1	16.1
Burglary/Breaking & Entering	488	40.4	31.6	14.8	13.3	424	38.2	33.3	12.7	15.8
Larceny/Theft	2,379	47.3	35.8	10.2	6.8	2,470	38.4	42.7	10.6	8.3
Motor Vehicle Theft	170	33.5	47.1	14.1	5.3	162	25.3	50.6	12.4	11.7
Simple Assaults	3,550	42.4	38.6	12.4	6.6	3,612	37.3	40.5	14.6	7.6
Stolen Property	494	52.6	38.3	6.1	3.0	437	52.0	38.2	7.8	2.1
Drug Sales/Trafficking	0	-	-	-	-	3	-	-	-	-
Drug Possession/Use	2,415	53.7	39.1	5.8	1.4	3,052	51.9	39.5	7.0	1.7
Sex Offense	39	69.2	25.6	5.1	0.0	42	61.9	19.1	7.1	11.9
Total†	10,746	45.5	37.8	10.6	6.1	11,300	41.2	40.1	11.6	7.2
All Defendant Episodes‡	17,315	51.6	34.8	8.7	4.8	17,555	46.9	37.4	9.9	5.8

† Refers to all relevant defendant episodes in selected analytic groups.

‡ Refers to all relevant defendant episodes in entire sample.

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Table 2.8 Reduction in Offense Class Between Charge and Conviction, by Most Serious Charge (Single-Charge Felony Defendant Episodes with Conviction Only)

Most Serious Charge	Prestructured Sentencing Defendant Episodes (%)					Structured Sentencing Defendant Episodes (%)				
	<i>N</i>	No Reduction	1 Class	2 Classes	3+ Classes	<i>N</i>	No Reduction	1 Class	2 Classes	3+ Classes
Criminal Homicide	66	21.2	9.1	27.3	42.4	56	35.7	7.1	17.9	39.3
Forcible Rape	24	-	-	-	-	29	-	-	-	-
Robbery	234	44.9	4.7	0.0	50.0	257	44.0	6.2	<1.0	49.4
Aggravated Assault	237	47.7	<1.0	40.1	11.0	249	26.1	<1.0	24.5	49.0
Burglary/Breaking & Entering	191	23.0	6.8	10.0	59.7	208	22.1	1.9	13.0	63.0
Larceny/Theft	367	26.4	<1.0	<1.0	72.2	464	19.6	<1.0	1.1	78.9
Motor Vehicle Theft	21	-	-	-	-	71	16.9	0.0	0.0	83.1
Simple Assaults	0	-	-	-	-	4	-	-	-	-
Stolen Property	212	23.1	0.0	0.0	76.9	198	32.3	<1.0	0.0	67.2
Drug Sales/Trafficking	402	40.3	24.1	9.0	26.6	532	38.5	22.0	11.8	27.1
Drug Possession/Use	363	62.8	<1.0	35.0	1.4	483	56.7	1.0	40.4	1.9
Sex Offense	93	78.5	0.0	3.2	18.3	108	67.6	0.0	<1.0	31.5
Total†	2,210	41.0	6.0	13.9	39.0	2,659	36.5	5.7	13.8	43.9
All Defendant Episodes‡	2,870	40.3	4.6	12.8	42.0	3,412	35.8	4.5	13.3	46.3

† Refers to all relevant defendant episodes in selected analytic groups.

‡ Refers to all relevant defendant episodes in entire sample.

Table 2.9 Reduction in Offense Class Between Charges and Conviction(s), by Most Serious Charge (Multiple-Charge Felony Defendant Episodes with Conviction(s) Only)

Most Serious Charge	Prestructured Sentencing Defendant Episodes (%)										Structured Sentencing Defendant Episodes (%)									
	N	Most Serious Charge					Across All Charges				N	Most Serious Charge					Across All Charges			
		No Reduction	1 Class	2 Classes	3+ Classes	Not convicted	No Reduction	1 Class	2 Classes	3+ Classes		No Reduction	1 Class	2 Classes	3+ Classes	Not convicted	No Reduction	1 Class	2 Classes	3+ Classes
Criminal Homicide	30	30.0	3.3	40.0	20.0	6.7	20.0	3.3	50.0	26.7	37	27.0	0.0	48.7	16.2	8.1	29.7	0.0	46.0	24.3
Forcible Rape	69	34.8	0.0	17.4	4.4	43.5	33.3	0.0	23.2	43.5	137	12.4	2.2	11.0	12.4	62.0	15.3	2.2	17.5	65.0
Robbery	438	46.1	1.1	<1.0	24.2	27.6	46.6	8.2	5.3	39.0	608	43.4	5.1	0.0	23.4	28.0	40.5	14.8	4.1	40.3
Aggravated Assault	207	38.2	0.0	17.9	4.4	39.6	38.7	3.9	24.6	32.9	346	21.7	2.6	15.6	23.4	36.7	21.7	3.2	20.2	54.9
Burglary/Breaking & Entering	2,534	40.3	2.6	4.5	23.5	29.0	49.1	6.8	6.2	37.9	2,780	40.5	1.3	4.5	20.6	33.1	49.4	5.4	7.6	37.7
Larceny/Theft	435	33.3	<1.0	<1.0	40.2	25.3	43.0	3.5	<1.0	53.1	638	23.0	<1.0	<1.0	42.2	34.3	33.4	3.6	2.0	60.8
Motor Vehicle Theft	18	-	-	-	-	-	-	-	-	-	120	20.8	0.0	0.0	43.3	35.8	27.5	1.7	2.5	68.3
Simple Assaults	0	-	-	-	-	-	-	-	-	-	5	-	-	-	-	-	-	-	-	-
Stolen Property	202	22.8	0.0	0.0	34.2	43.1	28.7	7.9	<1.0	62.9	305	23.3	0.0	0.0	36.7	40.0	30.2	6.2	3.3	60.3
Drug Sales/ Trafficking	1,790	45.5	8.3	3.6	7.8	34.9	59.3	16.1	10.5	14.1	2,334	42.6	8.4	4.0	10.1	34.9	56.4	14.4	11.8	17.3
Drug Possession/Use	569	36.6	0.0	16.3	1.1	45.7	37.1	1.4	54.1	7.0	813	33.5	0.0	25.5	1.4	39.6	32.5	2.1	57.7	7.6
Sex Offense	98	56.1	0.0	3.1	9.2	30.6	59.2	2.0	4.1	33.7	108	53.7	0.0	4.6	11.1	30.6	48.2	1.9	7.4	42.6
Total†	6,390	40.8	3.5	5.3	17.5	32.7	49.1	8.6	12.0	30.2	8,231	37.2	3.3	6.3	18.4	34.8	44.9	8.0	13.7	33.4
All Defendant Episodes‡	7,463	40.7	3.0	5.5	17.6	33.1	49.1	7.7	12.0	31.1	9,849	36.7	2.8	7.0	18.4	35.0	44.5	7.1	14.7	33.6

† Refers to all relevant defendant episodes in selected analytic groups.

‡ Refers to all relevant defendant episodes in entire sample.

breakdown of the percentage of convicted defendants with obsolete/split offenses by most serious charge is presented in Appendix A. As reported above, prestructured sentencing defendants were more likely to have split and obsolete offense, and results pertaining to offense class should be reviewed with this limitation in mind.

As indicated in Table 2.8, overall, the single-charge structured sentencing felony defendants were more likely than the prestructured sentencing defendants to have a reduction in offense class between charge and conviction (64.2% vs. 59.7%), and this increase is evident particularly among defendants with reductions of three or more classes. The results for defendants whose most serious charge was either criminal homicide or stolen property differed from this overall pattern in that a decrease in the percentage of these particular defendants having a reduction was observed within the structured sentencing sample.

Multiple-charge structured sentencing felony defendant episodes also were more likely to have a reduction in offense class between charges and conviction(s) (see Table 2.9). The first set of columns for each sample in this table has to do with the defendant's most serious charge. In general, a slight decrease was observed in the structured sentencing sample in the percentage of defendants who were convicted of their most serious charge (35.0% vs. 33.1%), and an increase in the percentage of defendants who *were* convicted of their most serious charge and for whom a reduction in offense class was calculated was found in the structured sentencing sample (28.3% vs. 26.2%).

The second set of columns for each sample in Table 2.9 presents the reduction in offense class taking all of the defendants' charges into consideration. Across all charges, multiple-charge structured sentencing felony defendants were more likely than prestructured sentencing defendants to have a reduction in offense class between their charges and conviction(s) (55.5% vs. 50.9%). This general increase is seen among defendants with reductions of two and more classes. Multiple-charge defendants whose most serious charge was criminal homicide, larceny/theft, or stolen property were exceptions to the overall increase observed.

To summarize our AOC findings pertaining to plea negotiation, structured sentencing defendants were more likely than prestructured sentencing defendants to have a reduction in the number of offenses between charges and conviction(s) and more likely to have a reduction in offense class between charges and convictions. In terms of offense class reduction, the increase in reductions for structured sentencing defendants was observed among defendants with larger

reductions (i.e., a reduction by two or more classes). In general, the increases observed among structured sentencing defendant episodes were modest but consistent and suggest that an increase in plea negotiations occurred after structured sentencing took effect.

These overall results do not support the decrease in plea negotiations (and related increase in jury trials) many had expected to result from structured sentencing. The presumption held by some was that because structured sentencing would limit sentencing discretion, prosecutors would have less to offer defendants in terms of a reduced sentence as part of a plea negotiation, and defendants in turn would have less incentive to plead guilty (straight up or to a negotiated plea) and more incentive to go to trial in the hope of eliminating the charges. What may have occurred is that prosecutors were required to offer more concessions in plea negotiations to secure guilty pleas. This interpretation is consistent with the data.

Although many of the court personnel we interviewed acknowledged that a decrease in plea negotiations and an increase in jury trials had been anticipated, only one of the respondents stated that he had observed a decrease in negotiated pleas among certain defendants since structured sentencing took effect in the State. Most of the respondents either reported an increase in plea negotiations or said that they had observed no change in the likelihood of negotiated pleas.

Respondents' explanations for an increase in plea negotiations identify possible reasons for the increase in plea negotiations we observed in our analysis of the AOC data. As one respondent articulated, there is still some incentive not to go to trial: "The judge still has some discretion to make it worth it to plead guilty...There is still something to lose by going to trial." For example, as this respondent emphasized, there is an advantage for the defendant to handling all charges on the same day because only the defendant's most serious offense will be held against him or her (as part of calculating a prior record in the future), and judges still tend to be more lenient if guilty pleas are entered for multiple charges at the same time. Another respondent stated that in situations where defendants will not get an active sentence (prison time), defendants are more willing to plead guilty. What these defendants are concerned about is whether they are going to have to serve time, and if it is clear that they will not go to prison with a guilty plea, they are often willing to plead guilty as part of a negotiated plea.

2.3.6 Jury Trials

As described in Section 2.3.5, we anticipated at least a small increase in jury trials among structured sentencing defendants due to the perception held by many that prosecutors under structured sentencing would have less to offer defendants in terms of a reduced sentence as part of a plea negotiation, and defendants in turn would have less incentive to plead guilty and less risk and more incentive in going to trial.

Table 2.10 summarizes the rate of jury trials among single- and multiple-charge felony defendants in our 12 analytic groups. For single-charge felony defendants, we present the percentage of defendants whose only charge resulted in a jury trial. For multiple-charge defendants, we present the percentage of defendants whose most serious charge as well as any charge resulted in a jury trial. Our results indicate that overall the percentage of single- and multiple-charge defendants going to trial was essentially the same between the two samples.

Among some of the specific defendant types we analyzed, however, there was an observed increase in jury trial rates. For example, among single-charge defendants, we found an increase in the percentage going to trial among criminal homicide, forcible rape, robbery, and sex offense defendants. This increase is particularly noticeable among single-charge defendants classified under criminal homicide. On the other hand, among multiple-charge defendants, we observed a decrease in the percentage going to trial among structured sentencing defendants whose most serious offense was criminal homicide, forcible rape, or a sex offense.

Responses from the court personnel we interviewed regarding changes in the frequency of jury trials since structured sentencing took effect varied. Overall, however, most thought that either they had observed no change at all or perhaps a slight increase in jury trials among defendants adjudicated under structured sentencing. Many of the respondents indicated that the initial fear of the frequency of jury trials increasing with structured sentencing did not occur. As mentioned earlier, the perception of one respondent was that under structured sentencing, a judge still has some discretion and that there is still something to lose by the defendant by going to trial; hence, there remains some incentive to plead guilty and to not go to trial. Another respondent said that some defendants may think, “why not go to trial because you know about the worse you will get because the judge doesn’t have latitude,” that other defendants may think with pleading guilty “they’ll get less than what they would if convicted via trial and they know for

Table 2.10 Jury Trials, by Most Serious Charge (Felony Defendant Episodes Only)

Most Serious Charge	Prestructured Sentencing Defendant Episodes					Structured Sentencing Defendant Episodes				
	Single Charge		Multiple Charges			Single Charge		Multiple Charges		
	<i>N</i>	Resulting in Jury Trial (%)	<i>N</i>	Most Serious Resulting in Jury Trial (%)	Any Resulting in Jury Trial (%)	<i>N</i>	Resulting in Jury Trial (%)	<i>N</i>	Most Serious Resulting in Jury Trial (%)	Any Resulting in Jury Trial (%)
Criminal Homicide	174	11.5	166	19.3	19.3	140	21.4	143	14.7	16.8
Forcible Rape	119	5.0	268	7.5	9.0	118	9.3	279	5.7	7.5
Robbery	489	2.9	1,039	4.7	6.4	527	5.1	1,086	5.9	6.9
Aggravated Assault	931	5.2	898	3.8	4.2	821	4.0	867	3.5	4.2
Burglary/Breaking & Entering	433	<1.0	4,439	<1.0	<1.0	429	<1.0	4,288	<1.0	1.1
Larceny/Theft	795	<1.0	974	<1.0	<1.0	885	<1.0	1,122	1.0	1.4
Motor Vehicle Theft	186	0.0	159	<1.0	<1.0	210	0.0	178	<1.0	1.7
Simple Assaults	2	-	2	-	-	14	-	15	-	-
Stolen Property	594	<1.0	515	<1.0	<1.0	496	<1.0	566	<1.0	1.1
Drug Sales/Trafficking	869	1.0	3,774	1.1	1.4	1,025	1.5	4,052	1.2	1.7
Drug Possession/Use	907	1.1	1,269	1.1	1.1	1,198	<1.0	1,617	1.1	1.1
Sex Offense	200	2.5	242	4.6	4.6	206	4.4	219	2.3	3.7
Total†	5,699	2.1	13,745	1.7	2.1	6,069	2.3	14,432	1.8	2.2
All Defendant Episodes‡	7,444	1.8	16,413	1.6	1.9	7,930	1.9	17,316	1.5	2.0

† Refers to all relevant defendant episodes in selected analytic groups.

‡ Refers to all relevant defendant episodes in entire sample.

sure what their punishment will be,” and that these two philosophies may be neutralizing each other such that the rate of jury trials has remained similar under the new sentencing law. Other respondents described plea negotiations as “a necessary evil of the system” and that because the system has the resources to try only a small percentage of the cases, plea bargaining continues to be an important mechanism for resolving cases. The majority of the cases have to be resolved in a way other than going to trial. “The system would grind to a halt if plea negotiation slowed down” and there were many more trials to be conducted.

One exception to the general perceptions shared by the respondents has to do with criminal homicide cases. One respondent indicated that up to a year ago, he had seen an increase in second-degree murder cases going to trial. Because prior to a recent change under structured sentencing, the presumptive sentence for voluntary manslaughter was significantly lower than that of second-degree murder (10 years vs. 2 years), more second-degree murder cases went to trial because the families of victims would not agree to a negotiated plea to manslaughter. Such a scenario may at least partially explain the increase in jury trials observed among single-charge criminal homicide defendants in our AOC structured sentencing sample.

2.3.7 Adjudication Time

Table 2.11 presents the adjudication time (time between charged offense and disposition dates) for selected single- and multiple-charge defendant episodes, broken down by defendants with felony and misdemeanor most serious charges. For single-charge defendants, we present the median number of days between the date of the charged offense and when it was disposed. For multiple-charge defendants, we present the median number of days from charged offense to disposition for the most serious charge alone, as well as all charges combined.

Overall, the data indicate an increase in the median number of days to adjudicate among the defendants in our structured sentencing sample. This overall increase, ranging from 7 to 13 days, is observed for both single- and multiple-charge defendants and across the 12 analytic groups. Two consistent exceptions among the specific defendant types analyzed are felony structured sentencing defendants whose most serious charge was criminal homicide and motor vehicle theft, for whom a decrease in the median number of days is observed.

Table 2.12 presents adjudication time by whether the defendant’s charge(s) was (were) completely dismissed, or the defendant went to trial or was convicted. Data are presented

Table 2.11 Adjudication Time (in Days), by Most Serious Charge

Most Serious Charge	Prestructured Sentencing Defendant Episodes					Structured Sentencing Defendant Episodes				
	Single Charge		Multiple Charges			Single Charge		Multiple Charges		
	N	Median Days to Process	N	Median Days to Process Most Serious	Median Days to Process All	N	Median Days to Process	N	Median Days to Process Most Serious	Median Days to Process All
FELONY										
Criminal Homicide	174	242.0	166	283.0	305.5	140	231.0	143	224.0	275.0
Forcible Rape	119	128.0	268	212.5	235.0	118	174.0	279	218.0	242.0
Robbery	489	129.0	1,039	144.0	205.0	527	134.0	1,086	164.0	219.5
Aggravated Assault	931	115.0	898	137.0	184.0	821	125.0	867	137.0	183.0
Burglary/Breaking & Entering	433	95.0	4,439	139.0	172.0	429	97.0	4,288	147.0	181.0
Larceny/Theft	795	103.0	974	128.0	169.5	885	110.0	1,122	135.0	191.0
Motor Vehicle Theft	186	83.0	159	115.0	183.0	210	73.5	178	111.0	172.5
Simple Assaults	2	-	2	-	-	14	-	15	-	-
Stolen Property	594	95.0	515	110.0	151.0	496	106.0	566	118.0	172.0
Drug Sales/Trafficking	869	137.0	3,774	167.0	194.0	1,025	151.0	4,052	170.5	205.0
Drug Possession/Use	907	125.0	1,269	115.0	152.0	1,198	144.0	1,617	143.0	174.0
Sex Offense	200	203.0	242	249.5	278.5	206	186.0	219	254.0	287.0
Total†	5,699	121.0	13,745	147.0	182.0	6,059	133.0	14,432	154.0	193.0
All Defendant Episodes‡	7,444	126.0	16,413	148.0	183.0	7,930	137.0	17,316	155.0	194.0
MISDEMEANOR										
Criminal Homicide	0	-	1	-	-	0	-	0	-	-
Forcible Rape	0	-	0	-	-	0	-	0	-	-
Robbery	1	-	0	-	-	1	-	0	-	-
Aggravated Assault	3,166	54.0	2,333	60.0	78.0	3,006	56.0	2,262	66.0	88.0
Burglary/Breaking & Entering	598	55.0	775	59.0	81.0	557	66.0	730	69.0	93.5
Larceny/Theft	5,302	67.0	3,318	70.0	99.0	5,515	75.0	3,668	78.0	110.5
Motor Vehicle Theft	897	45.0	278	62.5	103.0	969	63.0	291	67.0	110.0
Simple Assaults	13,528	41.0	5,985	54.0	72.0	14,870	46.0	6,716	61.0	81.0
Stolen Property	3,186	69.0	631	76.0	105.0	2,925	80.0	578	89.0	135.0
Drug Sales/Trafficking	0	-	0	-	-	0	-	3	-	-
Drug Possession/Use	4,089	68.0	3,309	72.0	78.0	6,210	85.0	4,539	90.0	101.0
Sex Offense	112	70.0	46	69.5	72.5	141	79.0	46	58.5	82.5
Total†	30,879	52.0	16,676	61.0	81.0	34,194	60.0	18,830	72.0	93.0
All Defendant Episodes‡	74,638	49.0	25,829	61.0	78.0	77,092	59.0	28,202	72.0	91.0

† Refers to all relevant defendant episodes in selected analytic groups.

‡ Refers to all relevant defendant episodes in entire sample.

Table 2.12 Adjudication Time (in Days), by Defendant Episode Outcome*

Outcome	Prestructured Sentencing Defendant Episodes					Structured Sentencing Defendant Episodes				
	Single Charge		Multiple Charges			Single Charge		Multiple Charges		
	<i>N</i>	Median Days to Process	<i>N</i>	Median Days to Process Most Serious	Median Days to Process All	<i>N</i>	Median Days to Process	<i>N</i>	Median Days to Process Most Serious	Median Days to Process All
FELONY										
Dismissed	2,607	102.0	2,578	138.5	168.0	2,770	117.0	3,022	147.5	176.0
Tried (Jury)	118	246.0	286	246.0	290.5	142	248.0	321	252.0	298.0
Convicted (of at least 1 offense)	3,046	134.5	11,043	148.0	184.0	3,235	140.0	11,274	155.0	196.5
MISDEMEANOR										
Dismissed	15,231	68.0	5,243	81.0	95.0	18,211	78.0	6,842	96.0	114.0
Convicted (of at least 1 offense)	13,582	40.0	10,746	55.0	76.0	14,080	46.0	11,300	* 62.0	84.0

* Results are based on data for only defendant episodes that involved the most serious charge of criminal homicide, forcible rape, robbery, aggravated assault, burglary/breaking and entering, larceny/theft, motor vehicle theft, simple assault, stolen property, drug trafficking, drug use/possession, or sex offense.

separately for both single- and multiple-charge defendants based on the results from our 12 analytic groups. An overall increase in the median number of days to process the defendant offenses was observed for both single- and multiple-charge defendants regardless of episode outcome. For single-charge defendants, the increase ranged from 2 to 15 days for felony defendants and 6 to 10 days for misdemeanor defendants. For felony and misdemeanor multiple-charge defendants, the overall increase in processing all charges in an episode ranged from 8 to 19 days.

Unlike these AOC results, our interviews with court personnel generated less consistent results. Several respondents indicated that they had observed a slight increase in time due to the requirement of calculating the prior record for a defendant as well as new and additional paperwork. Other respondents reported that they thought the amount of time it takes to process a defendant through the system had decreased with structured sentencing as a result of, for example, the computerization that accompanied the implementation of the new sentencing law and the fact that sentencing decisions by judges are facilitated by the sentencing grid (and therefore the amount of effort and time required to consider sentencing alternatives is reduced). Some respondents, on the other hand, indicated that they had observed no change in adjudication time.

The difference between our AOC findings and results from our interviews with court personnel regarding this topic is noteworthy. The fact that our AOC structured sentencing sample is comprised of *early* structured sentencing cases may be a factor in this discrepancy. Most of the people we interviewed reported that it initially took additional time for people working in the system to become familiar with structured sentencing and the procedures associated with the new sentencing law. Many respondents described a “learning curve” process, a transition that required people (some reluctant to change) to learn new procedures and rules. Additionally, and particularly immediately following the implementation of the new law, court personnel found themselves having to switch back and forth between prestructured sentencing and structured sentencing cases and sometimes had to process defendants with cases dictated by both fair sentencing and structured sentencing guidelines. It is plausible that a later sample of structured sentencing cases would have generated different adjudication time results.

2.4 Summary of Findings

Table 2.13 summarizes our AOC results for each of the outcomes of interest. This table presents the overall changes observed among the misdemeanor and felony defendant episodes in our structured sentencing sample. Although no major differences were observed between the prestructured and structured sentencing defendants, several modest (but nonetheless consistent) apparent effects of structured sentencing are noteworthy:

- an increase in the number of charges per defendant among misdemeanor defendants;
- an increase in the percentage of multiple-charge felony defendants charged with both felony and misdemeanor offenses;
- an increase in the percentage of defendant episodes resulting in a dismissal;
- an increase in plea negotiation rates based on two indicators: an increase in the percentage of convicted defendants with a reduction in the number of offenses between charges and conviction(s) and an increase in the percentage of convicted felony defendants with a reduction in offense class between charge(s) and conviction(s); and
- an increase in the median time required to adjudicate defendants.

Responses from our interviews with court personnel varied. Overall, however, respondents' perceptions were similar to the general findings from our analysis of AOC data. The court personnel we interviewed did not report *major* changes in the system resulting from the implementation of structured sentencing. The most noticeable differences between our quantitative and qualitative results had to do with dismissals and adjudication time. As summarized in Table 2.13, our AOC results indicated a modest increase in dismissals among structured sentencing defendants and an increase in the time to adjudicate defendants under structured sentencing. Instead, respondents in general reported no increase in dismissals and varied greatly in their comments regarding adjudication time, with some even reporting a decrease in adjudication time since the implementation of structured sentencing. Additionally, whereas our AOC results suggest an increase in plea negotiations, only some of the respondents reported that they had observed an increase in negotiated pleas.

Table 2.13 Summary of Changes Observed Among Structured Sentencing Defendants

Outcome	Misdemeanor Defendants	Felony Defendants
<u>Charges</u>		
% with Multiple Charges	1.1% increase	<1% decrease
% with Misdemeanor Charge(s) Only	<1% decrease	not applicable
% with at Least One Felony Charge	not applicable	<1% increase
% with Both Felony and Misdemeanor Charges	not applicable	1.7% increase (multiple-charge defendants only)
<u>Dismissals</u>		
% Resulting in Dismissal	5.2% to 5.6% increase	<1% to 2.2% increase
<u>Plea Negotiation</u>		
% with Reduction in Number of Offenses Between Charges and Conviction(s)	4.7% increase (multiple-charge defendants only)	2.2% increase (multiple-charge defendants only)
% with Reduction in Offense Class Between Charge(s) and Conviction(s)	not analyzed	2.1% to 4.6% increase
% with Reduction in Offense Class by 3+ Classes	not analyzed	<1% to 4.3% increase
<u>Jury Trials</u>		
% Going to Trial for at Least One Offense	not analyzed	<1% increase
<u>Adjudication Time (in Days)</u>	10 to 13 day increase	7 to 11 day increase

Exceptions to our general AOC findings were apparent for each of the outcomes. These exceptions were particularly noticeable for defendants whose most serious charge was criminal homicide, motor vehicle theft, or a sex offense. In fact, results for homicide defendants varied from our overall findings across four of the five outcomes. At least three of the court personnel we interviewed commented on the sentence lengths for second-degree murder and voluntary manslaughter under structured sentencing. These respondents suggested that the sentence lengths for these two offenses have been perceived by some as short; as a result, prosecutors in pursuit of a longer sentence have tended to “push for” a higher offense or add additional charges in these

cases. It is possible that these issues regarding second-degree murder and voluntary manslaughter partially explain the irregular results we observed for homicide defendants.

2.5 Limitations

The major limitations of our analysis are associated with the types of cases we elected to include. Some categories of cases were excluded: traffic offenses (including DWI), probation violations, worthless check charges, and a category of case referred to as “infractions.” Infractions are a minor category of crime, such as hunting and fishing violations. Thousands of cases in these categories are disposed in the State each year, but we were interested in examining the disposition of more serious criminal cases. Serious criminal offense cases were the focus of the structured sentencing legislation, and examining the effects of the legislation on the processing of more serious offense cases was the focus of our evaluation.

As discussed earlier, we asked North Carolina’s AOC to provide data for all their cases in selected offense categories where there had been at least one charge *disposed* within the time periods of interest (January through June of each year, 1994 and 1996). We thus excluded a large number of cases that were active during the period of our study but where no charge was disposed within the 6-month windows. We decided to study a disposition cohort of cases because the focus of the study was largely on comparing the processing and outcomes of cases under the previous and current law. We wanted to ensure that we had a large number of disposed cases to study.

In addition to the bias of not having pending cases (which are active within the court during the same period as those that were disposed), there is an additional form of bias related to the length of the disposition process for some cases. Cases that remain open for a long period of time are less likely to be disposed within the 2-year charge-to-disposition-time windows that constrained the prestructured sentencing and structured sentencing cases that were included in the analysis. Thus, our estimates of case processing time are biased downward as a result of the decreased probability of including cases that take a long time to adjudicate. To the extent that long process cases are different from cases with a shorter process (e.g., more severe offenses, more offenses per defendant, having more severe sentencing), the less our sample reflects the full

range of cases dealt with in the State's criminal courts. These types of bias are ones we cannot measure, but could be studied by drawing entry cohort samples.

Finally, as indicated earlier, we eliminated cases for Mecklenburg County on the recommendation of our advisory group. Case data from this jurisdiction are often not reported to the AOC, and we were concerned that the cases from Mecklenburg County that were in the AOC database would not be representative of all cases for the county.

In summary, our analysis results are not representative of all criminal offenses disposed during the periods we studied, do not represent cases that were active but did not have a charge disposed during the time we focused on, and exclude case data from a major population center in the State.

Chapter 3. Effects of Structured Sentencing on Prison Infractions

This chapter examines the effects of structured sentencing on inmates' involvement in institutional infractions. We utilize official data from the North Carolina Department of Correction and compare groups of inmates sentenced under the law in effect prior to October 1, 1994 (fair sentencing) and under structured sentencing.

3.1 Literature Review

There is a modest amount of literature on the causes and correlates of prison infractions, but we could find no previous studies of the impact of reduced prison stay incentives on institutional infractions. Most studies of prison infractions have focused on the relevance of individual characteristics (demographics, psychological makeup, criminal history), and a few have examined the characteristics of institutions and the impact of sentences. Earlier literature attributed prison disorder either to the deviant tendencies of inmates themselves, to the impact of the inmate culture, or to the "pains of imprisonment" (Clemmer, 1958; Sykes, 1958; Wheeler, 1961). More recent work has typically recognized multiple factors impacting inmate infractions as part of a complex etiology (Ellis, Grasmick, & Gilman, 1974; Goetting & Howsen, 1986; Wellford, 1967).

Inmate age has consistently been found to be inversely related to involvement in institutional infractions; younger inmates are more likely than older ones to commit infractions, particularly violent ones (Brown & Spevacek, 1971; Craddock, 1996; Ekland-Olson, Barrick, & Cohen, 1983; Ellis, 1984; Flanagan, 1983; Goetting & Howsen, 1986; Mackenzie, 1987; Wolfgang, 1961). Ellis et al. (1974, pp. 33-34) argued that younger inmates are more likely to act aggressively because younger males are more likely to act violently generally, correctional personnel are more tolerant of young male violence, young males are encouraged by their peers to act violently, and young males do not perceive the negative consequences of violent behavior to the extent that older inmates do (e.g., loss of time for good behavior). The relationship of age to institutional infractions also has been found to interact with other factors, such as current offense, drug history, and sentence type (Flanagan, 1983); psychological state (Mackenzie, 1987); and size of institution (Ekland-Olsen et al., 1983).

Research has found that males are more likely than females to commit institutional infractions (Craddock, 1996; Goetting & Howsen, 1986; Poole & Regoli, 1983). Craddock (1996) examined infraction rates separately for males and females and found that some of the correlates of infractions differed for the sexes. Past research on gender differences in institutional infractions has been hindered by the comparatively low incarceration rate for females and by their comparatively low prevalence of involvement in institutional infractions.

Results of the study of racial/ethnic differences in institutional infractions are mixed. Goetting and Howsen (1986) found that whites have fewer infractions than blacks, but other studies found no racial/ethnic differences (Craddock, 1996; Ellis et al., 1974; Wright, 1989). Petersilia, Honig, and Hubay (1980) found that racial/ethnic comparisons for involvement in infractions differed for California, Texas, and Michigan prisons. Poole and Regoli (1980) found that whites and blacks did not differ in their self-reported involvement in infractions, but blacks were more likely to be charged when they committed an infraction, suggesting observed black versus white differences might be a result of differential enforcement of prison rules based on race/ethnicity.

Research also has examined a variety of other inmate characteristics, such as education, income, and marital status, and has found no consistent relationship of these factors to involvement in infractions (Craddock, 1996; Goetting & Howsen, 1986). A record of previous incarceration has sometimes been found to be associated with prison rule infractions (Craddock, 1996; Goetting & Hansen, 1986).

Wooldredge's (1991) assessment of the literature on the impact of "preinstitutional factors on involvement in institutional infractions is that younger age at entry, being incarcerated for a violent offense, emotional or mental instability, and prior urban residence are the most important predictors of inmate deviant behavior during incarceration" (p. 5). Wooldredge also suggested that having been incarcerated previously is inversely associated with institutional rule violations.

Examination of the conditions of prisons themselves has been the focus of some previous research on infractions, but findings are ambiguous. Inmate contact with the outside by visitation, mail, and telephone has not been found to reduce the likelihood of involvement in infractions (Goetting & Howsen, 1986; Lembo, 1969). Prison overcrowding/population density has *not* been shown to have a relationship to prison infractions (Ekland-Olson et al., 1983; Ellis,

1984). Apparently other factors, such as the social control practices of the institution and the subjective perception of crowding, are more important than population density per se. McCain and McNally (1982) looked at the relationship of social programs to infractions in a New York maximum security prison and found no relationship between the two.

Past research has found a relationship between time served and time until release and involvement in infractions. Craddock (1986) and Goetting and Howsen (1986) each found that the likelihood of involvement in infractions increased with sentence length, but Wooldredge (1991, p. 8) referred to several studies that indicate inmates with shorter sentences are more likely to commit infractions. The relationship of sentence length to infractions is difficult to interpret without reference to the *phase* of an inmate's sentence. There is good reason to think that temporal proximity to release from prison is of particular importance to involvement in infractions; inmates close to release are less likely to commit infractions. The importance of incarceration phase has been recognized since research began to focus on inmate adjustment issues in the 1940s (Clemmer, 1958; Wheeler, 1961): Sentence length/time incarcerated is confounded with time until parole/release because an inmate's release can easily be jeopardized if he/she is involved in an infraction close to the time when a decision about release is being made. Ellis et al. (1974) found a strong relationship between the percentage of inmates in 29 felon and 26 misdemeanor prisons who had a year or more until parole and the level of "aggressive transgressions" in the prisons. Prisons with a higher percentage of inmates having a year or more left to serve had higher infraction rates. Edinger and Auerbach (1978) found inmates less likely to commit nonassaultive infractions as their release dates approached. Craddock (1996) found that women were less likely to be charged with rule violations as they got closer to parole

Flanagan (1983) found that inmates who had more determinate sentences were more likely to have high infraction rates than inmates with more indeterminate sentences. Presumably, this is the case because those who have relatively certain release dates have less incentive to follow prison rules, and those whose length of incarceration is more uncertain are more inclined to follow the rules to help ensure early release.

Memory (1998) studied the relationship between structured sentencing and institutional infractions in North Carolina prisons for inmates entering the system between June 1, 1995, and August 30, 1996. The study used quantitative data from North Carolina's Department of

Correction inmate records and qualitative data gathered from the State's disciplinary system personnel, administrator, correction officers, and case managers. The goal of the study was to assess whether inmates sentenced under North Carolina's structured sentencing law were more likely to commit infractions. A set of hypotheses were examined concerning the comparative involvement in institutional infractions of inmates sentenced under the structured sentencing law and under the previous fair sentencing law. It was hypothesized that SS inmates would be more likely to be convicted of infractions because their ability to earn time off for good behavior and to achieve early release from prison on parole was reduced by the new law and thus the incentive to abide by prison rules was reduced.

Because there are numerous known correlates of involvement in institutional infractions, the Memory et al. (1998) study used multivariate techniques that incorporated a number of control variables to examine the hypotheses concerning structured sentencing and fair sentencing inmates. Independent control variables included age, gender, race, type of conviction offense, days in prison before study, number of days of pretrial jail credit, whether inmate was a probation revokee, number of prior incarcerations in North Carolina, and infraction rate during prior incarcerations. The study examined a series of infraction variables, including examining infractions by type, a seriousness weighting of infractions, and the length of time incarcerated until commission of an infraction. Cox regression and survival analyses were used to examine the effect of sentence type (structured sentencing or fair sentencing), and what other independent variables were associated with the outcomes. A total of 3,194 fair sentencing inmates and 3,710 structured sentencing inmates were included in the analyses.

The major conclusions of the study were that, as hypothesized, *structured sentencing inmates were more likely than fair sentencing inmates to commit infractions of most types, and the difference is partially attributable to structured sentencing*. The annual disciplinary conviction rate of structured sentencing inmates was about 40% higher than this rate for fair sentencing inmates. More specifically,

- the weighted disciplinary conviction rate for assaultive infractions of structured sentencing inmates was higher than that of fair sentencing inmates at a statistically significant level;

- structured sentencing inmates had a 30% higher weighted disciplinary conviction rate for disobedience/profanity infractions than fair sentencing inmates, and they committed these infractions earlier in their incarceration;
- contrary to expectations, structured sentencing inmates in general did not have a higher weighted rate of work absence convictions than fair sentencing inmates;
- contrary to expectations, fair sentencing inmates tended to have higher infraction rates for drug and alcohol offenses than structured sentencing inmates, but this difference was not statistically significant; and
- the qualitative data gathered from prison personnel were consistent with the quantitative results showing structured sentencing inmates are more likely than fair sentencing inmates to be involved in institutional infractions.

Memory (1998) briefly discussed the serious negative implications of the likeliness that the rate of disciplinary infractions will increase as the future proportion of structured sentencing inmates in prison grows and the need to take action to accommodate higher rates of infraction.

3.2 Methods

The major purpose of our study is to determine whether there are differences in the commission of institutional infractions between inmates sentenced to North Carolina prisons under the fair and structured sentencing laws. We used statistical techniques to compare inmates sentenced under the two laws and included in the analysis a number of variables known or thought to be relevant to the commission of institutional infractions to control for possible differences between the fair and structured sentenced inmates.

The study is a modified replication of the one conducted by Memory et al. (1998) and summarized in the previous section. That study found significant elevations of infractions for inmates sentenced under structured sentencing in comparison to inmates sentenced under fair sentencing. We used the same general approach as the Memory et al. team (compare the infractions of fair and structured sentenced inmates) with the following modifications:

- the time period studied was longer, from June 1, 1995, until January 31, 1998 (compared to June 1, 1995, to August 30, 1996, for Memory et al.);

- we included control variables not analyzed by the previous study;
- we included somewhat different infraction categories; and
- we estimated models separately for males and females.

The longer study period allowed us to consider a larger proportion of inmates' incarceration period and thus may be more representative of the long-term effects of structured sentencing. These modifications also provided a more rigorous test of the infraction differences between the two inmate groups and thus allowed stronger inferences about the effects of structured sentencing on inmate infraction behavior.

Some categories of inmates were excluded from the analyses:

- those serving "mixed" sentences (i.e., those whose sentences were subject to both structured and fair sentencing provisions);
- inmates serving life sentences;
- inmates serving time for driving while impaired (DWI); and
- inmates serving sentencing with special conditions that might affect their incentive to follow institutional rules.

These categories of inmates were excluded from the analyses because their inclusion would have compromised our capacity to draw inferences about the impact of structured sentencing.

3.2.1 Poisson Regression

Besides the total number of infractions that occurred during the time an inmate was incarcerated, there were five specific infraction categories for which counts were available: assault, drug/alcohol, profanity/disobedience, work absence, and money/property. Models were run separately for males and females. Because counts (i.e., the number of times an event occurred in a given time interval) would be expected to have a Poisson distribution, we used Poisson regression analysis.

Inmate infractions were observed for varying lengths of time, so we controlled for this by using an *offset* variable on the right-hand side of the regression equation. The offset variable was the natural logarithm of the number of years that an inmate was observed. In Poisson regression,

the log of the expected number of infractions or mean number of infractions is modeled as a linear function of the independent variables plus the offset. Thus, the Poisson regression model is $\log \mu_i = \log(\text{time observed}) + \sum \beta_j X_{ij}$. In terms of the mean, this model is expressed as $\mu = (\text{time observed})e^{\sum \beta_j X_{ij}}$. Consequently, the effect of a variable on the mean is e^{β_j} .

A key characteristic of the Poisson distribution is that the mean is equal to the variance. For real data, sometimes the variance is larger or smaller than the mean. These conditions are known as overdispersion and underdispersion, respectively. The Statistical Analysis System (SAS) GENMOD procedure (Stokes, Davis, & Koch, 1995) allowed us to adjust for these conditions in the estimation of the standard errors of the estimated regression parameters.

The independent variables were a mixture of continuous variables (e.g., age) and categorical variables (e.g., three levels of crime seriousness: high, medium, and low). The exponentiated estimated regression parameter associated with a continuous variable is interpreted as the increase (decrease) in the mean infraction or infraction rate as a result of a one unit increase in the corresponding independent variable. For a categorical variable, the exponentiated parameter is interpreted as the increase (decrease) of the infraction rate for a particular level of the categorical variable (high serious level of crime) when compared to a reference level (low serious level of crime) for that categorical variable.

The sentence-type variable is the variable of primary interest in the study. Because we compared infractions between structured and fair sentenced inmates, the independent variable was sentence type, which is defined as structured (1) or fair (0).

The offset variable, which is described in Section 3.2.1, is the natural log of years confined for the current period of incarceration.

3.2.2 Control Variables

In the models using Poisson regression, we statistically controlled for variables that may affect the infraction rate. For example, we expected that younger inmates would have a higher infraction rate than older inmates. Therefore, if the structured sentenced inmates were mostly younger and fair sentenced inmates were mostly older, then a higher infraction rate for the structured sentenced inmates may be the result of over-representation of younger inmates. Based on the research literature, discussion with North Carolina's Department of Correction (DOC),

and the Memory et al. (1998) study, we identified control variables to include in the models. Therefore, the models determine if there is a difference in inmate infractions between structured and fair sentenced inmates, holding constant the effects of the control variables.

Below is a brief description of the control variables we used:

- Crime class – Under structured sentencing, North Carolina classifies felonies into 10 classes (A, B1, B2, C, D, E, F, G, H, and I) depending on the seriousness of the crime. The higher classes include crimes involving injury or risk of injury to a victim. The lower classes include property crimes and other crimes, which usually do not involve the risk of injury to victims. We used the same crime class categories as were used in the Memory et al. (1998) study, which are B1 to G, H, and I. Crime class A felonies that result in death or life in prison were not included in our study.
- Prior time served (in years) – Time served on prior incarcerations (in days) in North Carolina prisons divided by 365.25.
- Jail credit (in years) – Jail credit days divided by 365.25.
- Race – White, black, and other.
- Age – Age at admission (continuous).
- Probation revokee – Yes or no.
- Prior infractions – No prior incarcerations; prior incarceration, no infractions; prior incarceration, infraction(s).
- Expected time served – For fair sentenced inmates, the Department of Correction provided us with the average percentage of the maximum sentence length served for the years 1995, 1996, and 1997. For fair sentenced inmates, we took the average of the 3 years (27.0667%) and multiplied it by each inmate's maximum sentence length (in years). Then we subtracted jail credit (in years) from this product. For structured sentenced inmates, the Department provided us with the average percentage of minimum sentence length served for the years 1995, 1996, and 1997. We took the average of the 3 years (113.0333%) and multiplied it by each inmate's minimum sentence length (in years). Then we subtracted jail credit (in years) from this product. However, we first had to compute minimum sentence length by reversing the method to compute maximum sentence length. For Class B1 through E felonies, the minimum sentence length is the maximum length (in months) minus 9 months and then divided by 120%. Then this quotient is rounded down to the next lowest month and divided by 12 to get it in terms of years. For Class F

through I felonies, the minimum sentence length is the maximum length (in months) divided by 120%. Then this quotient is rounded down to the next lowest month and divided by 12 to get it in terms of years.

- Chemical dependency – Low risk: screening score less than 3; high risk: screening score 3 or higher.
- Alcohol dependency – Low risk: screening score less than 3; high risk: screening score 3 or higher.

3.2.3 Dependent Variables

We used total infraction counts and infraction counts for offense groups as the dependent variables. The following lists the groupings and the infractions included in each:

- Total – All infractions.
- Assault – Assault staff with weapon; assault person with weapon; provoke assault; fighting; verbal threat; fight involving weapons.
- Drug/alcohol – Substance possession; inhale substance; refuse submit/drug/breath test; misuse medicine.
- Profanity/disobedience – Profane language; disobey order; interfere with staff; negligently perform duties.
- Work absence – Unauthorized leave; unauthorized location; escape.
- Money/property – Theft of property; barter/trade/loan money; forgery; property tampering; unauthorized funds; possession of money; misuse of supplies.

3.2.4 Multivariate Analyses

We analyzed three sets of models using Poisson regression:

- We included the same independent and dependent variables used by Memory et al. (1998), but used a longer analysis time period, from June 1, 1995, until January 31, 1998.
- We added additional control variables to those used by Memory et al. and utilized the longer analysis period.

- We included additional infraction types with the dependent variables as well as the additional control variables and a longer time period.

Because the analyses described in the first two bullets essentially replicated the Memory et al. (1998) findings, we describe these findings briefly in Section 3.4.1. The most extensive findings (bullet 3) are described in detail in Section 3.4.2.

3.3 Descriptive Findings

Table 3.1 compares the inmates in our samples sentenced under structured and fair sentencing. The gender distribution and means of ages were similar, but a larger proportion of inmates incarcerated under structured sentencing were younger than 20 years of age. Inmates incarcerated under structured sentencing were more likely to be classified as high risk on the alcohol and chemical dependency scales. A larger proportion of the structured sentenced inmates had been incarcerated for more serious crimes. Inmates currently incarcerated under structured sentencing were more likely to have been incarcerated previously, and a higher proportion of structured sentenced inmates had three or more prior incarcerations (17% vs. 8%). Structured sentenced inmates who had been incarcerated previously were more likely to have had infractions during those incarcerations. Fair sentenced inmates were more likely to have had their probation revoked.

The amount of time already served on the current sentence was higher for fair sentenced inmates, but the expected time to be served was similar for the two inmate groups (1.30 vs. 1.34 years). Structured sentenced inmates had been previously incarcerated for a longer period (0.91 vs. 0.50 year).

Table 3.2 breaks down the infraction frequencies for structured and fair sentenced inmates. The general pattern was for inmates sentenced under structured sentencing to have a higher likelihood than fair sentenced inmates of committing at least one infraction, as well as having a comparatively high likelihood of committing multiple infractions. This relationship, however, did not hold in the drug/alcohol, work absence, and money/property offense categories.

Table 3.1 Characteristics of Structured and Fair Sentenced Inmates

Characteristic	Structured Sentenced Inmates (N=11,339)	Fair Sentenced Inmates (N=4,310)
Gender (%)		
Male	88.8	86.1
Female	11.2	13.9
Age (mean) ¹	29.4	30.5
Age¹ (%)		
20 or younger	20.4	11.1
21-24	16.4	20.4
25-35	37.8	41.6
36 or older	25.4	27.0
High risk for alcohol dependency (%) ¹	35.3	31.6
High risk for chemical dependency (%) ¹	47.6	41.1
Jail credit (mean)	0.20	0.17
Crime class¹ (%)		
B1-G	25.4	20.8
H	50.5	46.3
I	24.1	32.9
Crime group (%)		
Violent	23.4	20.0
Property	34.1	34.4
Drug offenses	39.7	43.9
Other offenses	2.9	1.7

See footnotes at end of table.

(continued)

Table 3.1 (continued)

Characteristic	Structured Sentenced Inmates (N=11,339)	Fair Sentenced Inmates (N=4,310)
Prior incarcerations (%)		
0	52.3	61.2
1	19.8	22.1
2	10.9	8.9
3 or more	17.0	7.8
Prior infractions¹ (%)		
No prior prison	52.3	61.1
Prior prison, no infractions	26.3	25.8
Prior prison, infractions	21.4	13.0
Probation revokee (%)		
Yes	52.9	80.8
Years confined (mean), current sentence	0.57	0.77
Expected time served (mean), ¹ current sentence	1.30	1.34
Prior time served (mean) ²	0.91	0.50
Race/ethnicity (%)		
White	25.2	29.7
Black	71.6	66.9
Other	3.2	3.5

Note: Percentages may not sum to 100 due to rounding error.

¹Characteristic is unknown for at least one inmate.

²Includes all inmates in the study, including those who had not previously been incarcerated.

Table 3.2 Percentages of Infraction Counts

Infraction Category	Structured Sentenced Inmates	Fair Sentenced Inmates	All Inmates
Total			
0 infractions	70.2	71.5	70.5
1 infraction	12.1	12.7	12.3
2 or more infractions	17.7	15.9	17.2
Assault			
0 infractions	92.3	94.3	92.9
1 infraction	5.6	4.3	5.3
2 or more infractions	2.0	1.5	1.9
Drug/alcohol			
0 infractions	94.9	93.1	94.4
1 infraction	4.3	5.4	4.6
2 or more infractions	0.8	1.5	1.0
Profanity/disobedience			
0 infractions	80.5	83.8	81.4
1 infraction	9.7	8.7	9.4
2 or more infractions	9.8	7.5	9.2
Work absence			
0 infractions	94.0	94.0	94.0
1 infraction	4.4	4.2	4.3
2 or more infractions	1.6	1.7	1.7
Money/property			
0 infractions	94.0	92.5	93.6
1 infraction	5.0	6.6	5.5
2 or more infractions	0.9	0.9	0.9

Note: Percentages may not sum to 100 due to rounding error.

3.4 Modeling Results

3.4.1 Poisson Replications of Earlier Analyses

Our Poisson analyses essentially replicated the Memory et al. (1998) findings for the effects of structured sentencing on inmate infractions. Inmates sentenced to prison under structured sentencing were more likely to commit most infraction types and did so sooner in their incarceration. These findings were replicated despite the longer analysis period and the inclusion of additional control variables. There were some differences in the magnitude of effects, and not all the same independent variables were significant/nonsignificant in the replications. The significant direct impact, however, of structured sentencing on involvement in institutional infractions was observed.

3.4.2 Extended Poisson Analyses of Structured Versus Fair Sentencing

The estimates in the cells of Table 3.3 are the exponentiated Poisson regression coefficients, and indicate the contribution of each variable to the likelihood of involvement in infractions. Values greater than one indicate an elevated likelihood of involvement in infractions, and values less than one indicate a decreased likelihood of involvement. Values close to one indicate no significant relationship between the variable and involvement in infractions.

Table 3.3 shows that the total infraction rate was significantly higher for structured sentenced inmates than for fair sentenced inmates for both males and females. For males, the average number of infractions was 25% higher for structured sentenced than for fair sentenced inmates. The corresponding percentage increase for females was 55%. For males, assault and profanity/disobedience infraction rates were 37% and 41% higher, respectively, for structured sentenced inmates. The corresponding increases for females were 39% and 57%, respectively.

For males, there were no significant differences in the work absence and money/property infraction rates between the two sentence types. The drug and alcohol infraction rate was 17% lower for males sentenced under structured sentencing than for males sentenced under fair sentencing. In contrast to males, structured sentenced females had significantly higher work absence and money/property infraction rates than fair sentenced females. These infraction rates

Table 3.3 Poisson Regression Findings, by Gender and Infraction Category

Parameter	Males						Females					
	Total	Assault	Drug/ Alcohol	Profan./ Disobed.	Work Absence	Money/ Prop.	Total	Assault	Drug/ Alcohol	Profan./ Disobed.	Work Absence	Money/ Prop.
Struct. Sentence vs. Fair Sentence	1.25***	1.37***	0.83***	1.41***	1.07	1.00	1.55***	1.39***	1.06	1.57***	1.28*	1.85***
Crime Class B1-G vs. Crime Class I	1.41***	1.85***	0.99	1.44***	1.36***	1.07	1.12	1.69***	1.09	1.15	0.80	1.24
Crime Class H vs. Crime Class I	1.30***	1.36***	1.13**	1.34***	1.37***	1.15**	1.00	0.90	0.88	1.18	0.95	0.82
Prior Time Served	1.05***	1.11***	1.02	1.06***	1.04***	0.98	1.07**	1.09**	1.12*	1.11***	0.65***	1.11**
Jail Credit	1.37***	1.40***	0.83**	1.53***	1.26***	0.93	2.10***	2.26***	0.40**	2.63***	1.37	1.31
Black vs. White	1.04	1.63***	0.59***	1.26***	1.25***	0.64***	1.29***	1.89***	0.32***	1.44***	1.54***	0.74***
Other Race vs. White	0.99	1.17	0.73***	1.15	0.88	1.15	0.86	0.94	0.00	0.85	2.41***	0.00
Age	0.92***	0.89***	0.96***	0.90***	0.93***	0.96***	0.92***	0.92***	0.97***	0.92***	0.89***	0.95***

See notes at end of table.

(continued)

Table 3.3 (continued)

Parameter	Males						Females					
	Total	Assault	Drug/ Alcohol	Profan./ Disobed.	Work Absence	Money/ Prop.	Total	Assault	Drug/ Alcohol	Profan./ Disobed.	Work Absence	Money/ Prop.
Prob. Revokee vs. Not Prob. Revokee	1.10***	1.17***	0.87***	1.14***	0.95	1.00	1.12	1.30**	0.99	1.17	0.77**	1.00
Expected Time Served	0.96***	0.98***	0.94***	0.95***	0.94***	0.94***	0.93*	0.83***	1.09***	0.91**	0.98	0.96
Alcohol Depend.: High Risk vs. Low Risk	1.00	1.15***	0.84***	1.03	0.83***	0.91**	0.98	0.85	0.67***	0.98	1.37**	1.12
Chem. Depend.: High Risk vs. Low Risk	1.02	1.16***	1.15***	1.02	0.98	0.93*	0.87*	1.04	1.38**	0.80**	0.76**	1.07
Prior Prison/ Infrac. vs. No Prior Prison	1.67***	1.39***	1.68***	1.68***	2.17***	1.56***	2.49***	3.24***	1.26	2.35***	5.20***	1.12
Prior Prison/ No Infrac. vs. No Prior Prison	0.97	0.98	1.21***	0.94	0.99	0.86***	1.46***	1.69***	1.08	1.51***	2.18***	0.86

* = significant at <.05.

** = significant at <.01.

*** = significant at <.001.

were 28% and 85% higher, respectively, for structured sentenced females. There was no significant difference in drug/alcohol infractions between the two sentence types for females.

In general, structured sentencing seemed to have had a somewhat larger effect on females than for males. However, for both genders, the assault infraction rate was over one-third higher for structured sentenced inmates than for fair sentenced inmates. This is a relatively large increase in a serious infraction rate, especially when one considers that well over one-half of the inmates are incarcerated under structured sentencing, and the proportion of inmates under structured sentencing will continue to grow. Although structured sentencing had a relatively large direct effect on infractions for both genders, other inmate background characteristics had even a larger direct impact on infractions. The main goals of this study were to determine the effect of structured versus fair sentencing on various types of infraction rates and to identify risk factors for committing infractions. The other independent variables were included in the regression models to control for other inmate background characteristics that would be expected to have a significant impact on infraction rates. We discuss the effects of these risk factors later in this report because these effects advance our understanding of inmate infraction behavior. The effects also have policy implications for monitoring and controlling infraction behaviors.

3.4.3 Seriousness of Crime

An important risk factor with respect to infractions is the seriousness of the crime for which the inmate was sentenced. Male inmates in the most serious crime category had a total infraction rate that was 41% higher than the rate for inmates in the least serious crime category. For assault infractions, the infraction rate was 85% higher for those in the most serious crime category than for those in the least serious crime category. The infraction rates for profanity/disobedience and work absence were 44% and 36% higher, respectively. There were no significant differences in drug/alcohol and money/property offenses. The infraction rates for males in the intermediate serious crime category also were significantly higher than the rates for the least serious crime category for all infraction types. The infraction rate for assaults in the intermediate crime category were substantially lower than the rate for the most serious crime category when compared to the least serious crime category (85% increase vs. 36% increase). In addition, the infraction rates for the intermediate category were somewhat lower than for the

most serious category for total infractions and profanity/disobedience infractions and somewhat higher for drug/alcohol and money/property infractions.

For females, the assault infraction rate was 69% higher for those in the most serious crime category compared to those in the least serious crime category. There were no significant differences in the other infraction rates for females. Likewise, the infraction rates for females in the intermediate crime category did not differ significantly from the infraction rates for those in the least serious crime category. The most important finding with respect to crime severity is that serious offenders, both male and female, had extremely high assault infraction rates compared to less serious offenders.

3.4.4 Prior Time Served

For both males and females, prior time served had a significant and positive impact on total, assault, and profanity/disobedience infraction rates. For males, each year of prior incarceration increased those infraction rates by 5%, 11%, and 6%, respectively. The corresponding increases for females were 7%, 9%, and 11%. Also, for males, each year of prior incarceration increased the work absence infraction rate by 4%. For females, each year of prior incarceration increased the drug/alcohol and money/property infraction rates by 12% and 11%, respectively. Oddly, previous incarceration time decreased the work absence infraction rate by 35% for females. These effects on infraction rates seem relatively small, but one needs to keep in mind that these percentage infraction rate increases reflect the effects of a single year of incarceration. Consequently, we would expect much larger effects for those inmates who were previously incarcerated for several years.

3.4.5 Jail Credit Time

The number of years of jail credit had a significant and positive effect on most infraction rates for both males and females. The percentage increases in total, assault, and profanity/ disobedience infractions were 37%, 40%, and 53%, respectively, for males and 110%, 126%, and 163%, respectively, for females. The effect of a year of jail credit for men was to increase the work absence infraction rate by 26%. The corresponding effect was not significant for women. Oddly, the effect of a year of jail credit for females was to decrease the drug/alcohol infraction rate by 60%. Because the average jail credit time is substantially less than a year, the

effects on most inmates is less than the percentages discussed above. It should be noted that the effect of jail credit time on infraction rates is considerably stronger for women than for men.

3.4.6 Race/Ethnicity

There was no significant difference in the total infraction rates between black and white men. The infraction rates of black men were higher than white men for assault (63% higher), profanity/disobedience (26% higher), and work absence infractions (25% higher). However, their infraction rates for drug/alcohol and money/property infractions were 41% and 36% lower, respectively. The only significant difference in infraction rates between the “other” racial category and whites was that the infraction rate for drug/alcohol infractions was 27% lower for others than for whites.

For females, the total infraction rate was 29% higher for blacks than for whites. The assault, profanity/disobedience, and work absence infraction rates for blacks were 89%, 44%, and 54% higher, respectively, than for whites. However, the drug/alcohol and money/property infraction rates for black females were 68% and 26% lower, respectively, than for white females. The only significant difference between others and whites was that others had a work absence infraction rate that was 141% higher than the one for whites.

3.4.7 Age

As age increased, there was a significant decline in infractions for all infraction categories for both males and females. For males, the total infraction rate declined by 8% for a 1-year increase in age. For inmates separated in age by 10 years, this translated into a 57% decline in total infractions. Assaults in particular declined by 11% for a 1-year increase in age or a 69% decline for inmates separated by 10 years in age. The effect of age on profanity/disobedience infractions was about the same magnitude, a 10% decline for each year’s increase in age. The effect of age on the remaining infraction categories was somewhat smaller but still substantial when the effects are translated into, say, a 10-year age difference.

The effects of age on infraction rates for females was very similar to that of males. There was a significant decline in the infraction rates for all infraction categories as age increased. The total infraction, assault, and profanity/disobedience infraction rates declined 8% with a 1-year increase in age or 57% for a 10-year increase in age. The work absence infraction rate declined

by 11% and 69% for a 1-year and 10-year increase in age, respectively. The effects of age on the remaining infraction categories were not as strong.

3.4.8 Probation Violator Versus Nonviolator

For males, the total infraction rate was 10% higher for probation violators than for nonviolators. The assault rate was 17% higher, and the profanity/disobedience infraction rate was 14% higher. The drug and alcohol infraction rate was 13% lower for probation violators than for nonviolators. There was no significant difference for probation violators and nonviolators in work absence and money/property infractions.

For females, the total infraction rates for probation violators and nonviolators were not significantly different from one another. However, assault infraction rates were 30% higher for probation violators than for nonviolators and work absence infraction rates were 23% lower. There were no significant differences for the other infraction categories.

3.4.9 Expected Time Served

For males, an increase in expected time served decreased all six infraction rates. The total infraction rate decreased by 4% for each additional year expected to be served. This is equivalent to a 34% reduction for a 10-year increase in time expected to serve. The remaining five infraction rates declined from 6% (drug and alcohol) to 2% (assault) for each additional year expected to be served. The corresponding percentage declines for a 10-year increase in expected time served were 46% and 18%, respectively.

For females, there was a 7% decline in the total infraction rate for each additional year of expected time served (52% decline for 10 years). Assault infractions declined 17% for each additional year of expected time served (84% decline for 10 years) and profanity/disobedience infractions declined 9% for each additional year of expected time served (61% decline for 10 years). On the other hand, drug/alcohol violations increased 9% for each additional year of expected time served (137% increase for 10 years).

The gradual lengthening of prison sentences may also be related to the finding that infraction rates decreased with expected time served. North Carolina's DOC found that the rate of inmate infractions peaks at about 6 to 9 months after admission. As sentences get longer,

more of an inmate's time is spent in the low-rate portions, and therefore the rate of infractions diminishes with sentence length.

3.4.10 Alcohol Dependency

For males, there was no difference in the total infraction rate between inmates who were at high risk for alcohol dependency and those who were not. However, there were significant differences between the high risk and non-high risk groups for four of the specific infraction categories. The assault infraction rate was 15% higher for the high-risk group compared to the non-high risk group. On the other hand, the high-risk group compared to the non-high risk group had significantly lower infraction rates for drug/alcohol infractions (16% lower), work absence infractions (17% lower), and money/property infractions (9% lower).

For females, there was also no difference in the total infraction rate for the two alcohol dependency risk groups. Like males, the females in the high risk of alcohol dependency group had a lower (33% lower) drug/alcohol infraction rate than the non-high risk group. On the other hand, the infraction rate for work absences was 37% higher for the high-risk group than for the non-high risk group.

3.4.11 Chemical Dependency

For males, there was no difference in the total infraction rate between the high risk for chemical dependency group and the non-high risk group. However, the assault and drug/alcohol infraction rates for the high-risk group were 16% and 15% higher, respectively, than for the non-high risk group. On the other hand, the money/property infraction rate for the high-risk group for chemical dependency was 7% lower than the non-high risk group.

For females, a different pattern emerges. The total infraction rate was 13% lower for the high risk for chemical dependency group than for the non-high risk group. In contrast to males, there was no difference in assault infractions between the two groups, but the drug/alcohol infraction rate was 38% higher for the high-risk than for the non-high risk group. In addition, the high-risk group compared to the non-high risk group had lower infraction rates for profanity/disobedience and work absence (20% and 24% lower, respectively).

3.4.12 Prior Prison Infractions

For males, the total infraction rate was 67% higher for those who had one or more infractions while serving a prior prison sentence than for those who had no prior prison record. The infraction rates for the five specific infraction categories also were much higher for those who had one or more infractions while serving a prior prison sentence than those who had no prior prison record. They ranged from 39% higher for assault infractions to 117% higher for work absence infractions. When comparing males who had a prior prison record but no infractions with those with no prior prison record, there was no difference in the total infraction rate. However, those with a prior prison record but no infractions had a 21% higher drug/alcohol infraction rate than those with no prison record. Conversely, they had a 14% lower infraction rate for money/ property infractions.

For females, the effect of a prior prison record with infractions was even stronger. The total infraction rate for them was 149% higher than those with no prior prison record. The effect also was strong for profanity/disobedience infractions, 135% higher, and even stronger for assault, and work absence infractions. These infraction rates were 224%, and 420% higher, respectively, for those who had a previous prison record with infractions than those who had no prior prison record. For females, as contrasted to males, even the effect of a prior prison record but no infractions had a strong effect on infractions. The total infraction rate for those with a prior prison record but no infractions was 46% higher than those with no prior prison record. The effect of a prior prison record relative to no prior prison record was even greater for assault, profanity/disobedience, work absence, and money/property infractions with increases of 69%, 51%, and 118%, respectively.

3.4.13 Summary of Results

Both male and female inmates sentenced under structured sentencing laws had higher total infraction rates than those sentenced under fair sentencing laws. Both genders also had higher assault infractions rates. Most of the other risk factors that were used as covariates or independent variables in the Poisson regression models to adjust the effects of structured versus fair sentencing for differences in background characteristics between the two sentence groups also had substantial relationships to both total infractions and various specific infractions. In

fact, some of the covariates (e.g., infractions during prior incarcerations vs. no prior incarcerations) had a stronger effect on infraction rates than the effect of structured versus fair sentencing.

For males, those with high infraction rates could be characterized as being sentenced under structured sentencing; being sentenced for the most serious crimes; having served more time for prior incarcerations; having had more jail credit time; being young, being a probation violator; having a shorter expected sentence; and having one or more infractions during prior incarcerations. Male inmates with these characteristics would be expected to have an extremely high infraction rate compared to inmates who did not have those characteristics.

For females, the profile of those with high infraction rates was similar to that described above for males. However, in general, structured versus fair sentencing and the other covariates had a much higher relationship with the total infraction rate and various infraction categories for females than for males. For example, the total infraction rate for males who had one or more infractions in prior incarcerations compared to those with no prior prison was 67% higher whereas for females the corresponding infraction rate was 149% higher. For assault infractions, the differential effect of this variables was even stronger; 39% for males and 224% for females.

Considerable confidence is justified in our findings regarding the impact of structured sentencing on prison infractions. The current study largely replicates an earlier one, and improvements in methodology also were made. But other factors may have influenced the recent increases in inmate infractions. During the period of the study, the prison system was undergoing changes along with the sentencing law change. Prison capacity and staffing were increasing so that the physical and environmental features of the system were changing and the characteristics of the correctional officer staff were modified. Although these changes may have impacted the overall likelihood of occurrence and mix of infraction types, we know of no reason to think that structured and fair sentenced inmates would have been affected differentially by the changes.

3.5 Limitations

Some limitations to our analyses are related to the data we used and some to the selection of the inmates who were included in the study. First, the infractions included in our study resulted in a “conviction,” which means that the prison authorities through infraction hearings formally adjudicated the charges and judged that the inmates were guilty of the infractions.

Infractions not formally recognized and adjudicated by prison authorities were excluded from our analyses.

Second, the inmates in our sample came from many correctional institutions across the State of North Carolina. These institutions ranged from minimum to maximum security institutions. Although there are statewide correctional system rules, institutions vary in their propensity to officially adjudicate rule violations. The North Carolina DOC also added a number of new institutions to their system during the time frame of the study and hired and trained a large number of new staff to manage the institutions. There is no reason to think that infractions committed by inmates sentenced under prestructured sentencing conditions would be treated any differently from infractions committed by inmates sentenced under structured sentencing. The “social control” context, however, within which the infractions we analyzed were generated varied considerably.

As mentioned above, infractions committed by some inmates were excluded from our analyses. Inmates serving mixed prestructured and structured sentences were not included, as were inmates serving life sentences and those incarcerated for DWI. Thus our findings do not apply to all classes of inmates.

Finally, our study looked at a limited time period that ended in early 1998, which was a time of change in the DOC as a result of the introduction of structured sentencing, new correctional institutions, and many new staff. It is not certain that the same results would be found for a later time period.

Chapter 4. Summary and Implications

4.1 Background

Sentencing reforms have proliferated in the United States since the 1970s. These changes have been prompted by a variety of factors: dissatisfaction with the rehabilitative goals of indeterminate sentencing, disparities in sentencing practices, beliefs that the disparities between incarceration sentences given and actual time served was excessive (truth in sentencing), hopes that reform would elevate public safety effects, and concerns about the levels and types of correctional resources that must be expended to implement sentences given by the courts. Most of the recent changes have involved the implementation of sentencing guidelines or structured sentencing developed under State statutes. Sentencing guidelines typically involve the specification of “presumptive” sentences that guide judges’ sentencing decisions. The presumptive sentence depends on the type of offense an individual has been convicted of and his or her previous conviction record. The presumptive sentence can be “enhanced” or “mitigated” based on factors related to the case. If there is a single hallmark of sentencing guidelines, it is that it has shaped and reduced judicial sentencing discretion.

Recent evaluations of sentencing reforms typically have found that although the new laws do modify sentencing practices, the effects are usually less than anticipated. Plea negotiations continue to be the predominant way of disposing of cases, and judicial sentencing discretion is reduced by sentencing guidelines (but most effects are muted). The adjudication system continues to emphasize the efficient disposition of cases, and local courtroom workgroups collaborate to ensure this result. The existing sentencing reform evaluation literature is also somewhat inconsistent. Findings usually indicate that sentencing disparities are reduced by sentencing guidelines, but other effects have been found inconsistently.

The existing sentencing evaluation literature has not paid sufficient attention to the *system impacts* of sentencing reforms, and this was the major focus of the study described in this report. The current study examined multiple aspects of the adjudication process by analyzing case data provided by North Carolina’s Administrative Office of the Courts (AOC) for the prestructured sentencing (i.e., fair sentencing) and structured sentencing time periods, and by interviewing individuals in key adjudication roles in three judicial districts in North Carolina. We compared

charging practices, case dismissal and jury trial rates, plea negotiations, and case processing time for a large number of cases, and we collected qualitative information on the same factors from judges, district attorneys, defense attorneys, and court clerks.

4.2 North Carolina's Structured Sentencing Law

The North Carolina Sentencing and Policy Advisory Commission was created in 1990 to make recommendations regarding State criminal sentencing policies. In 1993, the General Assembly reviewed recommendations made by the Commission and adopted the structured sentencing law, which applies to all felony and misdemeanor crimes (except for driving while impaired [DWI]) committed on or after October 1, 1994. Structured sentencing represented a new way of sentencing offenders in North Carolina. Judges are provided with specific sentencing options for the type and length of sentence that may be imposed, derived from calculations of the severity of the crime and on the extent of previous criminal records (the presumptive sentence). The new law also eliminated parole and set priorities for the use of correctional resources.

Three types of punishments are stipulated under the new law: (1) active punishments (prison or jail), (2) intermediate punishments, and (3) community punishments. For *active punishments*, felons and misdemeanants with more than 3-month sentences are incarcerated in State prisons, and misdemeanants with fewer than 3 months of active time are placed in county jails. *Intermediate punishments* require that offenders be placed on probation and also that they be restricted in a boot camp, by split sentence, a day reporting center, or other special conditions. *Community punishments* may include fines, restitution, treatment, or community service. Crimes are classified into letter classes ranging from Offense Class A through Class I.

Crimes that involve injuries or risks of injuries to victims are in the highest categories, while property crimes are in the lower ones. Misdemeanors are classified into a descending hierarchy of four classes. There are six levels of classifications for prior records for felons. The highest levels are used for felons with violent or extensive prior records. Misdemeanors are classified into three prior conviction levels.

Judges must impose active punishments for felons convicted of crimes that are in the high offense categories or who have high prior record levels. They must impose intermediate or community sanctions for those who are in the low categories, and they can choose either an

intermediate or active punishment for those who fall in between. Options for increasing or decreasing the “presumptive” sentence based on aggravating or mitigating factors are also specified. In studies conducted after the new law became effective, the North Carolina Sentencing and Policy Advisory Commission determined that the goals of the new law were largely being met.

4.3 Effects of Structured Sentencing on the Adjudication Process

Table 4.1 summarizes our findings from the analysis of AOC data. Structured sentencing did not bring about major changes in the aspects of the adjudication that we examined. We observed a slight increase in the percentage of misdemeanor defendants with multiple charges (1.1%) and in the percentage of multi-charge felony defendants charged with both felony and misdemeanor offenses. A comparison of dismissals for the prestructured sentencing and structured sentencing time periods indicated that the rate of dismissal among misdemeanor defendants was 5% to 6% higher under structured sentencing, and about 2% higher for felony defendants. The predominant (although not unanimous) view of those we interviewed regarding charging practices and case dismissal was that there were no changes in charging practices or dismissals under structured sentencing, indicating a disparity between their views and the empirical data.

The results from our AOC analyses suggest a small increase in the percentage of structured sentencing defendant episodes resulting in negotiated pleas. For instance, multiple-charge convicted felony defendants in the structured sentencing sample were more likely than those in the prestructured sentencing sample to have a reduction in their number of offenses between charges and conviction(s) (76.5% vs. 74.3%) and more likely to have a reduction in offense class between their charges and conviction(s) (55.5% vs. 50.9%). An increase in offense class reduction was evident even in the reduction category of three or more classes. Most of the court personnel we interviewed either noted an increase in plea negotiations or said that they had observed no change in the frequency of negotiated pleas. It is possible that because sentencing outcomes are more predictable under structured sentencing guidelines, defendants being adjudicated under the new law may be more willing to accept a negotiated plea because it is clearer what their sentence will be. This may be the case particularly in situations where it is certain that a defendant will not serve prison time with a guilty plea.

Table 4.1 Summary of Changes Observed Among Structured Sentencing Defendants

Outcome	Misdemeanor Defendants	Felony Defendants
<u>Charges</u>		
% with Multiple Charges	1.1% increase	<1% decrease
% with Misdemeanor Charge(s) Only	<1% decrease	not applicable
% with at Least One Felony Charge	not applicable	<1% increase
% with Both Felony and Misdemeanor Charges	not applicable	1.7% increase (multiple-charge defendants only)
<u>Dismissals</u>		
% Resulting in Dismissal	5.2% to 5.6% increase	<1% to 2.2% increase
<u>Plea Negotiation</u>		
% with Reduction in Number of Offenses Between Charges and Conviction(s)	4.7% increase (multiple-charge defendants only)	2.2% increase (multiple-charge defendants only)
% with Reduction in Offense Class Between Charge(s) and Conviction(s)	not analyzed	2.1% to 4.6% increase
% with Reduction in Offense Class by 3+ Classes	not analyzed	<1% to 4.3% increase
<u>Jury Trials</u>		
% Going to Trial for at Least One Offense	not analyzed	<1% increase
<u>Adjudication Time (in Days)</u>	10 to 13 day increase	7 to 11 day increase

There was agreement between the perceptions of the interviewees and the AOC data for jury trials. The AOC data showed very similar jury trial rates (approximately 2%) for prestructured sentencing and structured sentencing defendants, and the respondents thought little had changed regarding this disposition mode. Several working in the adjudication process recognized that the system can handle only a small percentage of cases by the jury trial method, and it appears that the system's resources are utilized to ensure that most cases are settled in ways that require less time and resources.

The court data showed clearly that the time required to adjudicate defendants under structured sentencing was 7 to 13 days longer than under the previous law. Here, too, there was a difference between what the empirical data showed and what the respondents said was the case. Whereas some of the respondents noted an increase in adjudication time (due to new and additional paperwork), others reported a decrease (pointing to a reduction in the time required to make sentencing decisions), while others indicated that they had observed no change in the time it takes to process a defendant. It is likely that at least some of the increased adjudication time that we observed in the AOC data is attributable to delays from learning the new procedures associated with structured sentencing that was required when the new law was first being implemented.

4.4 Structured Sentencing and Prison Infractions

North Carolina's structured sentencing law modified the incentives for prison inmates to follow institutional rules by reducing an inmate's capacity to earn sentencing reductions for good behavior. Moreover, empirical and anecdotal evidence from North Carolina's Department of Correction (DOC) suggested that inmates serving sentences under structured sentencing were in fact committing institutional infractions at a higher rate than inmates serving sentencing under the previous law. To examine the relationship between structured sentencing and institutional infractions, we analyzed data provided by the DOC using Poisson regression techniques. The analyses were conducted separately for males and females, and a group of 12 control variables (individual characteristics, current offense, criminal history, previous incarceration, and history of prison infractions) were included in the regression models.

Key findings indicated that in comparison to inmates sentenced under the previous law, inmates sentenced under structured sentencing had the following characteristics and rates:

- They had higher overall infraction rates—25% higher for males and 55% higher for females.
- Their assault infraction rate was about one-third higher for both sexes.
- Male inmates sentenced in the most serious crime category had higher overall and assault infraction rates, and the assault infraction rates for females in the most serious crime category was significantly higher.

- Prior time served had a direct effect on the infraction rate for both sexes in most infraction categories.
- Age was inversely related to infractions in that, as age increased, the likelihood of involvement in infractions decreased.
- For males, there was no difference in the overall infraction rates for blacks and whites, but black males had a higher assault infraction rate, and black females had higher overall and assault infraction rates.
- Longer expected time to be served was associated with lower infraction rates for both males and females.
- Having a prior record of infractions during a previous incarceration was significantly associated with infractions during the current incarceration for both sexes.

It is clear that, at least in the early years of structured sentencing, inmates sentenced under the new law pose more difficult prison management challenges than do inmates sentenced under the previous law.

4.5 Implications

Our study's findings with regard to the effects of sentencing reform on the adjudication process are consistent with most previous work in several respects. First, claims made about probable major impacts of new sentencing laws during legislative debate leading up to passage of new laws typically overstate the effects that can be expected to occur. Sentencing reform results in real change, but the pressing need to move cases through local systems appears to dampen the impact of new legislation. The primary demands made on local systems are to process cases that are presented. Local court workgroups are organized to accomplish this goal. Some of the interviews we conducted with those who work in the adjudication process highlight the primary importance of efficient case processing. In the discussions we had, several individuals noted the importance of efficient case processing to the system.

To ensure that State-initiated sentencing reforms will be implemented as planned requires that attention be paid to *local* operational realities, including local workloads and court workgroups. Local decision makers with responsibilities for implementing sentencing reforms should be involved in deliberations about change and in the formulation of legislation to affect

change. After reforms are legislated, continuing attention should be paid to local situations to ensure implementation is occurring in the ways intended, and that problems of implementation are being addressed. The initial implementation of sentencing reforms should also be monitored to assess whether intended changes are occurring. If they are not, initiatives to identify why and to institute corrective actions will likely be required.

This report's analysis of the effects of structured sentencing on the involvement of inmates in infractions (see Section 3) demonstrates how legislative initiatives that modify behavioral incentives can have an impact on inmate behavior. The structured sentencing law implemented in North Carolina made the management of the State's prisons more difficult and more costly. The results of our analysis provided some information that, when used in combination with prison management and housing practices, might have a positive impact on the safety and orderliness of the State's correctional institutions.

Certain classes of inmates were much more likely to be involved in infractions, indicating that risk profiling can provide direction to inmate management approaches. Inmates with a risk factor profile indicating a relatively strong likelihood of committing infractions could be monitored more closely than those without such a profile. They also could be housed together in order to make the monitoring more efficient. Because the risk factors are more predictive of infractions for females than for males, monitoring females with a high infraction rate risk factor profile more closely could pay even higher dividends.

Risk factor analysis might also be initiated at an aggregate level. As the distribution of risk factors changes through time, corresponding changes in the infraction rates can be expected. For example, if the prison population, on the average, becomes younger with a higher percentage of inmates who have been incarcerated previously, and a higher percentage of those sentenced for the most serious crimes, we can expect corresponding increases in infraction rates. Prison management practices might be used to attempt to modify the prevalence of infractions, such as by refining inmate classification and security assignment approaches and promising more favorable housing and job assignments for inmates who avoid infractions.

Another important implication of the infractions analysis is that as the proportion of inmates sentenced under structured sentencing increases over time, which will occur inexorably unless the law is changed, the behavior management problems of the system will likely grow. Of course, it is possible that the system can adapt successfully by modifying its practices to manage

inmate behavior more effectively. But barring more effective methods of dealing with infractions, North Carolina's prisons face major challenges when a larger proportion of its charges are incarcerated under structured sentencing.

It is clear from the findings in this report that modifications in sentencing can have far-reaching implications for prisons. It has been clearly demonstrated by other research that sentencing policies and practices have major impacts on the size of correctional populations. But the features of sentencing can also affect inmates' behavior while incarcerated, making the management of prisons more difficult and more costly. Future legislation should consider these effects as well as those impacting the need for bed space. The orderliness and safety of the prison environment can have negative consequences that may be every bit as serious as overcrowding.

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Appendix A

Unknown Offense Class Due to Obsolete and Split Offenses, by Most Serious Charge (Defendant Episodes with Conviction(s) Only)

Unknown Offense Class Due to Obsolete and Split Offenses, by Most Serious Charge (Defendant Episodes with Conviction(s) Only)

Most Serious Charge	Prestructured Sentencing Defendant Episodes (%)				Structured Sentencing Defendant Episodes (%)			
	Single Charge		Multiple Charges		Single Charge		Multiple Charges	
	N	% Unknown	N	% Unknown	N	% Unknown	N	% Unknown
FELONY								
Criminal Homicide	136	51.5	150	80.0	112	50.0	116	68.1
Forcible Rape	52	53.9	178	61.2	40	27.5	206	33.5
Robbery	271	13.7	867	49.5	292	12.0	891	31.8
Aggravated Assault	490	51.6	700	70.4	388	35.8	648	46.6
Burglary/Breaking & Entering	238	19.8	3,651	30.6	241	13.7	3,367	17.4
Larceny/Theft	426	13.9	745	41.6	494	6.1	822	22.4
Motor Vehicle Theft	76	72.4	124	85.5	75	5.3	142	15.5
Simple Assaults	1	-	1	-	7	-	10	-
Stolen Property	249	14.9	376	46.3	208	4.8	408	25.3
Drug Sales/Trafficking	480	16.3	3,050	41.3	572	7.0	3,233	27.8
Drug Possession/Use	498	27.1	1,005	43.4	676	28.6	1,261	35.5
Sex Offense	129	27.9	196	50.0	130	16.9	170	36.5
Total†	3,046	27.5%	11,043	42.1%	3,235	17.8%	11,274	27.0%
MISDEMEANOR								
Criminal Homicide	0	-	0	-	0	-	0	-
Forcible Rape	0	-	0	-	0	-	0	-
Robbery	0	-	0	-	0	-	0	-
Aggravated Assault	852	83.0	1,210	89.2	767	20.9	1,098	45.0
Burglary/Breaking & Entering	266	4.5	488	52.7	217	1.4	424	29.5
Larceny/Theft	2,845	2.6	2,379	35.1	2,844	1.4	2,470	13.0
Motor Vehicle Theft	219	98.2	170	99.4	239	<1.0	162	29.0
Simple Assaults	5,008	51.0	3,550	80.6	4,972	10.0	3,612	35.7
Stolen Property	1,884	<1.0	494	42.5	1,577	<1.0	437	7.6
Drug Sales/Trafficking	0	-	0	-	0	-	3	-
Drug Possession/Use	2,436	2.7	2,415	21.8	3,391	2.2	3,052	5.3
Sex Offense	72	6.9	39	30.8	73	2.7	42	7.1
Total†	13,582	26.8%	10,746	55.4%	14,080	5.6%	11,300	21.9

†Refers to all relevant defendant episodes in selected analytic groups.