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**Multi-Site Evaluation of
Sentencing Guidelines:
Florida and North
Carolina**

Final Report
Executive Summary

Award #96-CE-VX-0016

February 2000

Prepared for
National Institute of Justice

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Introduction

Thirty years ago, all offenders in the U.S. were processed through indeterminate sentencing systems which permitted judges complete discretion in setting sentence conditions and terms, thus limiting appellate review¹ and detection of undesired consequences such as racial disparity. Once incarcerated, inmates served sentences according to good time earned, furloughs, parole board decisions, and sometimes early release due to arbitrary determinants such as overcrowding. Over the years, the criminal justice system (CJS) developed a diminished capacity to punish offenders in a manner consistent with many of the principles of sentencing—including deterrence, incapacitation, and retribution.²

Since Minnesota first enacted sentencing guidelines in 1980, many jurisdictions have considered structured sentencing a means to transition from indeterminate to determinate sentencing and restricted prison release policies. Actually, structured sentencing systems can be distinguished along a continuum ranging from mandatory to voluntary application of sentencing guidelines.³ In some States, such as Virginia, structured sentencing is voluntary but judicial compliance with the guidelines is high.⁴ All Federal felonies and most serious misdemeanor cases have been sentenced according to guidelines established by the U.S. Sentencing Commission since November 1987.⁵ A recent survey⁶ yielded information for 18 States which have established sentencing commissions to standardize structured sentencing rules. However, some States (e.g., Wisconsin and Florida) have decided to abolish their commissions and to adopt new criminal punishment codes.

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¹ Tonry, M. (1999, Sep). *Reconsidering Indeterminate and Structured Sentencing*. Washington, DC: National Institute of Justice, Research in Brief, Papers from the Executive Sessions on Sentencing and Corrections.

² Pontell, H. (1984). *Capacity to Punish: The Ecology of Crime and Punishment*. IN: Indiana University Press.

³ Ostrom, B.J., Kauder, N.B., Rottman, D., and Peterson, M. (1998). *Sentencing Digest: Examining Current Sentencing Issues and Policies*. Williamsburg, VA: National Center for State Courts.

⁴ Virginia Criminal Sentencing Commission (1997, Dec). *Virginia Criminal Sentencing Commission: 1997 Annual Report*. Richmond, VA: Author.

⁵ U.S. Sentencing Commission. (1998). *An Overview of the Federal Sentencing Guidelines*. U.S.S.C. website (<http://www.ussc.gov>).

⁶ National Center for State Courts (1997). *Sentencing Commission Profiles: State Sentencing Policy and Practice Research in Action Partnership*. Williamsburg, VA: Author.

Generally, sentencing guidelines are rules established by commissions that structure sentencing according to both the case and the offender's record. Sentencing guidelines are often described as presumptive, meaning a range of sanctions and terms are presumed in accordance with, among other factors, offense severity and criminal history. The presumed sentence range is applied unless there are aggravating or mitigating circumstances for which alternate ranges are provided. Judges can depart from even mandatory guidelines with sufficient justification. Judges usually must state the factors which determined the alternate sentence, or if the sentence falls outside the alternate range, the reasons for a departure (e.g., for appellate review purposes).

The intent of this project is to focus on States which instituted (or made significant modifications to) structured sentencing policies in the 1990s and are referred to as "second generation sentencing commissions." Common among these second generation sentencing guidelines are some primary objectives: imprisonment of priority (violent) offenders, sentencing neutrality and uniformity, truth-in-sentencing, and prison population control. During the 1990s, Florida and North Carolina had mandatory presumptive sentencing guidelines; effective October 1998, the Florida Legislature repealed the sentencing guidelines and the Sentencing Commission, and established a new Criminal Punishment Code. The purpose of this study is to observe the effects of sentencing guidelines and prison release policy changes on felony sentences and time served in these two States.

One cannot study sentencing guidelines without examining truth in sentencing and other release policies that also affect time served and, consequently, demand on correctional resources. Prison release policies have been affected both by structured sentencing systems that may call for abolishment of parole boards and modifications in gaintime policies, and by Violent Offender Incarceration and Truth in Sentencing (VOI/TIS) initiatives that promote increased time served. The Violent Crime Control and Law Enforcement Act of 1994 provided financial incentives for States to adopt VOI/TIS laws requiring certain offenders (esp. violent offenders) to serve minimum proportions of their sentences.⁷

For example, the Sentencing Reform Act of 1984 that established Federal sentencing guidelines also eliminated parole and reduced good conduct time allowed; these truth in sentencing provisions required that Federal offenders serve a minimum of 85 percent of their sentences. The Bureau of Justice Statistics⁸ reported that between 1986 and 1997, average sentence terms rose by one-third (39 months to 54 months) and average time served more than doubled (21 months to 47 months). Despite increased sentence terms⁹, the proportion of time served rose from about 58 percent in 1986 to about 87 percent in 1997 overall. Due to case processing lags, the effects of the sentencing guidelines and truth in sentencing

⁷ Bureau of Justice Statistics (1999, Jan). *Truth in Sentencing in State Prisons*. Washington, DC: U.S. DOJ.

⁸ Bureau of Justice Statistics (1999, Jun). *Time Served in Prison by Federal Offenders, 1986-1997*. Washington, DC: U.S. DOJ.

policies accrued gradually as cohorts of new court commitments were admitted to the Bureau of Prisons; 23 percent of the inmates admitted in 1988 versus 99 percent of the inmates admitted in 1997, were sentenced under these new laws. These changes had the most impact on certain serious offenses—such as violent, drug, weapons, and immigration offenses—and had little impact on less serious offenses such as property offenses. In addition to time served, number of admissions increased differentially by offense type, whereby about 72 percent of the increase in the Federal prison population between 1986 and 1997 can be attributed to drug offenses.

Research Design

We selected two States—Florida and North Carolina—that adopted and modified sentencing guidelines, and revised release policies, to enhance sentences and time served for serious offenses and offenders with criminal histories. Our basic approach was to examine charging, sentence, prison admission, and time served statistics over time, comparing these outcomes for the periods before and after sentencing guidelines and release policy changes went into effect. Interrupted time series analyses and simulated projections were used to evaluate the impact of these policy changes on charging and sentencing practices by prosecutors, defense attorneys, and judges, as well as on release practices by prison officials. We also predicted future demand in terms of prison beds required as a consequence of these policies.

We obtained data collected by State court and corrections agencies in Florida and North Carolina for the period surrounding these policy changes (i.e., 1991 through 1997). Note that sentencing data can be highly variable in availability and quality, especially when both pre- and post-guideline data are required. Further, there are administrative practices (e.g., consolidating cases for judgement, resentencing, etc.) which impinge on our ability to observe accurate, real-time trends. Last, time served was estimated for recent cases, and one can only assume fixed characteristics to project time served estimates forward. These estimates may misrepresent future release outcomes.

As described in detail in the following chapters, both States classify offenses and criminal histories into ranked severity classes. North Carolina organizes sentence ranges in a grid format, where each cell refers to some combination of offense and criminal history severity (see appendix B). North Carolina follows guidelines for misdemeanors as well as felonies, but this study is concerned with felony crimes only. Florida differs from other States in that sentence calculations are organized into a point system rather than a punishment grid (see appendix A). Sentence type and term are determined by the sum of offense and criminal history points associated with each severity class. To control for offense type and severity, we chose cases charged with felony burglary, robbery, or drug possession. These represent

⁹ Sentence term increases are largely the result of mandatory minimum prison terms (BJS 1999).

substantial proportions of common offense types—property, person, and drug—and a range of serious, moderate, and minor felonies. Further, these groups of offenses are differentially targeted by guideline modifications so comparisons can be used to demonstrate guideline impacts.

Findings pertaining to analyses of sentencing and prison data for Florida are presented in chapter 1 of this report, and for North Carolina in chapter 2. Following is a summary of those findings along with a review of the legislative changes in sentencing and release policies.

Florida

In October 1983, the Florida Sentencing Guidelines Commission initiated sentencing guidelines based on an objective scoring of offense- and offender-related criteria.¹⁰ In an effort to promote truth in sentencing and to increase actual time served for violent and repeat offenders, Florida revised the sentencing guidelines and modified prison release policies as part of the Safe Streets Act effective January 1994.¹¹ With the Crime Control Act of 1995, Florida changed its sentencing guidelines to increase the incidence of prison sentences and the duration of time served for crimes involving serious offenses or serious victim injury, and for offenders who had serious prior criminal records.¹² For instance, the 1995 guidelines increased level 7 offense assessments from 42 to 56 points, changing the presumptive sentence from discretionary to mandatory prison for serious offenses such as burglary.¹³ When the 1994 guidelines were effective, inmates could earn 20 to 25 days of incentive gain time per month served, and they typically served about 70 percent of the sentence imposed. When the 1995 guidelines were effective, inmates could earn 10 days of incentive gain time per month served, and they could not serve less than 85 percent of their sentences.¹⁴

Florida provided pre-guideline data for cases sentenced between January 1991 and December 1993, guideline data for cases related to offenses committed between January 1994 and June 1997, and admission and release data for offenders admitted to prison between July 1979 and June 1997. We analyzed sentencing data for associations between the implementation of the 1994 sentencing guidelines or the 1995 sentencing guidelines and:

- changes in primary offense, additional offense, and prior record charging;

¹⁰ Hogenmuller, J.N. (1997, Jan). *Historical Overview of Florida Sentencing Guidelines*. Tallahassee, FL: Sentencing Commission.

¹¹ Florida Department of Corrections (1996, Dec). *1995-96 Annual Report: The Guidebook to Corrections in Florida*. Tallahassee, FL: Author.

¹² Florida Department of Corrections (1997, Mar). *Sentencing Guidelines 1995-96 Annual Report: The Impact of the 1994 and 1995 Structured Sentencing Policies in Florida*. Tallahassee, FL: Author.

¹³ Offense types are organized in a master list by severity, ranging from 1 (low) to 10 (high).

¹⁴ Florida Department of Corrections (1996, Dec). *1995-96 Annual Report: The Guidebook to Corrections in Florida*. Tallahassee, FL: Author. Note meritorious and educational gain time policies also apply.

- the incidence of sentence sanction and term mitigation by judges (i.e., judicial departures from the sentencing guidelines); and,
- the resulting sentence types and terms imposed.

Interrupted time-series indicate an increase in lower level charging (and a decrease in higher level charging) for primary offenses among burglary and robbery cases that coincides with the implementation of the 1995 sentencing guidelines. This reduced the impact of guideline modifications on average primary offense points, which remained nearly the same. Average points for additional offenses rose with the guideline modifications for serious felonies despite a drop in serious additional offense charging, especially among robbery cases. The incidence of prior record charging did not change, so average points increased in tandem with the guideline transition, as expected. The net effect of the 1995 guidelines was an increase in presumptive prison sentence terms, as intended by the State.

CJS officials may have adjusted charging or plea bargaining practices in response to guideline changes, but if these changes happened, they were not large enough to nullify the guidelines' intent. With the implementation of the 1995 guidelines, we see a general increase in points meaning an increase in recommended prison sentences. However, it appears that judges attempted to mitigate the harsher sanctions prescribed by the 1995 guidelines via sentence departures in burglary and drug possession cases—more in terms of nonprison sanctions than in decreased prison terms. Again, apparent CJS attempts to mitigate new provisions of the guidelines and truth in sentencing were not so great as to nullify the guidelines' intent. Comparing expected time served under 1994 versus 1995 guidelines given time served assumptions of 70 percent and 85 percent of sentence imposed, guideline changes resulted in substantial time served estimate increases for serious offenses like burglary and robbery (e.g., increases of six months or more), and only moderate increases on minor felonies such as drug possession.

We analyzed prison admission and release data for new court commitments to observe the impact of guideline and release policy changes on:

- proportion of sentence time served;
- admissions and demand (the number of prison beds required)¹⁵; and,
- projected cumulative demand.

Proportion of time served did increase with each set of guideline and associated release policy changes—from about 30 percent to 55 percent prior to 1994, to about 60 percent to 75 percent during the 1994 guideline period, and finally up to 85 percent since the 1995 guidelines were introduced. Although admissions declined, demand on prison resources remained steady for serious inmates such as burglary and robbery offenders as time served increased commensurate with guideline and release policies

changes. Nonetheless, sentencing guidelines changes have a positive impact that is independent of the effects of admissions and release policies. Simulating future demand, we found that sentencing guideline and truth in sentencing policies may double the number of prison beds required for such serious offenses by FY2013.

North Carolina

North Carolina adopted a structured sentencing system following a history of indeterminate sentencing altered only by the Fair Sentencing Act (FSA) of 1981.¹⁶ In October 1994, North Carolina introduced sentencing guidelines which stipulate presumptive sentences according to offense severity and criminal history (see appendix B) for all felonies and misdemeanors. For serious crimes and repeat offenders, the guidelines presume jail or prison terms (called active terms). The felony sentencing chart is divided by a grid border that separates cells corresponding to active versus optional sentences including intermediate and community punishment.

In December 1995, selected minimum sentence ranges were amended to increase sanctions and terms for serious crimes and offenders; specifically, minimum terms were increased by approximately 16 percent for serious felonies (denoted as classes B2, C, and D). Also, active punishment options were added for felony class H offense cases (e.g., burglary) with prior record levels of I or II (minimal or no criminal histories).

Under structured sentencing, good time, gaintime, and parole were abolished. Offenders sentenced to active punishment must serve at least the minimum term imposed; however, as determined by the Department of Correction (DOC), they could earn credits of up to six days per month incarcerated on their maximum term. Prisoners could be released on the date equivalent to the maximum sentence term less nine months (effective December 1996¹⁷), any earned time awarded, and time served in pretrial detention.¹⁸

North Carolina provided court data for cases filed between 1991 and 1997, and prison admission and release data for offenders admitted between 1990 and 1997. We analyzed sentencing data for associations between the implementation of the 1994 sentencing guidelines or the 1995 sentencing guidelines and changes in:

¹⁵ We can approximate the demand made by a cohort of offenders on prison resources by multiplying the number of offenders admitted by the average length of time they will serve.

¹⁶ The FSA mandated statutory presumptive sentence terms for felony offenses that were punishable by maximum prison terms of three or more years.

¹⁷ Effective December 1996, the incarceration release date was amended from the equivalent of the maximum prison term “less six months” to “less nine months.”

¹⁸ Offenders should serve 100 percent of their minimum term less time served in pretrial detention.

- primary offense and prior record charging;
- the incidence of active punishment (above the sentencing chart border) sentences imposed; and,
- the resulting sentence types and terms imposed.

Despite the increase in terms for serious felonies effective with the 1995 guidelines, interrupted time-series indicate no change in primary offense charging patterns. Missing data probably attributable to record consolidation practices preclude definitive conclusions, but changes in prior record charging were not apparent. Also, there was no change in the proportion of cases for which active punishment was the presumed sentence that can be associated with guideline modifications in 1995.

Actually, the shift in sentences occurs in 1994 when North Carolina moved from indeterminate sentencing and FSA policies to structured sentencing. Confirmed by DOC data and expert opinion, the sentencing and prison data show a considerable drop in the length of prison terms imposed across offenses. However, the sentence outcomes are structured to reinforce the punitive differential between serious and minor felonies whereby more punitive terms are associated with more serious offenses. During the FSA period, the majority of robbery cases (i.e., the most serious felonies) were sentenced to prison terms of over five years; since the 1994 guidelines, sentence terms between 13 and 24 months are more common. In contrast, sentence terms for minor felonies (such as drug possession) were usually more than two years during the FSA period. Under sentencing guidelines, very few drug possession cases were sentenced to more than two years, and the majority were sentenced to six months or less. These trends reflect a rational decision to impose reduced demands on correctional resources, in general, but to reserve more punitive sentences for targeted serious offenses.

We analyzed prison admission and release data for new court commitments to observe the impact of guideline and release policy changes on:

- proportion of sentence time served;
- admissions and demand (the number of prison beds required); and,
- projected cumulative demand.

During the period from 1990 to 1994, prisoners served an average of 20 to 30 percent of their maximum sentence, regardless of offense type. Offenders sentenced under the sentencing guidelines served an average of about 80 percent or more of their sentences. Many offenders sentenced under the guidelines were still in prison through 1997, but there is a slight increase in time served among burglary and robbery offenses sentenced under the 1995 guidelines.

Prison demand patterns vary by offense type. Increased time served resulted in increased demand posed by burglary and robbery offenders, even though burglary admissions decreased. Demand among drug possession offenders increased, despite shorter sentences, because admissions rose. Assuming

similar time served and admission averages, estimated future cumulative demand will require triple the number of prison beds for serious offenses such as robbery. There is a near doubling in demand for drug possession offenses, and a negligible increase in demand for burglary offenses. Controlling for admissions, the change in demand or the projected number of prison beds required by FY2013 is greatest for robbery offenses, but still substantial for burglary offenses. No appreciable change in demand for drug possession offenses is anticipated.

Review

Both Florida and North Carolina succeeded in raising time served for serious offenses (e.g., robbery and burglary) and the proportion of sentences served overall. According to interrupted time-series analyses, the net effect of Florida sentencing guidelines and their modifications was increased primary offense, additional offense, and prior record points for serious cases. Despite judicial departures that mitigated sanctions, guideline changes led to increased sentence terms—more for serious offenses than for minor felonies such as drug possession. The end results are inmates serving up to 85 percent of their prison sentences and higher demand related to serious offenses.

Court data are insufficient to support precise statistics, but North Carolina achieved truth in sentencing by adopting sentencing guidelines that generally lowered the sentence terms imposed. With structured sentencing, prison inmates served up to 80 percent of their sentences, with a slight increase in time served observed among serious offenses since the implementation of the 1995 guidelines. Similar to Florida, demand related to North Carolina's cases increased among serious offenses despite decreasing prison admissions. However, like Federal trends, drug offense admissions to prison are up in North Carolina. Expected time served is lower for drug possession cases compared to Federal drug trafficking cases, but demand caused by drug possession cases in North Carolina is greater than in Florida due to increasing volume.

We analyzed data for sentences and prison admissions through 1997. A new punishment code effective in Florida October 1998 entails several changes. For example, judges may impose statutory maximums without explanation, or downward departures with explanation, which are subject to appeal. As of July 1997, sentences of up to 22 months of community control or prison may be imposed without aggravating reasons when the recommended sentence is nonprison if there are prior felony convictions; and downward departures on the basis of drug addiction were eliminated. If mitigating judicial departures are inhibited by these policies, we would expect further increases in demands on prison resources while truth in sentencing policies are also in effect.