
Impact of the Criminal Sentencing Reform Act of 2005 on Tennessee's Criminal Justice System



The Third Report of the Governor's Task Force on the Use of Enhancement Factors in Criminal Sentencing

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Administrative Office of the Courts
Nashville City Center
511 Union Street, Suite 600
Nashville, TN 37219
(615) 741-2687

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Introduction

This is the third of three annual reports of The Task Force on the Use of Enhancement Factors in Criminal Sentencing. The Task Force was established by Governor Phil Bredesen following the U.S. Supreme Court ruling in *Blakely v. Washington*, 124 S.Ct. 2531 (2004) and was charged with studying the impact of *Blakely* on the administration of criminal justice in the State of Tennessee. Part of that charge also included recommending changes to rectify the constitutionality of the State's sentencing structure. The goal of the Task Force was to deal with the constitutional issues of presumptive sentences while preserving the Criminal Sentencing Act of 1989, in which the General Assembly sought to achieve uniformity, consistency and predictability in criminal sentencing. The work product of the Task Force became the Criminal Sentencing Reform Act of 2005.¹ The 2005 Act kept the 1989 sentencing structure in place, removed presumptive sentences and established advisory sentencing guidelines. As established in the 1989 Act, sentencing structure in Tennessee is based on five felony classes and five defendant type categories; each assigned a range in duration increasing with offense severity and criminal history.² The presumption for most sentences was the minimum of each range; however felony Class A sentences began at the midpoint of the range and were then reduced or increased depending on mitigating or enhancing factors. Sentence alternatives to incarceration were also encouraged in the 2005 Act. TCA §40-35-102(6) states that the courts shall consider but not be bound by the advisory sentencing guideline in which a standard offender convicted of a Class C, D or E felony, should be considered as a favorable candidate for alternative sentencing options in the absence of evidence to the contrary. Sentence alternatives were also expanded in TCA §40-35-303(a), which included an increase in the number of convictions eligible for alternative sentencing options by allowing probation for sentences up to 120 months.

The Task Force was also charged with the responsibility of monitoring and assessing the impact of the Criminal Sentencing Reform Act of 2005 on Tennessee's criminal justice system. The first report was completed in October of 2006 and analyzed sentence type rates and sentence lengths. Analyzing sentence types addresses the utilization of sentence alternatives to incarceration. Exploring sentence lengths over time evaluates the influence that removing presumptive sentences has on sentencing. The second report of October 2007 included an analysis of the use of a limited number of sentence lengths, or conventional number preferences, which will also be analyzed in this third report to look for categorical and overall changes in specific sentence lengths.

Methodology

The data used in evaluating sentencing practices comes from the Tennessee Department of Correction (TDOC). Each offense sentence is recorded individually, even in cases of multiple offense convictions, eliminating the potential confusion in determining sentence lengths created by multiple offense convictions. To establish a baseline for comparison purposes, data from multiple years was queried. The data was queried on August 8, 2008 and yielded 296,162 felony offenses for 116,280 individuals sentenced on 153,782 occasions between July 1, 2000 and June 30, 2008. This data is all of the sentences recorded by the TDOC during this time.

¹ Chapter No. 353 of the Public Acts of 2005

² A table listing the sentence ranges is provided in Appendix A.

Sentence lengths will be reported for standard offenders, multiple offenders and for all offender types as a group. Standard and multiple defendant types were chosen because they comprise 94.8% of Tennessee sentences before data transformations and 97.1% of Tennessee sentences after data transformations.

Data Transformations

Offender/Defendant Type Classification

Offender type data was classified by TDOC as mitigated, standard, multiple, persistent, career and “hundred percent”. The designation of “hundred percent” indicates the percent of the sentence to be served for offenses listed under TCA §40-35-501(j). Therefore, offenders listed as “hundred percent” were reclassified for this report into appropriate offender types for the felony class and offense for which they were convicted. For example, a “hundred percent” offender who received a 260 month sentence for especially aggravated kidnapping, which is a Class A felony, was reclassified as a standard offender because 260 months is in the 180-300 month range for standard offender, Class A sentences. Missing offender types were also recoded when felony class and sentence lengths were known. In total, 4,192 “hundred percent” offender records and 2,727 missing offender types were recoded. The following table displays the sentence ranges in months in which the “hundred percent” and missing offender types were reclassified.

Sentence Range Classifications

Felony Class	Mitigated	Standard	Multiple	Persistent
A	162.0	180-300	>300-480	>480-720
B	86.4	96-144	>144-240	>240-360
C	32.4	36-72	>72-120	>120-180
D	21.6	24-48	>48-96	>96-144
E	10.8	12-24	>24-48	>48-72

Sentence Type Classification

Sentences to TDOC facilities and local jails were considered incarcerations. Life without parole and death sentences were included as incarcerations for sentence type numbers but were excluded from sentence length analysis. Sentences to community corrections were analyzed as probations.

Data

The 2005 Reform Act went into effect June 7, 2005. Convicted offenders with offense dates on or after that date were sentenced under the changes implemented in the Act. Defendants with offense dates prior to passage of the Act who had not yet gone to trial before the effective date of the Act were eligible for sentencing under the Act at their discretion. For Fiscal Year 2005, 31.6% of the sentences issued were associated with offense dates considered under the Act. For Fiscal Year 2006, 77.1% of sentences issued were associated with offense dates under the Act. For Fiscal Year 2007, 91.4% of sentences issued were associated with offense dates under the Act. Data is unavailable to determine the number of defendants with offense dates prior to June 7, 2005 and sentence dates after June 7, 2005 who chose to be sentenced under the Act. Class A and B offenses have lower percentages of Post Act cases than the other offense classes due to increased lengths between the date of the offense and the date the sentence was imposed. The following table lists the percent of convictions by felony class with offense dates before and after the effective date of the Act.

Percent of Cases with Offense Dates Pre and Post Reform Act

Felony Class	2005		2006		2007	
	Pre Act	Post Act	Pre Act	Post Act	Pre Act	Post Act
A	92.8%	7.2%	58.1%	41.9%	32.0%	68.0%
B	77.3%	22.7%	29.3%	70.7%	12.0%	88.0%
C	69.2%	30.8%	23.6%	76.4%	8.1%	91.9%
D	67.8%	32.2%	23.0%	77.0%	7.9%	92.1%
E	65.6%	34.4%	19.6%	80.4%	7.7%	92.3%
Total	68.4%	31.6%	22.9%	77.1%	8.6%	91.4%

Type of Adjudication

Guilty pleas were entered for 98.1% of convictions over the eight years analyzed. The more serious the offense class, the less likely a guilty plea was entered. The following table lists the percent of adjudication types for all fiscal year 2000 to 2007 convictions.

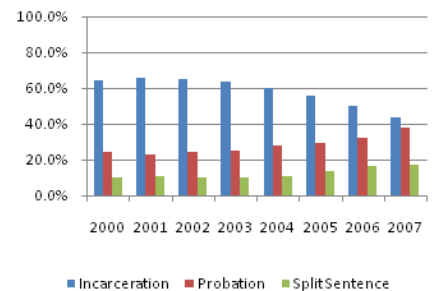
Felony Class	Guilty Plea	Guilty Plea / Jury Trial	Found Guilty by Jury Trial	Found Guilty by Bench Trial	Nolo Contendere
A	77.9%	12.8%	7.5%	0.1%	1.6%
B	95.5%	2.6%	1.2%	0.0%	0.7%
C	98.1%	0.7%	0.4%	0.1%	0.7%
D	98.7%	0.5%	0.3%	0.0%	0.5%
E	98.9%	0.4%	0.2%	0.0%	0.4%
Total	98.1%	0.9%	0.5%	0.0%	0.5%

Sentence Type Information

Convicted offenders in Tennessee can be sentenced to incarceration, probation or a combination of the two, hereby referred to as a split sentence.³ For sentence type information, incarcerations include sentences to local jails and Department of Correction facilities, which also contain life without parole and death sentence convictions. Probations include sentences to workhouses and community corrections. The reliance on incarceration in sentencing has diminished steadily for all classes other than Class A felonies. As a result, the utilization of both probation and split sentence options has increased. Part of the 2005 Reform Act allowed for the use of probation as a sentencing alternative for offenses with sentences up to 120 months. The biggest increase in the use of sentence alternatives to incarceration for these offenses occurred in 2007. The following tables present the percent of each sentence types for all Tennessee convictions from 2000 to 2007.

Percent of Sentence Type - All Offenders

Fiscal Year	Incarceration	Probation	Split Sentence	N ⁴
	Percent	Percent	Percent	
2000	64.6%	24.9%	10.4%	34,238
2001	65.6%	23.3%	11.1%	36,104
2002	64.9%	24.7%	10.3%	35,015
2003	63.8%	25.6%	10.6%	36,557
2004	60.3%	28.1%	11.6%	37,066
2005	56.3%	29.8%	13.9%	37,978
2006	50.4%	32.9%	16.7%	40,648
2007	43.9%	38.4%	17.7%	38,523



Percent of Sentence Type - Felony Class A - All Offenders

Fiscal Year	Incarceration	Probation	Split Sentence	N
	Percent	Percent	Percent	
2000	99.6%	0.4%	0.0%	542
2001	99.0%	0.7%	0.3%	600
2002	99.4%	0.4%	0.2%	533
2003	100.0%	0.0%	0.0%	527
2004	100.0%	0.0%	0.0%	560
2005	99.6%	0.4%	0.0%	477
2006	99.6%	0.4%	0.0%	523
2007	99.6%	0.0%	0.4%	453



³ Fines are also a sentence option, but are not included in this analysis.

⁴ N refers to the number of sentences.

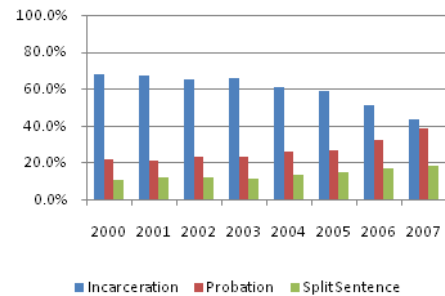
Percent of Sentence Type - Felony Class B - All Offenders

Fiscal Year	Incarceration	Probation	Split Sentence	N
	Percent	Percent	Percent	
2000	77.6%	12.5%	9.9%	2,757
2001	76.6%	13.1%	10.3%	2,902
2002	79.0%	11.8%	9.1%	2,755
2003	74.9%	13.9%	11.2%	2,889
2004	74.0%	14.6%	11.4%	3,066
2005	66.3%	18.9%	14.8%	3,281
2006	62.3%	20.5%	17.2%	4,025
2007	58.7%	22.5%	18.8%	3,803



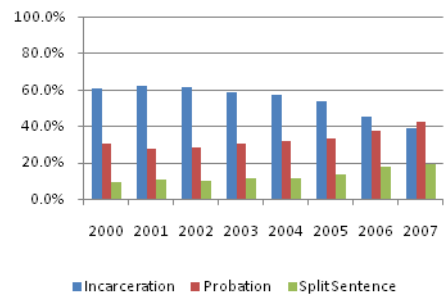
Percent of Sentence Type - Felony Class C - All Offenders

Fiscal Year	Incarceration	Probation	Split Sentence	N
	Percent	Percent	Percent	
2000	68.0%	21.7%	10.3%	8,198
2001	67.2%	20.7%	12.2%	8,742
2002	65.0%	23.0%	12.0%	8,373
2003	65.9%	22.8%	11.3%	9,529
2004	60.8%	25.8%	13.4%	9,018
2005	58.8%	26.5%	14.7%	9,394
2006	51.1%	32.2%	16.7%	9,966
2007	43.4%	38.4%	18.1%	9,453



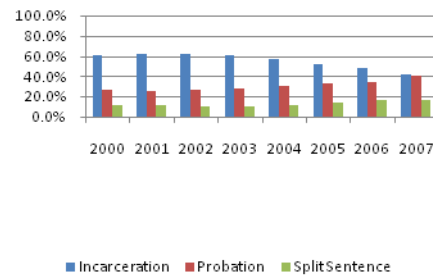
Percent of Sentence Type - Felony Class D - All Offenders

Fiscal Year	Incarceration	Probation	Split Sentence	N
	Percent	Percent	Percent	
2000	60.4%	30.3%	9.2%	7,742
2001	61.8%	27.5%	10.7%	8,272
2002	61.6%	28.4%	10.0%	8,301
2003	58.3%	30.2%	11.5%	8,796
2004	56.9%	32.0%	11.1%	9,062
2005	53.8%	32.9%	13.3%	9,143
2006	45.2%	37.4%	17.4%	9,951
2007	38.6%	42.4%	18.9%	9,904



Percent of Sentence Type - Felony Class E - All Offenders

Fiscal Year	Incarceration	Probation	Split Sentence	N
	Percent	Percent	Percent	
2000	61.1%	27.3%	11.7%	14,876
2001	63.3%	25.4%	11.3%	15,493
2002	62.7%	27.1%	10.2%	14,969
2003	61.9%	28.2%	9.9%	14,718
2004	57.5%	31.0%	11.5%	15,230
2005	52.7%	33.3%	14.0%	15,584
2006	48.2%	34.9%	16.9%	16,071
2007	41.9%	41.1%	17.0%	14,838



Sentence Lengths

The analysis for sentence lengths is presented in three sections: average incarceration lengths, average probation lengths and average split sentence lengths. Each section will display tables for each felony class by year for all offenders as well as for standard and multiple defendant types. The numbers given will be the average sentence in months. Average incarceration lengths for selected specific offenses are reported elsewhere by the Administrative Office of the Courts.⁵ For a table describing available sentence ranges by class and defendant type, see Appendix A.

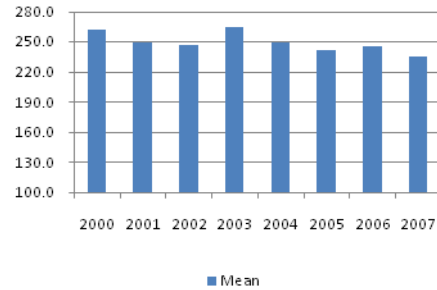
Average Incarceration Lengths

For sentence type frequencies, life without parole and death sentences were included with incarcerations. That is not the case for incarceration length calculations because there is not a specific length associated with life without parole and death sentences. Thus, incarcerations with regard to sentence lengths refer only to convictions where known jail time was sentenced. The presumptive midpoint for Class A sentences was removed in the 2005 Act. Average Class A sentences for all offenders in the FY2007-2008 are the lowest in the eight years analyzed. More data is needed to show that this is directly a result of the Act. Additionally, there is a wide variation, as much as 29.9 months, between the range of mean sentences for Class A offenses over the years. The median has lowered by 24 months in the FY2007-2008. This is the first change to the median noted in the eight years of data. The tables reporting average incarceration lengths are presented below.

⁵ See Criminal Sentencing Statistics at the website www.tncourts.gov.

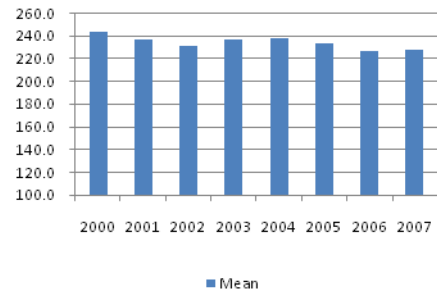
Average Incarceration Length - Class A - All Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	262.1	240.0	88.2	540
2001	249.0	240.0	68.3	594
2002	246.9	240.0	78.1	530
2003	265.3	240.0	98.5	527
2004	250.0	240.0	80.1	560
2005	241.8	240.0	77.2	475
2006	245.4	240.0	91.3	521
2007	235.4	216.0	73.7	450



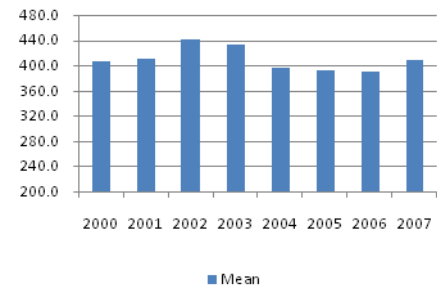
Average Incarceration Length - Class A - Standard Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	244.3	240.0	47.8	471
2001	238.0	240.0	45.2	542
2002	231.9	240.0	47.5	479
2003	237.8	240.0	44.3	449
2004	238.5	240.0	43.3	484
2005	233.6	240.0	45.6	411
2006	227.1	240.0	47.2	430
2007	228.0	216.0	45.0	394



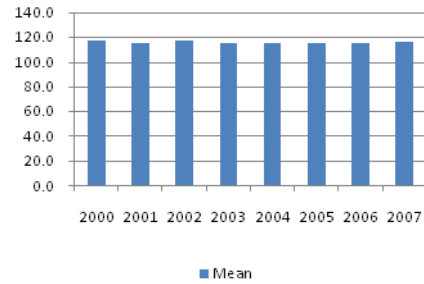
Average Incarceration Length - Class A - Multiple Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	406.0	396.0	55.2	41
2001	409.8	420.0	81.1	40
2002	441.8	480.0	53.0	35
2003	433.4	432.0	49.4	52
2004	395.6	360.0	54.8	36
2005	391.7	384.0	71.2	25
2006	389.4	408.0	79.4	47
2007	409.2	408.0	62.4	20



Average Incarceration Length - Felony Class B - All Offenders

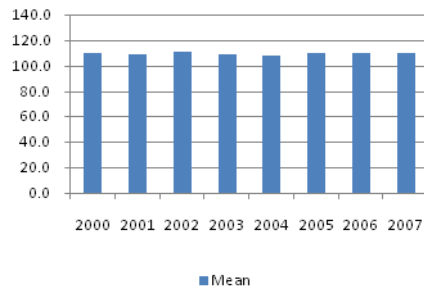
Fiscal Year	Mean	Median	Standard Deviation	N
2000	117.1	102.0	35.8	2,137
2001	115.0	96.0	32.5	2,223
2002	117.1	96.0	34.9	2,175
2003	115.8	96.0	36.2	2,164
2004	115.5	96.0	40.1	2,263
2005	115.8	96.0	36.2	2,173
2006	115.4	96.0	34.2	2,507
2007	116.6	96.0	37.8	2,229



One persistent offender Schedule II Cocaine case was removed from 2004 because of an inordinately high sentence of 54 years.

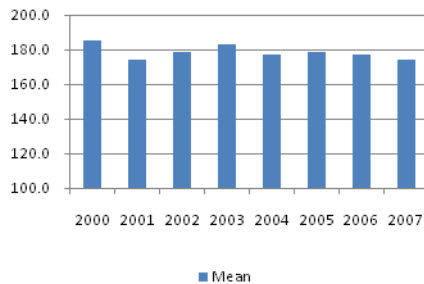
Average Incarceration Length - Felony Class B - Standard Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	110.0	96.0	18.7	1,824
2001	108.9	96.0	17.3	1,919
2002	110.3	96.0	18.3	1,866
2003	108.9	96.0	18.3	1,841
2004	107.8	96.0	18.8	1,881
2005	109.3	96.0	18.5	1,777
2006	109.4	96.0	18.0	2,081
2007	109.7	96.0	18.3	1,816



Average Incarceration Length - Felony Class B - Multiple Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	185.5	180.0	37.3	168
2001	174.5	168.0	40.6	178
2002	178.6	168.0	39.5	176
2003	183.3	180.0	38.0	180
2004	177.5	180.0	36.1	163
2005	178.6	180.0	39.3	190
2006	177.4	180.0	34.4	210
2007	174.3	174.0	33.5	192



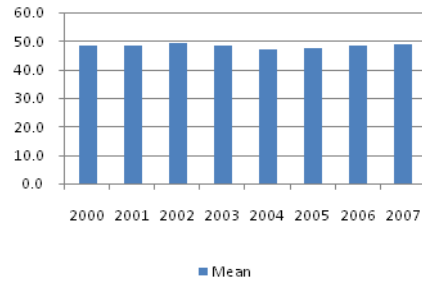
Average Incarceration Length - Class C - All Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	56.3	48.0	26.5	5,571
2001	55.1	48.0	24.2	5,871
2002	55.5	48.0	23.7	5,440
2003	55.2	48.0	24.0	6,277
2004	54.0	48.0	24.2	5,483
2005	54.1	48.0	23.5	5,523
2006	56.2	48.0	26.2	5,090
2007	57.5	48.0	26.9	4,106



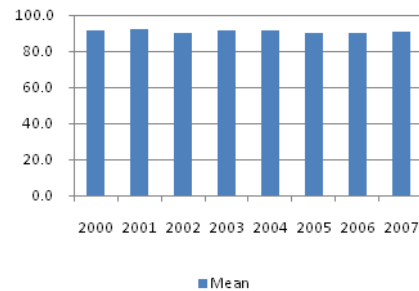
Average Incarceration Length - Class C - Standard Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	48.7	48.0	15.0	4,765
2001	48.6	48.0	14.7	5,115
2002	49.5	48.0	14.8	4,778
2003	48.7	48.0	14.4	5,428
2004	47.6	48.0	14.1	4,761
2005	48.1	48.0	14.5	4,762
2006	48.7	48.0	15.2	4,263
2007	49.4	48.0	15.5	3,394



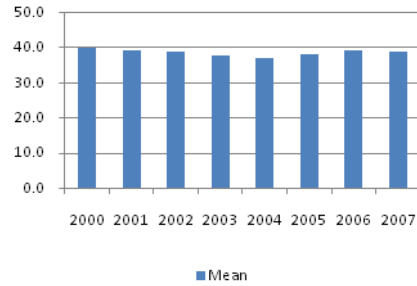
Average Incarceration Length - Class C - Multiple Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	91.1	96.0	19.6	635
2001	92.0	96.0	19.0	610
2002	90.3	96.0	16.9	530
2003	91.4	96.0	19.4	681
2004	91.3	96.0	20.2	563
2005	90.1	84.0	19.8	594
2006	89.7	84.0	20.1	585
2007	90.9	96.0	20.4	494



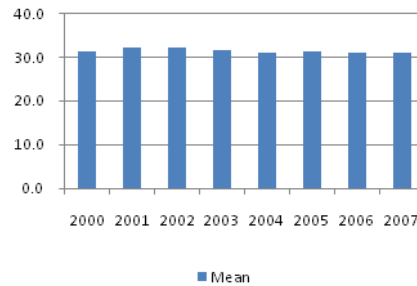
Average Incarceration Length - Class D - All Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	39.8	36.0	24.2	4,677
2001	39.0	36.0	22.2	5,112
2002	38.7	36.0	21.9	5,112
2003	37.7	36.0	20.3	5,127
2004	36.7	24.0	20.0	5,152
2005	37.8	36.0	20.4	4,917
2006	39.2	30.0	24.0	4,502
2007	38.6	25.0	23.1	3,825



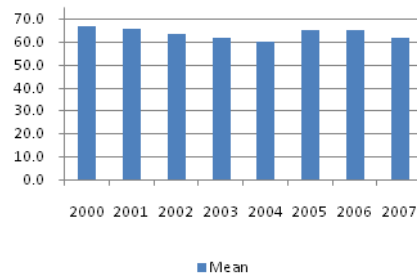
Average Incarceration Length - Class D - Standard Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	31.4	24.0	9.8	3,833
2001	32.2	24.0	9.9	4,337
2002	32.2	24.0	9.9	4,373
2003	31.8	24.0	9.9	4,361
2004	31.0	24.0	9.5	4,397
2005	31.5	24.0	9.8	4,157
2006	31.2	24.0	9.9	3,738
2007	31.0	24.0	9.7	3,121



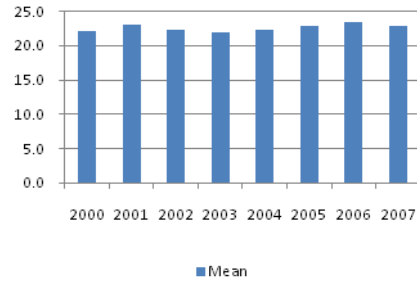
Average Incarceration Length - Class D - Multiple Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	66.4	60.0	21.7	652
2001	65.7	66.0	18.6	580
2002	63.1	60.0	17.3	546
2003	61.7	60.0	17.8	609
2004	59.7	48.0	16.9	598
2005	65.1	60.0	19.7	638
2006	64.8	60.0	17.9	565
2007	61.6	60.0	19.1	530



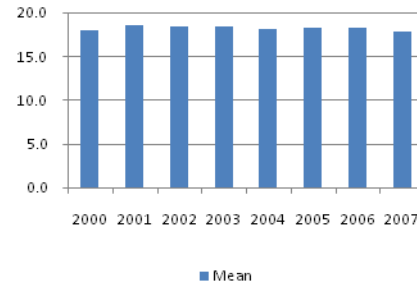
Average Incarceration Length - Class E - All Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	22.3	24.0	12.4	9,084
2001	23.2	24.0	13.3	9,810
2002	22.3	24.0	11.9	9,390
2003	22.1	24.0	11.3	9,111
2004	22.4	24.0	12.6	8,760
2005	23.0	24.0	12.9	8,207
2006	23.5	24.0	13.1	7,747
2007	22.9	24.0	12.8	6,218



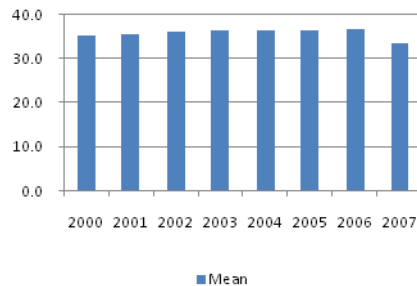
Average Incarceration Length - Class E - Standard Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	18.1	18.0	5.9	7,445
2001	18.7	24.0	6.3	8,012
2002	18.5	21.0	6.1	7,834
2003	18.6	18.0	6.0	7,658
2004	18.2	18.0	6.0	7,168
2005	18.4	18.0	6.1	6,607
2006	18.5	18.0	6.2	6,038
2007	18.0	18.0	6.1	4,742



Average Incarceration Length - Class E - Multiple Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	35.4	36.0	9.8	1,225
2001	35.7	36.0	10.2	1,255
2002	36.2	36.0	10.2	1,225
2003	36.6	36.0	10.4	1,188
2004	36.6	36.0	11.6	1,250
2005	36.4	36.0	10.3	1,200
2006	36.8	36.0	10.7	1,405
2007	33.6	36.0	10.4	1,132

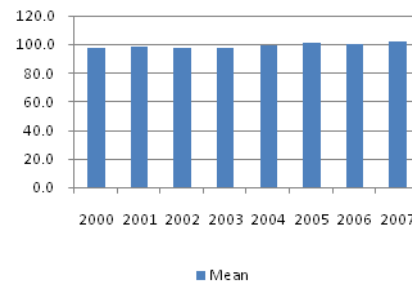


Average Probation Lengths

Average probation⁶ lengths show similar variability as incarceration lengths. A small trend in probation sentencing lengths is starting to emerge with 2007 sentences generally near or slightly higher than the past averages in the years analyzed. Probation lengths were shorter than incarcerations for Class B offenses. Probation eligibility as a sentence alternative is capped at 120 months. Class C, D, and E incarceration sentence lengths are more equivalent to their probation counterparts. The following tables display the average probation lengths for Class B through E felonies.

Average Probation Length - Felony Class B - All Offenders

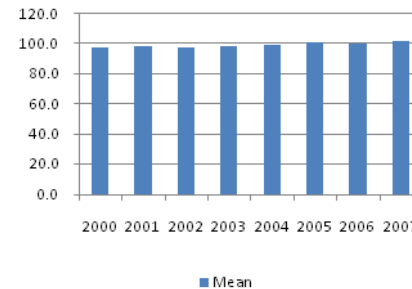
Fiscal Year	Mean	Median	Standard Deviation	N
2000	98.3	96.0	15.5	344
2001	99.0	96.0	15.0	380
2002	97.9	96.0	18.9	326
2003	98.6	96.0	19.8	401
2004	99.9	96.0	22.2	447
2005	101.7	96.0	17.3	620
2006	101.0	96.0	14.4	826
2007	102.4	96.0	15.5	857



The table for multiple offenders was not included due to low occurrence frequencies.

Average Probation Length - Felony Class B - Standard Offenders

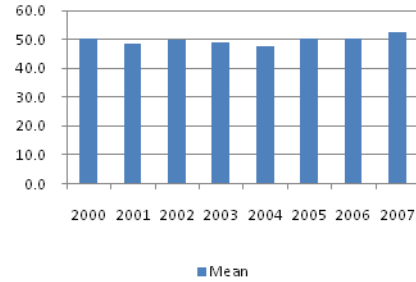
Fiscal Year	Mean	Median	Standard Deviation	N
2000	97.8	96.0	13.3	339
2001	98.7	96.0	14.5	374
2002	97.8	96.0	18.7	323
2003	98.6	96.0	19.9	397
2004	99.4	96.0	21.3	436
2005	101.4	96.0	16.6	608
2006	100.7	96.0	13.7	810
2007	101.6	96.0	14.3	830



⁶ No sentence alternatives were excluded as they were for the analysis of incarcerations because community corrections sentences, like other probation sentence options, have specific lengths. Twenty-one percent (21.0%) of the probations reviewed included sentences to community corrections.

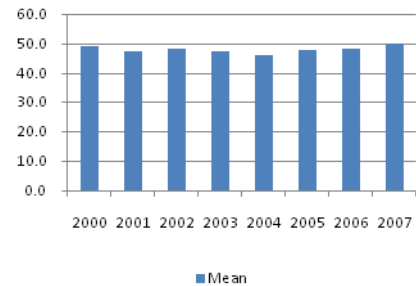
Average Probation Length - Class C - All Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	50.5	48.0	23.0	1,782
2001	48.3	36.0	18.4	1,808
2002	50.0	48.0	18.5	1,926
2003	49.0	48.0	17.0	2,171
2004	47.4	36.0	16.5	2,329
2005	50.1	48.0	20.2	2,487
2006	50.5	48.0	19.5	3,210
2007	52.3	48.0	23.4	3,631



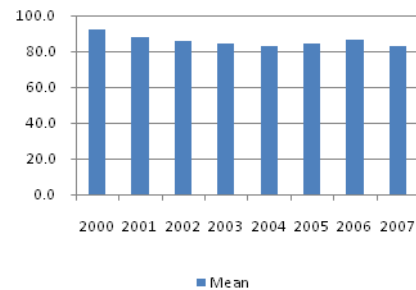
Average Probation Length - Class C - Standard Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	49.2	46.0	21.8	1,726
2001	47.1	36.0	17.2	1,745
2002	48.3	48.0	16.7	1,833
2003	47.5	48.0	15.3	2,076
2004	45.9	36.0	14.4	2,218
2005	47.7	36.0	16.4	2,335
2006	48.3	36.0	16.8	3,037
2007	49.9	48.0	21.6	3,379



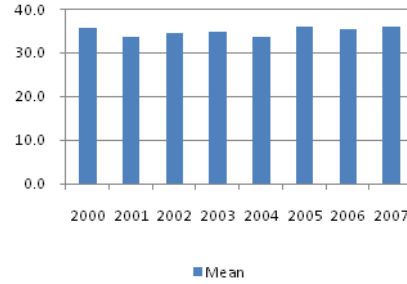
Average Probation Length - Class C - Multiple Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	92.4	96.0	17.3	43
2001	87.7	96.0	13.2	55
2002	85.7	96.0	16.2	83
2003	84.6	84.0	17.6	86
2004	83.2	72.0	20.1	96
2005	84.3	72.0	20.4	124
2006	86.8	84.0	16.4	138
2007	82.8	72.0	18.6	215



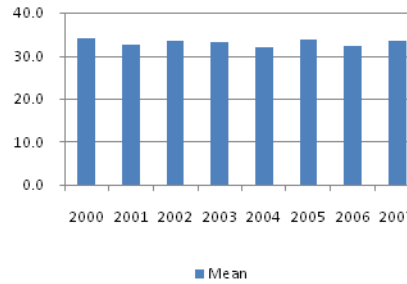
Average Probation Length - Class D - All Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	35.9	30.0	17.6	2,349
2001	33.9	24.0	16.0	2,272
2002	34.8	27.0	15.8	2,359
2003	34.9	36.0	15.5	2,655
2004	33.9	24.0	16.5	2,903
2005	36.1	36.0	16.3	3,006
2006	35.6	36.0	17.1	3,721
2007	36.1	32.0	17.6	4,203



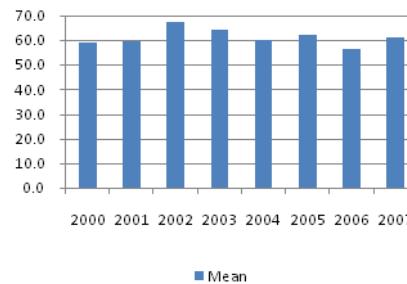
Average Probation Length - Class D - Standard Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	34.4	24.0	16.0	2,229
2001	32.8	24.0	14.6	2,191
2002	33.7	24.0	14.3	2,284
2003	33.5	28.5	13.6	2,542
2004	32.1	24.0	13.9	2,747
2005	34.0	36.0	13.3	2,822
2006	32.4	24.0	11.7	3,374
2007	33.6	24.0	13.4	3,932



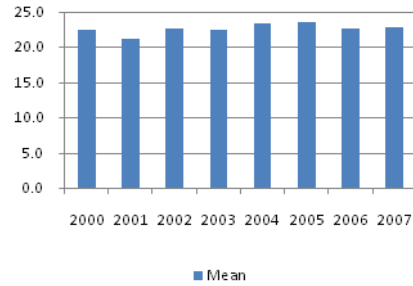
Average Probation Length - Class D - Multiple Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	59.3	60.0	20.2	105
2001	59.7	48.0	16.8	66
2002	67.7	72.0	20.2	68
2003	64.6	60.0	18.4	102
2004	60.5	48.0	21.7	132
2005	62.8	60.0	15.7	164
2006	56.7	48.0	17.2	280
2007	61.5	60.0	18.8	212



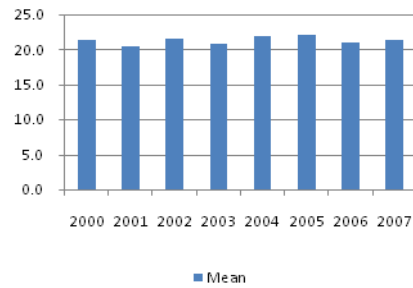
Average Probation Length - Class E - All Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	22.4	24.0	12.9	4,055
2001	21.1	24.0	11.0	3,930
2002	22.6	24.0	12.3	4,050
2003	22.5	24.0	11.6	4,146
2004	23.3	24.0	14.7	4,719
2005	23.5	24.0	14.7	5,188
2006	22.7	24.0	12.5	5,608
2007	22.9	24.0	12.7	6,094



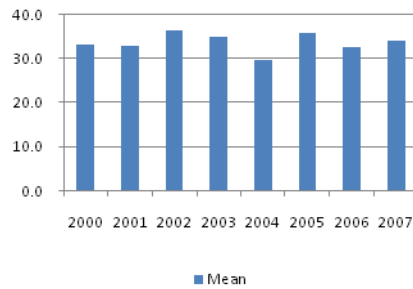
Average Probation Length - Class E - Standard Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	21.4	24.0	11.9	3,811
2001	20.5	24.0	10.2	3,771
2002	21.5	24.0	10.8	3,812
2003	20.8	24.0	9.9	3,730
2004	21.9	24.0	13.4	4,274
2005	22.0	24.0	13.5	4,756
2006	20.9	24.0	10.3	5,103
2007	21.3	24.0	11.2	5,537



Average Probation Length - Class E - Multiple Offenders

Fiscal Year	Mean	Median	Standard Deviation	N
2000	33.3	36.0	8.9	193
2001	32.9	36.0	9.5	130
2002	36.5	36.0	10.9	214
2003	35.2	36.0	11.5	356
2004	29.9	24.0	9.3	359
2005	36.0	36.0	10.5	354
2006	32.7	24.0	10.9	432
2007	34.3	36.0	11.2	442

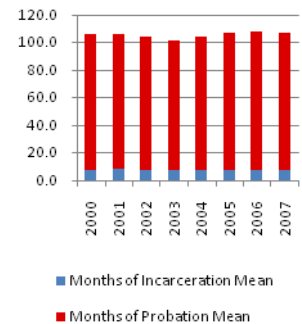


Average Split Sentence Lengths

Split sentences include an initial time in incarceration followed by a period of probation. The utilization of such sentences has increased in the years reported. The proportion of the sentence in incarceration increases as the seriousness of the offense decreases. For example, an individual convicted of a Class B offense will spend a lower percentage (around 7%) of their split sentence incarcerated than an individual convicted of a Class E offense (around 14%). It is also pertinent when analyzing sentence practices to see if the proportion of incarceration to probation has changed over time. Generally, it has not changed. The proportion of incarceration length to probation length varies from year to year without establishing any trend. However, for almost all of the tables, 2006 data indicates the longest probation period in the eight years analyzed. This information was also noted in the second report last year. Tables reporting average lengths in months for split sentences are presented below.

Average Sentence Length - Felony Class B - All Offenders

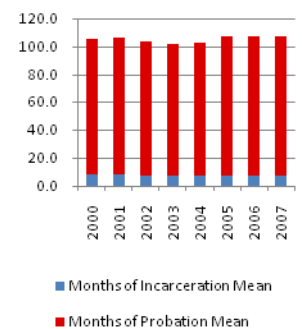
Fiscal Year	Months of Incarceration				Months of Probation		
	Mean	Median	Standard Deviation	N	Mean	Median	Standard Deviation
2000	7.9	8.5	4.6	274	97.7	95.7	22.5
2001	8.2	7.8	7.1	298	97.6	96.0	35.3
2002	7.5	6.0	4.2	252	96.3	96.0	20.1
2003	7.3	6.0	4.1	323	94.6	96.0	19.7
2004	7.5	6.4	5.6	350	96.2	96.0	25.8
2005	7.7	6.7	4.2	487	99.3	96.0	25.7
2006	7.2	6.0	4.5	692	100.3	96.0	26.9
2007	7.6	6.0	4.2	714	99.8	96.0	21.6



The table for multiple offenders was not included due to low occurrence frequencies.

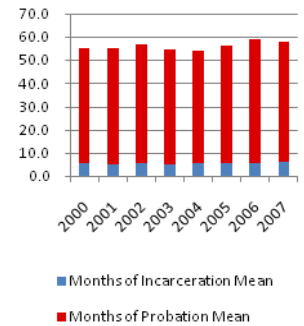
Average Sentence Length - Felony Class B - Standard Offenders

Fiscal Year	Months of Incarceration				Months of Probation		
	Mean	Median	Standard Deviation	N	Mean	Median	Standard Deviation
2000	7.8	6.7	4.5	270	97.8	95.7	22.6
2001	8.2	7.7	7.1	295	97.8	96.0	35.2
2002	7.5	6.0	4.1	249	96.4	96.0	20.2
2003	7.3	6.0	4.1	320	94.6	96.0	19.8
2004	7.6	7.9	5.6	341	95.0	96.0	20.7
2005	7.7	6.8	4.2	480	99.1	96.0	25.7
2006	7.0	6.0	4.2	676	100.2	96.0	26.8
2007	7.5	6.0	4.2	703	99.8	96.0	21.3



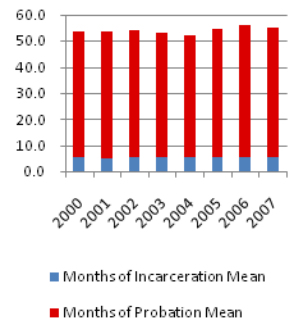
Average Sentence Length - Class C - All Offenders

Fiscal Year	Months of Incarceration				Months of Probation		
	Mean	Median	Standard Deviation	N	Mean	Median	Standard Deviation
2000	5.9	5.9	3.9	845	49.4	48.0	19.2
2001	5.5	4.0	3.9	1,063	49.8	46.7	21.4
2002	6.1	5.9	6.7	1,007	50.5	48.0	21.5
2003	5.7	5.0	3.8	1,081	49.1	48.0	17.9
2004	5.8	5.9	3.9	1,205	48.2	46.5	18.3
2005	6.0	5.0	4.1	1,383	50.6	48.0	19.3
2006	5.9	5.9	4.1	1,665	52.9	48.0	22.3
2007	6.3	6.0	4.1	1,715	51.4	48.0	22.3



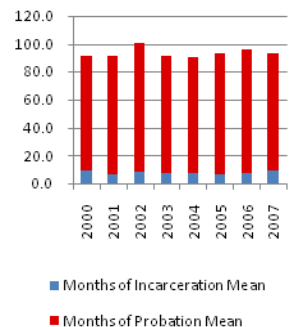
Average Sentence Length - Class C - Standard Offenders

Fiscal Year	Months of Incarceration				Months of Probation		
	Mean	Median	Standard Deviation	N	Mean	Median	Standard Deviation
2000	5.7	5.0	3.8	812	48.1	46.3	18.4
2001	5.5	4.0	3.8	1,020	48.4	45.0	20.4
2002	5.9	5.7	6.8	947	48.0	45.0	18.8
2003	5.6	5.0	3.8	1,036	47.5	48.0	16.0
2004	5.7	5.0	3.9	1,158	46.6	45.0	16.1
2005	5.9	5.0	4.1	1,315	48.8	48.0	16.8
2006	5.8	5.9	4.1	1,565	50.5	48.0	19.7
2007	6.1	5.9	4.0	1,611	49.2	48.0	20.6



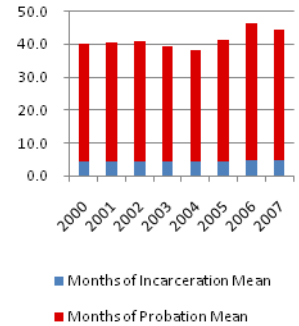
Average Sentence Length - Class C - Multiple Offenders

Fiscal Year	Months of Incarceration				Months of Probation		
	Mean	Median	Standard Deviation	N	Mean	Median	Standard Deviation
2000	9.8	12.0	3.8	31	82.2	84.0	10.1
2001	7.6	7.3	4.3	41	83.6	84.0	13.1
2002	8.8	12.0	4.0	53	91.6	96.0	23.0
2003	8.1	9.0	3.9	39	83.9	87.0	13.9
2004	8.4	9.0	3.6	42	82.0	84.0	18.0
2005	7.6	8.0	4.2	59	85.6	84.0	21.7
2006	8.0	9.0	4.4	95	88.2	84.0	21.5
2007	10.1	12.0	4.0	95	83.3	84.0	17.4



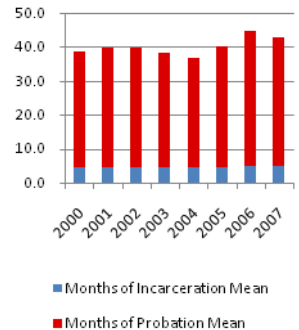
Average Sentence Length - Class D - All Offenders

Fiscal Year	Months of Incarceration				Months of Probation		
	Mean	Median	Standard Deviation	N	Mean	Median	Standard Deviation
2000	4.5	3.0	3.6	716	35.8	33.0	18.1
2001	4.5	3.0	3.5	887	36.1	36.0	18.1
2002	4.7	3.7	3.5	830	36.4	34.0	18.7
2003	4.8	3.8	3.7	1,014	34.9	36.0	14.8
2004	4.7	3.9	3.4	1,007	33.6	31.0	14.2
2005	4.8	3.6	3.7	1,220	36.6	36.0	18.1
2006	5.1	4.0	3.8	1,727	41.4	36.0	25.6
2007	4.9	3.9	3.9	1,875	39.5	36.0	26.2



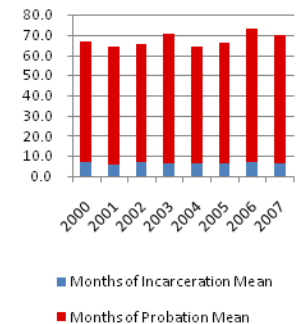
Average Sentence Length - Class D - Standard Offenders

Fiscal Year	Months of Incarceration				Months of Probation		
	Mean	Median	Standard Deviation	N	Mean	Median	Standard Deviation
2000	4.4	3.0	3.5	668	34.2	31.0	16.8
2001	4.5	3.0	3.5	861	35.5	35.0	17.6
2002	4.6	3.4	3.4	789	35.3	33.0	18.1
2003	4.7	3.5	3.6	967	33.6	35.0	13.1
2004	4.6	3.5	3.3	956	32.3	30.0	12.7
2005	4.7	3.3	3.6	1,165	35.4	36.0	16.9
2006	4.9	3.9	3.7	1,620	39.7	36.0	24.8
2007	4.8	3.9	3.8	1,763	37.8	36.0	24.3



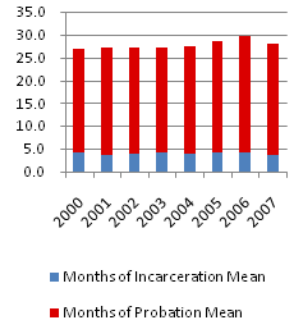
Average Sentence Length - Class D - Multiple Offenders

Fiscal Year	Months of Incarceration				Months of Probation		
	Mean	Median	Standard Deviation	N	Mean	Median	Standard Deviation
2000	7.1	9.5	5.0	28	60.0	60.0	18.4
2001	6.1	5.0	4.1	25	58.4	58.0	20.7
2002	7.1	6.0	4.1	36	59.0	59.5	15.2
2003	6.5	6.0	3.9	43	64.3	60.0	16.8
2004	6.7	6.0	4.1	48	57.9	60.0	18.2
2005	6.7	5.9	4.4	49	59.9	48.0	18.2
2006	6.8	6.0	4.4	101	66.8	60.0	21.2
2007	6.4	6.0	4.5	93	63.7	60.0	37.9



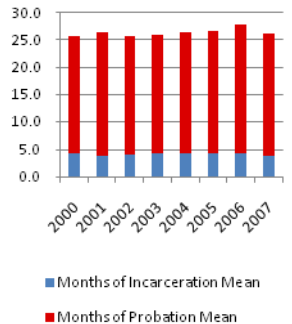
Average Sentence Length - Class E - All Offenders

Fiscal Year	Months of Incarceration				Months of Probation		
	Mean	Median	Standard Deviation	N	Mean	Median	Standard Deviation
2000	4.4	4.0	3.0	1,735	22.6	22.0	14.1
2001	3.9	3.3	2.8	1,752	23.3	22.0	14.7
2002	4.1	4.0	2.6	1,527	23.0	22.0	14.4
2003	4.3	4.0	2.9	1,459	22.8	22.5	13.5
2004	4.3	4.0	2.9	1,751	23.2	23.7	13.6
2005	4.6	3.9	3.3	2,189	24.0	24.0	16.2
2006	4.4	3.9	3.3	2,715	25.2	24.0	18.4
2007	4.0	3.0	3.1	2,526	23.9	24.0	16.3



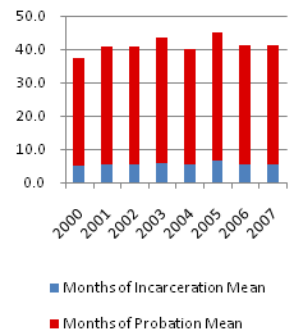
Average Sentence Length - Class E - Standard Offenders

Fiscal Year	Months of Incarceration				Months of Probation		
	Mean	Median	Standard Deviation	N	Mean	Median	Standard Deviation
2000	4.3	4.0	2.9	1,610	21.6	21.0	13.3
2001	3.8	3.0	2.7	1,687	22.7	22.0	14.3
2002	4.0	3.9	2.6	1,414	21.8	22.0	13.8
2003	4.2	4.0	2.8	1,374	21.8	21.5	13.0
2004	4.2	4.0	2.9	1,629	22.2	23.0	13.1
2005	4.3	3.6	3.1	1,982	22.4	24.0	13.9
2006	4.2	3.3	3.2	2,456	23.7	24.0	18.0
2007	3.8	3.0	3.0	2,286	22.4	23.0	15.7



Average Sentence Length - Class E - Multiple Offenders

Fiscal Year	Months of Incarceration				Months of Probation		
	Mean	Median	Standard Deviation	N	Mean	Median	Standard Deviation
2000	5.5	5.0	3.6	96	32.0	33.0	11.3
2001	5.6	5.0	3.3	45	35.1	36.0	12.2
2002	5.8	6.0	2.6	94	35.1	36.0	7.9
2003	6.3	6.0	3.8	81	37.4	36.0	11.4
2004	5.6	6.0	2.7	107	34.5	36.0	10.4
2005	7.0	5.9	4.0	191	38.2	36.0	25.4
2006	5.6	5.0	3.5	214	35.6	36.0	13.6
2007	5.8	4.9	3.8	202	35.4	36.0	13.0



Conventional Number Preferences

The use of a limited number of sentences, despite the availability of a continuous spectrum of sentence length options, has been documented for other states. In 2002, Olstrom and Olstrom observed that even though prison sentences can range from 1 to 480 months in Michigan, 78% of sentences fell on 12, 18, 20, 24, 30, 36, 48, 60, 72, 84, 96 and 120 month lengths.⁷ This use of a fixed number of sentence lengths has been designated conventional number preferences (CNPs). Replicating the Olstroms' study, Wiseman, Fischer and Connelly reviewed Wisconsin sentence data and found 91% of prison sentences are assigned to CNP lengths.⁸ Even as early as 1895, Francis Galton noted "the terms of imprisonment that are most frequently awarded, fall into a rhythmic series. Beginning with sentences reckoned in months, we see that their maxima of frequency are at 3, 6, 9, 12, 15 and 18 months."⁹

This section characterizes the use of conventional number preferences in Tennessee. The cases reviewed were limited to those with sentences of 180 months or less.¹⁰ For purposes of this study, conventional number preferences for Tennessee data are 12, 18, 24, 30, 36, 48, 60, 72, 84, 96, 108, 120, 144 and 180 months. The tables below show the number of sentences by sentence lengths for incarcerations, probations, and split sentences.

⁷ Ostrom, B. J., & Ostrom, C. W., Jr. (2002). A new look at sentence severity. In C. Tata & N. Hutton (Eds.), *Sentencing and society: International perspectives* (pp. 277–307). Burlington, VT: Ashgate Publishing.

⁸ Wiseman, A., Fischer, D., & Connelly, M. (2006) Sentencing and Conventional Number Preferences: A Research Note. *Justice Research and Policy*, 8 (1), 67-98.

⁹ Galton, F. (1895). Terms of imprisonment. *Nature*, 52, 174–176.

¹⁰ 98.2% of sentences in Tennessee are 180 months or less.

Incarcerations

Table 1 lists the number and percent of sentences that fall on and in between conventional number preferences. Of the 168,573 incarcerations analyzed in these sentence lengths, 95.6% (161,094) are of CNP lengths. Put another way, 95.6% of sentences to incarceration are one of 14 specific lengths.

Table 1: Incarceration Length Frequencies

Sentence in Months	N	Percent
12	23,891	14.17%
Between 12 & 18	1,184	0.70%
18	3,835	2.27%
Between 18 & 24	185	0.11%
24	46,595	27.64%
Between 24 & 30	1,735	1.03%
30	794	0.47%
Between 30 & 36	241	0.14%
36	27,154	16.11%
Between 36 & 48	741	0.44%
48	20,147	11.95%
Between 48 & 60	584	0.35%
60	5,461	3.24%
Between 60 & 72	142	0.08%
72	10,814	6.42%
Between 72 & 84	311	0.18%
84	674	0.40%
Between 84 & 96	1,137	0.67%
96	10,809	6.41%
Between 96 & 108	142	0.08%
108	1,459	0.87%
Between 108 & 120	48	0.03%
120	4,491	2.66%
Between 120 & 144	598	0.35%
144	3,201	1.90%
Between 144 & 180	431	0.26%
180	1,769	1.05%
Total	168,573	100.00%
CNP Sentences	161,094	95.56%

Probations

The length and number of probation sentences are displayed in Table 2. Just over 97% (82,082) of the 84,553 probations received in these sentence lengths are of CNP lengths.

Table 2: Probation Length Frequencies

Sentence in Months	N	Percent
12	12,102	14.31%
Between 12 & 18	623	0.74%
18	1,896	2.24%
Between 18 & 24	144	0.17%
24	29,913	35.38%
Between 24 & 30	735	0.87%
30	374	0.44%
Between 30 & 36	101	0.12%
36	15,059	17.81%
Between 36 & 48	329	0.39%
48	10,333	12.22%
Between 48 & 60	227	0.27%
60	2,515	2.97%
Between 60 & 72	100	0.12%
72	4,363	5.16%
Between 72 & 84	57	0.07%
84	210	0.25%
Between 84 & 96	52	0.06%
96	3,864	4.57%
Between 96 & 108	19	0.02%
108	216	0.26%
Between 108 & 120	18	0.02%
120	932	1.10%
Between 120 & 144	38	0.04%
144	207	0.24%
Between 144 & 180	28	0.03%
180	98	0.12%
Total	84,553	100.00%
CNP Sentences	82,082	97.08%

Split Sentences

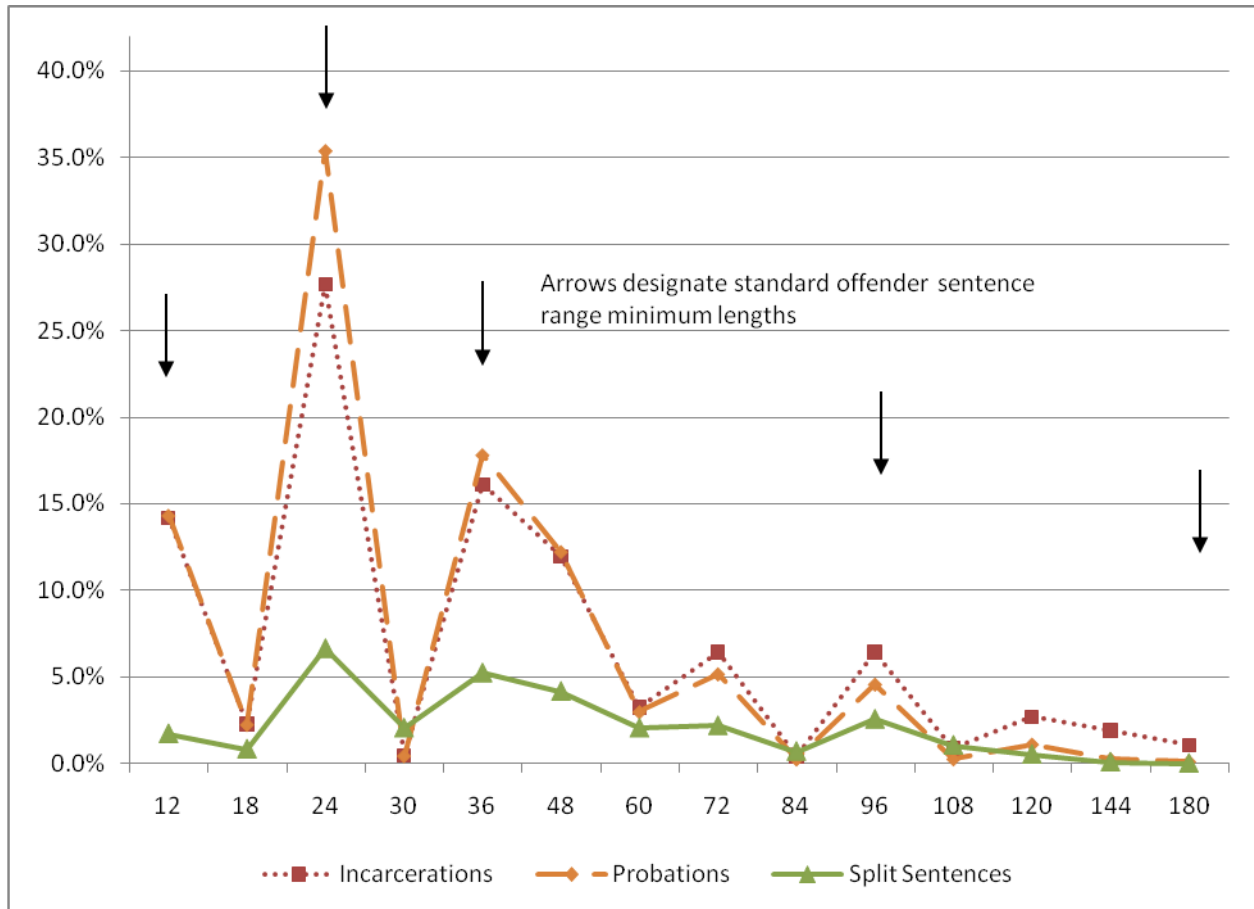
Split sentences generally consist of a time of incarceration followed by a much longer time of probation. The combined sentence total of split sentences fall on CNP lengths far less often than incarcerations and probations. Only 29.8% (11,205) of the 37,647 split sentences in these sentence lengths are of CNP lengths. Table 3 displays the number and percent of split sentence data. When looking at the incarceration and probation lengths in these sentence lengths independently, 11.7% of the incarceration portions and 69.8% of the probation portions fall on CNP lengths.

Table 3: Split Sentence Length Frequencies

Sentence in Months	N	Percent
12	646	1.72%
Between 12 & 18	2,495	6.63%
18	311	0.83%
Between 18 & 24	2,274	6.04%
24	2,500	6.64%
Between 24 & 30	6,221	16.52%
30	770	2.05%
Between 30 & 36	1,666	4.43%
36	1,969	5.23%
Between 36 & 48	4,730	12.56%
48	1,569	4.17%
Between 48 & 60	3,494	9.28%
60	769	2.04%
Between 60 & 72	1,230	3.27%
72	821	2.18%
Between 72 & 84	1,592	4.23%
84	262	0.70%
Between 84 & 96	460	1.22%
96	964	2.56%
Between 96 & 108	1,443	3.83%
108	395	1.05%
Between 108 & 120	156	0.41%
120	198	0.53%
Between 120 & 144	445	1.18%
144	31	0.08%
Between 144 & 180	236	0.63%
180	0	0.00%
Total	37,647	100.00%
CNP Sentences	11,205	29.76%

Figure 1 displays the percent of cases for each sentence type for Tennessee sentences of 180 months or less. It is provided to give a visual of the peaks of CNP use in sentencing.

Figure 1: Percent of Cases by Sentence Length in Months



Discussion of the use of Conventional Number Preferences in Tennessee Sentencing

There is a continuous spectrum of sentences from 10.8 months to 720 months¹¹ available to be imposed for felony convictions in Tennessee. Nearly all incarcerations and probations however fall on a limited number of lengths, which happen to coincide with sentence range minimum and maximum lengths. The rationale behind why certain length sentences are imposed more often than others is beyond the scope of this report. It is possible that conventional number preference sentence lengths are exactly what sentences should be.

Noting the potential cost differences in not imposing CNP sentences as frequently for Wisconsin Wiseman, Fisher and Connelly (2006) stated if 500 Wisconsin offenders currently serving three-year prison terms were each serving only 28–32 months, the state would save between

¹¹ Not including life sentences.

\$4,600,000 and \$9,200,000 (500 inmates × \$2,300 per person, per month). In Tennessee, the Department of Correction reports that for FY 2006-07 it spent approximately \$22,700 to incarcerate an individual for one year. As identified for Wisconsin, minor changes in sentencing practices could have a serious budgetary impact. The impact could be in either direction depending on whether the use of CNPs in sentencing is causing sentences to be lower or higher than necessary. If conventional number preferences are driving sentences lower, then deterrence, retribution and public safety issues arise in addition to future costs. If CNPs are driving sentences higher, then Tennesseans are paying more than needed to obtain the same sentencing goals and the incarcerated individual experience a loss of freedom longer than required to obtain sentence effectiveness.

Since conventional number preferences are not used to the same degree for split sentences, sentence determinants can and do think differently when determining appropriate sentence lengths. The system participants will determine any change of reliance on CNPs at the current rate for incarceration and probation sentences.

Overall Conclusions

The Criminal Sentencing Reform Act of 2005 had the potential to most affect the use of sentence alternatives to incarceration and the lengths of sentences issued. The Act encouraged the use of sentence alternatives as well as eliminated presumptive sentences with regard to sentence lengths. For FY2007, 91.4% of the sentences issued were sentenced under the Act, with a higher concentration of less severe felonies comprising that percentage. The higher percentage of Post Act data allows for more definitive conclusions. As codified as an advisory sentencing guideline in TCA §40-35-102(6) and as noted last year, incarceration continues to be utilized less in lieu of probation, community corrections and split probation/incarceration. This is beginning to be seen in the prison populations. In the April 2007 publication, *Future Felon Population of the State of Tennessee FY 2006-2007*, the TDOC states, "Overall, the January 2006 projection model did not perform within the acceptable standard of model accuracy, showing a 2.6% deviation between the number of projected felons and the actual felon population from January to November 2006. The difference reached 4.3% in August; however, it should be noted that the projection model *overestimated* the actual felon population in all of the months of the projection period. The continued increases in deviations seen during the 2006 projection model year indicated a need to take a close look at the model's underlying assumptions prior to the 2007 projection model."¹² This overestimation is most likely a result of a change in sentencing practices with alternatives to incarceration gaining in popularity. Also, the percent of defendants receiving incarceration for sentences of more than 96 months but less than 120 months has decreased from 91.7% in 2003 to 73.4% in 2005 to 68.8% in 2007, highlighting that alternatives to incarceration are being utilized even for more severe offenses. It is possible that there could be a few years of increases in sentences to probation, thus decreasing prison populations, followed by an increase in probation violations that could push the populations back up. According to the 2007 Annual Report by the Tennessee Department of Correction, data indicates that nearly 40% of prison admissions are parolees or probationers who have violated the conditions of their release. The same report also states that the average length of stay as a result of technical violations was 14 months of incarceration. This information is thought to be the reason for a large fluctuation in percentage changes to the sentence type from one fiscal year to the next. In fact, only upon looking at the first, second, and this third report can one see the clear trend for a given fiscal year where the incarceration sentence rates will increase and the probation and split sentences will decrease.

For felony classes B through E, Post Act sentence lengths are within typical year to year variations. Class A felony convictions are less than 2% of all convictions analyzed in this study, furthermore, only 68% of Class A felony convictions have sentence dates after the implementation of the 2005 Reform Act. To analyze the effects of the 2005 Reform Act for Class A felony convictions with a high degree of certainty, a higher percentage of Class A felony convictions should be in the Post Act category. As a final conclusion to the impact of the Criminal Sentencing Reform Act of 2005 on Tennessee's criminal justice system, it appears that there has been minimal or no significant change in the sentence lengths.

¹² Nutt, L. and Taylor, C. *Future Felon Population of the State of Tennessee FY 2006-2007*. Nashville, TN. Tennessee Department of Correction. 2007.

APPENDIX A: Sentence Range Matrix

Sentence Lengths

Felony Class	Mitigated	Standard Range I	Multiple Range II	Persistent Range III	Career
A 180-720 months	162 months	180-300 months	300-480 months	480-720 months	720 months
B 96-360 months	86.4 months	96-144 months	144-240 months	240-360 months	360 months
C 36-180 months	32.4 months	36-72 months	72-120 months	120-180 months	180 months
D 24-144 months	21.6 months	24-48 months	48-96 months	96-144 months	144 months
E 12-72 months	10.8 months	12-24 months	24-48 months	48-72 months	72 months