

CHAPTER THREE

CONFORMITY TO THE SENTENCING GUIDELINES

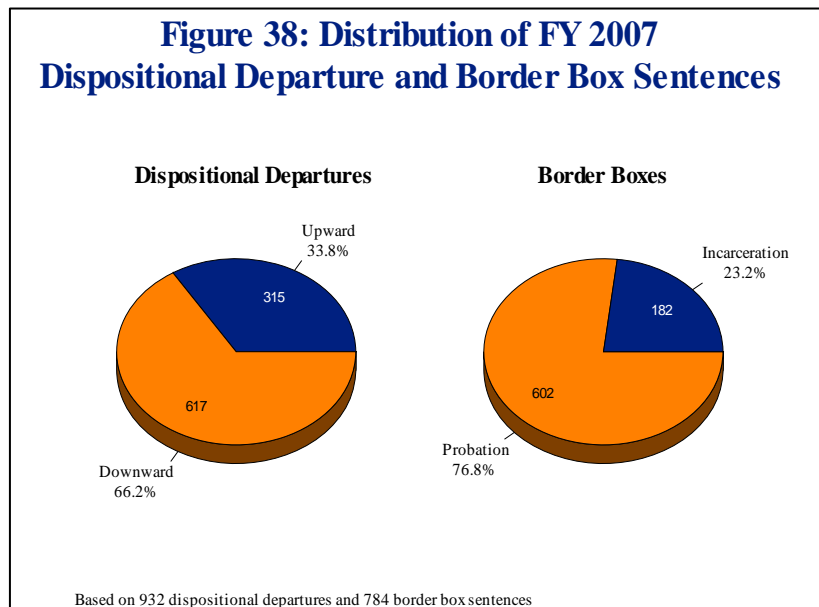
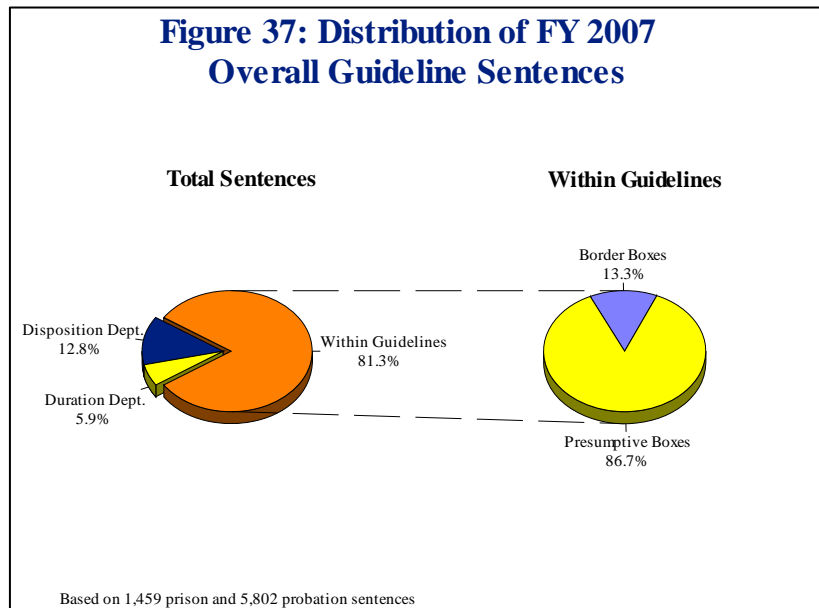
The analysis of conformity to the sentencing guidelines involves the comparison of the actual sentence imposed to the sentence identified under the Sentencing Guidelines Act. A sentence is considered to conform to the guidelines if it falls within the range of sentence lengths for a guideline grid box at a specific designated severity level and criminal history category. A sentence that falls at the mid-point of a relative grid box is regarded as standard. A sentence that falls at either the upper end or lower end of the relative grid box is considered as an aggravated or mitigated sentence, respectively. All other sentence lengths imposed are considered to be a departure from the guidelines unless the grid box is a designated border box. A sentence length above the aggravated level is defined as "departure upward" and a sentence length less than the mitigated level is defined as "departure downward."

Departures from the designated guideline sentence can be further categorized into two types: dispositional departures and durational departures. A dispositional departure occurs when the guidelines recommend a period of incarceration or probation but the reverse type of sentence is imposed. For example, the grid box indicates a period of incarceration, but a probation sentence is imposed. Sentences imposed in "border boxes" or violations resulting from a probation sentence are not considered departures. A durational departure occurs when a sentence is pronounced but the imposed length of incarceration is either greater or less than the

number of months designated by the guidelines. Only pure guideline sentences were utilized for this specific analysis. A pure guideline sentence is defined as a guideline sentence that is not imposed to run concurrent or consecutive with a "pre-guideline" sentence. In addition, the analysis is based on computed variables regarding departures and the consecutive sentences are excluded from this analysis.

OVERALL CONFORMITY RATES

In FY 2007, a total number of 7,261 pure guideline sentences were utilized for this analysis, including 1,459 incarceration guideline sentences and 5,802 probation sentences. Figure 37 demonstrates that 81.3% of the 7,261 guideline sentences were within the presumptive guideline grids, 5.9% indicated durational departures and 12.8% were dispositional departures. Of all the sentences within the presumptive guideline grids, 5,119 sentences (86.7%) fell within either the presumptive prison boxes or presumptive probation boxes, while 784 sentences (13.3%) were located on designated border boxes. Figure 38 indicates that 66.2% (617 sentences) of the 932 dispositional departures were downward departures and 33.8% (315 sentences) were upward dispositional departures. Approximately 77% of the 784 border box sentences resulted in probation sentences with only 23% of this group sentenced to prison. The analysis of durational departure sentences is only applicable to presumptive prison sentences.

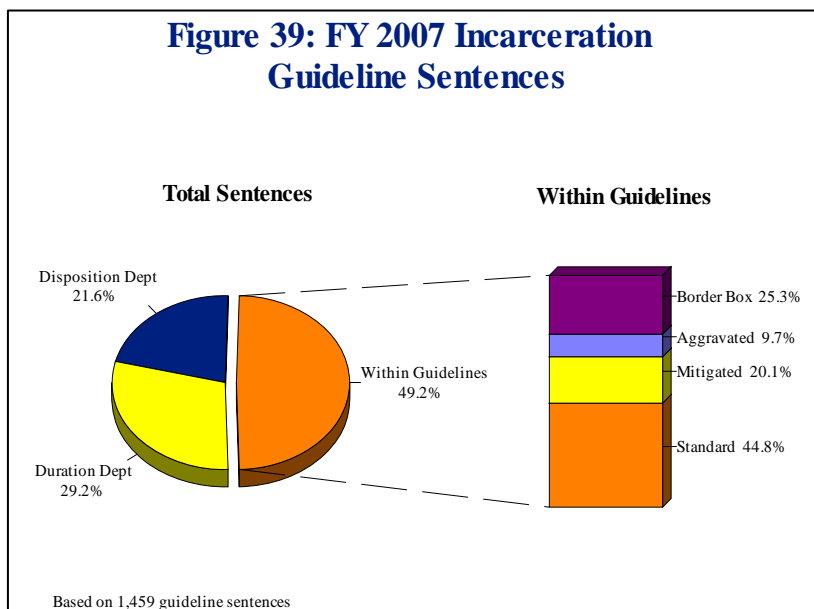


CONFORMITY OF PRESUMPTIVE PRISON GUIDELINE SENTENCES

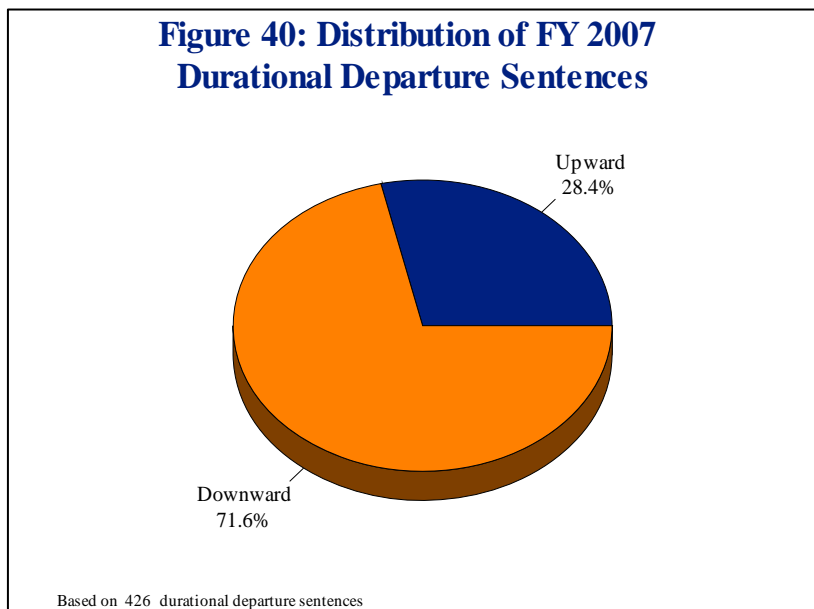
Presumptive prison guideline sentences refer to sentences that are designated above the incarceration line of the sentencing grids.

Revocations of probation conditions, either with or without new sentences, which result in prison sentences were excluded from this analysis. A total of 1,459 presumptive prison guideline sentences of FY 2007 were analyzed for this purpose.

More than 49% of total sentences fell within the presumptive incarceration range. Of these sentences within the guidelines, 44.8% were within the standard range, 9.7% were within the aggravated range, and 20.1% were within the mitigated range. More than 25% were located within designated border boxes (Figure 39).



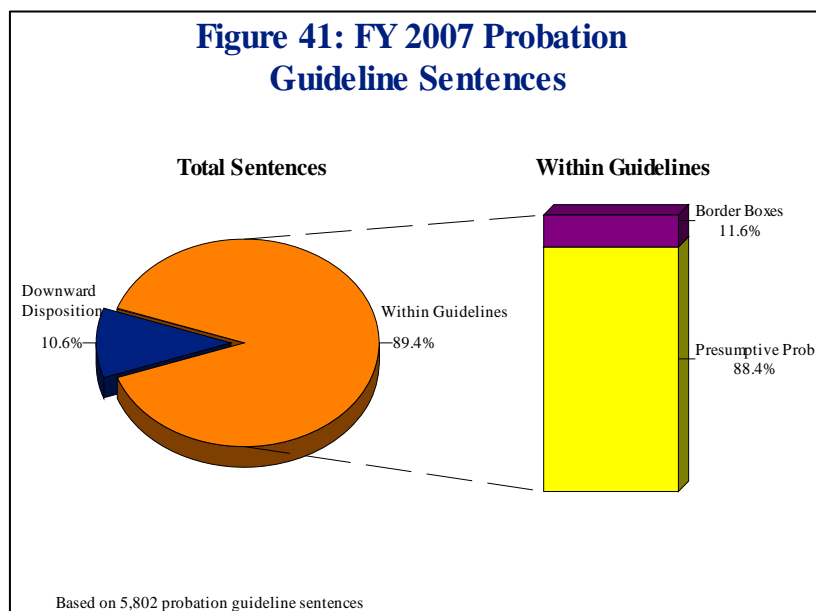
Among the durational departure sentences, 71.6% departed downward from the sentence lengths indicated on the presumptive range, while 28.4% departed upward from the presumptive guideline ranges. The percentage change of the upward durational departure sentences is a 1.3% decrease from that in FY 2006 (Figure 40).



CONFORMITY OF PRESUMPTIVE PROBATION GUIDELINE SENTENCES

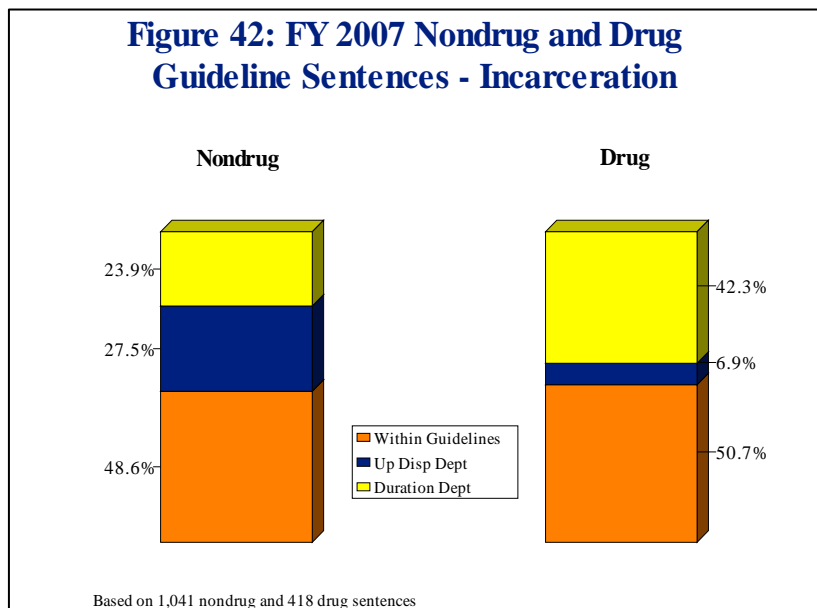
Sentences that are designated below the incarceration line of the sentencing grids are presumptive probation guideline sentences. The analysis of probation guideline sentences demonstrates that as expected, the majority of probation guideline sentences (89.4% or 5,185 cases) fell within presumptive guideline range, among which 88.4% were within presumptive probation grids and 11.6% were within border boxes

(Figure 41). The sentences within presumptive guideline range (5,185) accounted for almost 67% of the total probation sentences in FY 2007 (7,747), which decreased by 1% compared to the percentage rate of FY 2006 (68%). Further analysis of the dispositional departures indicates that probation sentences reflected downward dispositional departures of 10.6% (Figure 41), an increase of 0.6% compared with the percentage rate of FY 2006. Upward dispositional departure sentences were reflected in presumptive incarceration sentences (See Figure 39).

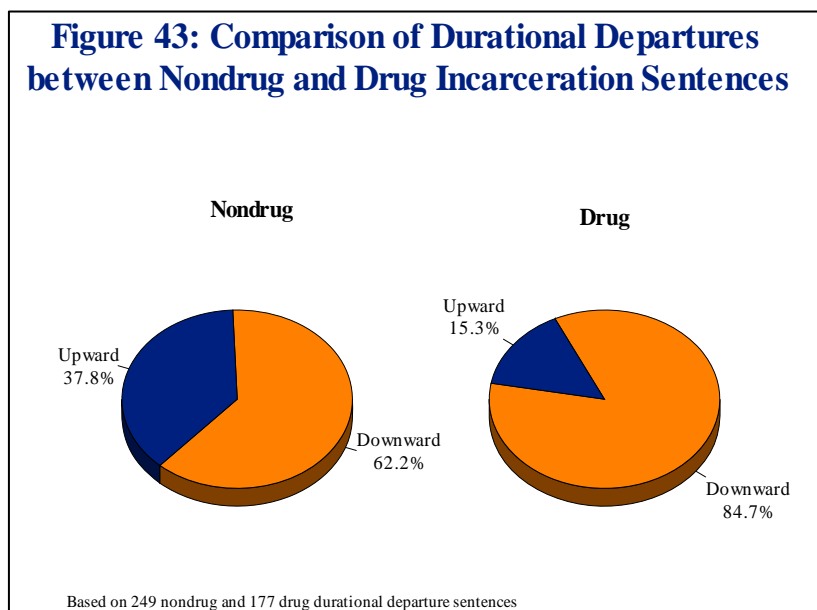


CONFORMITY OF NONDRUG AND DRUG GUIDELINE SENTENCES

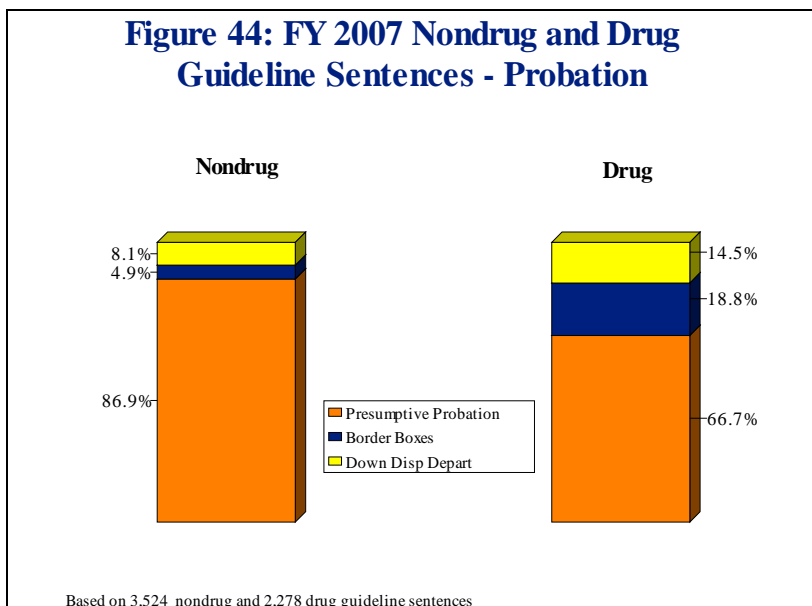
The comparative analysis of guideline incarceration sentences in terms of nondrug and drug sentences reveals that 27.5% of nondrug offenders showed upward dispositional departures, while only 6.9% of drug offenders indicated upward dispositional departures. Additionally, nondrug offenders represented 23.9% durational departures while drug offenders showed 42.3% durational departures (Figure 42).



The examination of durational departures indicates that downward departures represented 84.7% of the total durational departures on the drug grid. However, on the nondrug grid, 62.2% of durational departures were downward (in Figure 43). The majority of the upward departures were found at severity levels 1, 2, 3 and 4 of the nondrug grid, which include the most serious person offenses (Table 25).



Disparities were identified between nondrug and drug offenders on probation, as well (Figure 44). Drug sentences represented a higher percentage of downward dispositional departures than nondrug sentences (14.5% vs. 8.1%). The rate of drug probation sentences resulting from border boxes was much higher than that of nondrug probation sentences (18.8% vs. 4.9%).



The sentencing trend in Kansas seems to indicate that there is a tendency to depart downward more often with drug sentences than with nondrug sentences. The sentencing trend also indicates that drug offenders tend to be sentenced to probation sentences more frequently than do nondrug offenders when their offense types and criminal history categories are within the border boxes (Figure 44).

CONFORMITY RATES TO THE GUIDELINES BY SEVERITY LEVEL

The conformity rates of incarceration sentences to the guidelines at each severity level are presented in Table 25. Drug incarceration sentences, as a whole, indicated a 17.9% standard, 1.4% aggravated, 7.9% mitigated and 23.4% border box sentence distribution. Nondrug sentences revealed a 23.7% standard, 6.1% aggravated, 10.7% mitigated and 8.1%

border box sentence distribution. As for the departure sentences, drug sentences showed 6.5% upward durational departures and 35.9% downward durational departures, whereas nondrug sentences showed a 9% upward durational departure rate and a 14.9% downward durational departure rate. The highest rate of downward durational departures was identified at drug severity level 1 (80.6%) for drug incarceration sentences and nondrug severity level 3 (28%) for nondrug incarceration sentences. When examining dispositional departures, 27.5% of nondrug incarceration sentences were upward dispositional departures. By contrast, only 6.9% of drug incarceration sentences were upward dispositional departures. This would imply that judges are more likely to impose fewer upward dispositional sentences for drug offenders than for nondrug offenders. This finding has been supported by the data observed in the past eleven years.

Table 25: Conformity Rates by Severity Level - Incarceration Sentences

Severity Level	N	Within Guidelines (%)				Departures (%)		
		Agg.	Standard	Mit.	Box	Durational		Dispositional
						Upward	Downward	Upward
D1	62		11.3	6.5		1.6	80.6	
D2	24	8.3	20.8	12.5		8.3	50.0	
D3	132	0.8	13.6	3.0	56.1	9.8	16.7	
D4	200	1.5	22.5	11.0	12.0	5.5	33.0	14.5
Subtotal	418	1.4	17.9	7.9	23.4	6.5	35.9	6.9
N1	55	20.0	25.5	5.5		25.5	23.6	
N2	26	19.2	19.2	7.7		30.8	23.1	
N3	157	10.2	32.5	15.3		14.0	28.0	
N4	41	7.3	36.6	19.5		12.2	24.4	
N5	200	5.5	18.0	9.0	40.0	6.0	21.5	
N6	35	2.9	25.7	14.3	11.4	8.6	20.0	17.1
N7	185	3.2	19.5	7.6		9.2	5.9	54.6
N8	76	5.3	17.1	3.9		5.3	7.9	60.5
N9	187	2.7	28.3	11.2		4.8	4.8	48.1
N10	79	2.5	19.0	16.5			7.6	54.4
Subtotal	1,041	6.1	23.7	10.7	8.1	9.0	14.9	27.5
TOTAL	1,459	4.8	22.1	9.9	12.5	8.3	20.9	21.6

Table 26 displays the conformity rates of probation sentences to the guidelines by severity level. Probation drug sentences indicated 14.5% downward dispositional departures, which should have been presumptive incarceration, while only 8.1% of probation nondrug sentences experienced downward dispositional departures. A significant difference also occurred within the border boxes of the grids. Drug offenders received more probation sentences

than nondrug offenders did when their severity levels and criminal history categories fell within the border boxes (18.8% versus 4.9%). The comparison of probation drug and nondrug sentences reveals the same trend as indicated with incarceration sentences: the tendency is to impose more non-prison sentences for drug offenders than for nondrug offenders. This trend has been consistent for the past eleven years.

Table 26: Conformity Rates by Severity Level - Probation Sentences

Severity Level	N	Presumptive Probation (%)	Border Boxes (%)	Downward Disposition (%)
D1	30			100.0
D2	13			100.0
D3	478		88.9	11.1
D4	1,757	86.5	0.2	13.3
Subtotal	2,278	66.7	18.8	14.5
N1	4			100.0
N2	1			100.0
N3	44			100.0
N4	15			100.0
N5	209		78.9	21.1
N6	66	72.7	13.6	13.6
N7	837	93.2		6.8
N8	789	96.1		3.9
N9	1,201	94.2		5.8
N10	358	96.6		3.4
Subtotal	3,524	86.9	4.9	8.1
TOTAL	5,802	79.0	10.4	10.6

CONFORMITY RATES TO THE GUIDELINES BY RACE

Tables 27 and 28 present the conformity rates to the sentencing guidelines by race respectively for the drug and nondrug offenders admitted to prison in FY 2007. The examination of drug incarceration sentences within guidelines indicates that blacks received more standard sentences (23.7% vs. 15.8%) and mitigated sentences (9.3% vs. 7.5%) than whites. However, white offenders represented a higher percentage in aggravated sentences than black offenders (1.4% vs. 0.8%). No big percentage difference was identified between whites and blacks in border box sentences (24% vs. 23.7%). When reviewing sentence departures, whites indicated a much higher percentage of downward durational departures (39.4% vs. 25.4%) and

a lower percentage of upward durational departures (4.5% vs. 11%) than blacks, while black offenders received fewer upward dispositional departures than white offenders (5.9% vs. 7.5%), (Table 27).

The analysis of nondrug incarceration sentences demonstrates that white nondrug offenders represented higher percentages in aggravated sentences (6.4% vs. 5.7%), border box sentences (8.9% vs. 5.3%) and upward dispositional departures (29.1% vs. 24.2%) than black nondrug offenders. Similar with drug sentences, blacks received higher rates of standard sentences (24.6 vs. 22.9%) and mitigated sentences (13.2% vs. 9.7%) for nondrug offenses than whites. In addition, blacks received more durational departure sentences in both upward (11% vs. 8.4%) and downward departures (16% vs. 14.6%) than whites (Table 28).

Table 27: Conformity Rates by Race - Incarceration Sentences Drug Offenders

Severity Level	Race	N	Within Guidelines (%)				Departures (%)		
			Agg.	Standard	Mit.	Box	Durational		Dispositional
							Upward	Downward	Upward
D1	White	58		12.1	5.2		1.7	81.0	
	Black	1			100.0				
	Other	3						100.0	
D2	White	17	5.9	17.6	5.9		11.8	58.8	
	Black	6	16.7	33.3	33.3			16.7	
	Other	1						100.0	
D3	White	88	1.1	10.2	3.4	63.6	5.7	15.9	
	Black	42		19.0	2.4	42.9	16.7	19.0	
	Other	2		50.0			50.0		
D4	White	129	1.6	20.9	11.6	10.9	3.9	34.1	17.1
	Black	69		26.1	10.1	14.5	8.7	30.4	10.1
	Other	2	50.0					50.0	
Total	White	292	1.4	15.8	7.5	24.0	4.5	39.4	7.5
	Black	118	0.8	23.7	9.3	23.7	11.0	25.4	5.9
	Other	8	12.5	12.5			12.5	62.5	

Note: Based on 418 drug incarceration guideline sentences reporting race of offenders.

**Table 28: Conformity Rates by Race - Incarceration Sentences
Nondrug Offenders**

Severity Level	Race	N	Within Guidelines (%)				Departures (%)		
			Agg.	Standard	Mit.	Box	Durational		Dispositional
							Upward	Downward	Upward
N1	White	41	19.5	19.5	4.9		29.3	26.8	
	Black	11	27.3	36.4	9.1		9.1	18.2	
	Other	3		66.7			33.3		
N2	White	22	18.2	22.7	4.5		31.8	22.7	
	Black	3	33.3				33.3	33.3	
	Other	1			100.0				
N3	White	110	11.8	33.6	13.6		11.8	29.1	
	Black	44	6.8	27.3	20.5		20.5	25.0	
	Other	3		66.7				33.3	
N4	White	34	8.8	32.4	23.5		8.8	26.5	
	Black	7		57.1			28.6	14.3	
	Other	0							
N5	White	139	5.8	15.8	7.9	45.3	4.3	20.9	
	Black	56	3.6	25.0	12.5	25.0	10.7	23.2	
	Other	5	20.0			60.0		20.0	
N6	White	28	3.6	21.4	14.3	10.7	10.7	21.4	17.9
	Black	5		20.0	20.0	20.0		20.0	20.0
	Other	2		100.0					
N7	White	128	3.1	22.7	6.3		8.6	5.5	53.9
	Black	54	3.7	11.1	11.1		11.1	7.4	55.6
	Other	3		33.3					66.7
N8	White	51	3.9	11.8	2.0		5.9	3.9	72.5
	Black	24	8.3	25.0	8.3		4.2	16.7	37.5
	Other	1		100.0					
N9	White	131	1.5	26.7	9.9		3.1	3.1	55.7
	Black	53	5.7	32.1	13.2		9.4	9.4	30.2
	Other	3		33.3	33.3				33.3
N10	White	55	3.6	18.2	16.4			5.5	56.4
	Black	24		20.8	16.7			12.5	50.0
	Other	0							
Total	White	739	6.4	22.9	9.7	8.9	8.4	14.6	29.1
	Black	281	5.7	24.6	13.2	5.3	11.0	16.0	24.2
	Other	21	4.8	42.9	9.5	14.3	4.8	9.5	14.3

Note: Based on 1,041 nondrug incarceration guideline sentences reporting race of offenders.

The conformity rates by race for offenders sentenced to probation during FY 2007 are exhibited in Tables 29 and 30. White offenders received more presumptive probation sentences for drug offenses than black offenders (69.3 vs. 57.9%) but black drug offenders indicated a higher rate of border box sentences (21.1% vs. 18.1%) and downward dispositional departures than white drug offenders (20.9% vs. 12.7%), (Table 29).

that similar to the drug sentence pattern, white nondrug offenders received more presumptive probation sentences than black nondrug offenders (88.5 vs. 81.4%), while black offenders represented a higher percentage of border box sentences (6.1% vs. 4.6%) and downward dispositional departures than white offenders for nondrug offenses (12.5% vs. 6.9%). This sentence distribution for nondrug offenders did not fluctuate much as compared with that of FY 2006 (Table 30).

The conformity rates of the probation sentences of the nondrug offenders reveal

Table 29: Conformity Rates by Race - Probation Sentences Drug Offenders

Severity Level	Race	N	Presumptive Probation (%)	Border Boxes (%)	Downward Disposition (%)
D1	White	27			100.0
	Black	2			100.0
	Other	0			
D2	White	8			100.0
	Black	5			100.0
	Other	0			
D3	White	346		91.0	9.0
	Black	124		82.3	17.7
	Other	3		100.0	
D4	White	1,373	88.5	0.1	11.4
	Black	356	79.2	0.3	20.5
	Other	27	85.2		14.8
Total	White	1,754	69.3	18.1	12.7
	Black	487	57.9	21.1	20.9
	Other	30	76.7	10.0	13.3

Note: Based on 2,271 drug probation sentences reporting race of offenders.

**Table 30: Conformity Rates by Race - Probation Sentences
Nondrug Offenders**

Severity Level	Race	N	Presumptive Probation (%)	Border Boxes (%)	Downward Disposition (%)
N1	White	4			100.0
	Black	0			
	Other	0			
N2	White	1			100.0
	Black	0			
	Other	0			
N3	White	30			100.0
	Black	14			100.0
	Other	0			
N4	White	11			100.0
	Black	4			100.0
	Other	0			
N5	White	147		78.2	21.8
	Black	57		82.5	17.5
	Other	5		60.0	40.0
N6	White	52	76.9	15.4	7.7
	Black	12	50.0	8.3	41.7
	Other	2	100.0		
N7	White	643	94.4		5.6
	Black	173	88.4		11.6
	Other	19	94.7		5.3
N8	White	598	96.7		3.3
	Black	173	94.8		5.2
	Other	12	83.3		16.7
N9	White	920	95.8		4.2
	Black	258	88.4		11.6
	Other	17	94.1		5.9
N10	White	258	97.7		2.3
	Black	93	93.5		6.5
	Other	6	93.5		6.5
Total	White	2,664	88.5	4.6	6.9
	Black	784	81.4	6.1	12.5
	Other	61	85.2	4.9	9.8

Note: Based on 3,509 nondrug probation sentences reporting race of offenders.

CONFORMITY RATES TO THE GUIDELINES BY GENDER

This section discusses the conformity rates to the sentencing guidelines between male and female offenders sentenced or admitted to prison in FY 2007. For drug incarceration sentences, only males received aggravated sentences and upward durational departures. In addition, male drug offenders represented higher rates in standard sentences (18.5% vs. 12.5%) and mitigated sentences (8.2% vs. 5%). While females received more border box sentences for drug crimes (30% vs. 22.8%) than males. The examination of departure sentences demonstrates that female drug offenders represented higher rates in downward durational departures (42.5% vs. 35.2%) and upward dispositional departures (10% vs. 6.6%) than their counterparts (Table 31).

The evaluation of nondrug incarceration sentences reveals that within guidelines, males represented higher percentages than females in aggravated sentences (6.3% vs. 4.4%), standard sentences (24.6% vs. 11.8%) and mitigated sentences (10.8% vs. 8.8%), which is pretty consistent with the data observed in FY 2006. Female nondrug offenders received a lot more border box sentences than male nondrug offenders (22.1% vs. 7.1%). The analysis of departure sentences demonstrates that female nondrug offenders stood for the lower rate of upward durational departure sentences (7.4% vs. 9.1%) and downward durational departures (10.3% vs. 15.2%) than males. However, females represented a much higher percentage in upward dispositional departures (35.3% vs. 26.9%) than their counterparts (Table 32).

Table 31: Conformity Rates by Gender - Incarceration Sentences Drug Offenders

Severity Level	Gender	N	Within Guidelines (%)				Departures (%)		
			Agg	Standard	Mit.	Box	Durational		Dispositional
							Upward	Downward	Upward
D1	Male	54		13.0	7.4		1.9	77.8	
	Female	8						100.0	
D2	Male	21	9.5	19.0	14.3		9.5	47.6	
	Female	3		33.3				66.7	
D3	Male	118	0.8	13.6	2.5	54.2	11.0	17.8	
	Female	14		14.3	7.1	71.4		7.1	
D4	Male	185	1.6	23.3	11.4	11.9	5.9	32.4	13.5
	Female	15		13.3	6.7	13.3		40.0	26.7
Total	Male	378	1.6	18.5	8.2	22.8	7.1	35.2	6.6
	Female	40		12.5	5.0	30.0		42.5	10.0

Note: Based on 418 drug incarceration guideline sentences.

**Table 32: Conformity Rates by Gender - Incarceration Sentences
Nondrug Offenders**

Severity Level	Gender	N	Within Guidelines (%)				Departures (%)		
			Agg.	Standard	Mit.	Box	Durational		Dispositional
							Upward	Downward	Upward
N1	Male	54	20.4	25.9	5.6		25.9	22.2	
	Female	1						100.0	
N2	Male	24	20.8	20.8	8.3		29.2	20.8	
	Female	2					50.0	50.0	
N3	Male	152	10.5	31.6	15.8		14.5	27.6	
	Female	5		60.0				40.0	
N4	Male	40	7.5	37.5	20.0		10.0	25.0	
	Female	1					100.0		
N5	Male	174	5.2	19.5	9.2	37.9	5.2	23.0	
	Female	26	7.7	7.7	7.7	53.8	11.5	11.5	
N6	Male	32	3.1	21.9	15.6	9.4	9.4	21.9	18.8
	Female	3		66.7		33.3			
N7	Male	182	3.3	19.2	7.7		9.3	6.0	54.4
	Female	3		33.3					66.7
N8	Male	66	6.1	19.7	3.0		6.1	9.1	56.1
	Female	10			10.0				90.0
N9	Male	177	2.8	29.9	10.2		5.1	5.1	46.9
	Female	10			30.0				70.0
N10	Male	72	1.4	20.8	18.1			8.3	51.4
	Female	7	14.3						85.7
Total	Male	973	6.3	24.6	10.8	7.1	9.1	15.2	26.9
	Female	68	4.4	11.8	8.8	22.1	7.4	10.3	35.3

Note: Based on 1,041 nondrug incarceration guideline sentences.

The conformity rates of the probation sentences by gender are demonstrated in Tables 33 and 34. The analyses of the offenders on probation show that females on both drug and nondrug grids received less downward dispositional departures than males (4.7% vs. 17.8%), (Table 33); (3.9% vs. 9.4%), (Table 34). This finding indicates that except for incarceration drug sentences in FY 2003, females were more likely to be incarcerated than males when both upward and downward dispositional departures are compared for incarceration and probation sentences. Females had a higher likelihood

of an upward dispositional departure to prison even when their offenses were designated within the presumptive probation portion of the grid (Tables 31 and 32). Females were less likely to receive a downward dispositional departure to probation if their sentences fell within a presumptive prison box (Tables 33 and 34). The above findings continue the trend that was present in the past eleven years (Annual Reports of FY 1996, FY 1997, FY 1998, FY 1999, FY 2000, FY 2001, FY 2002, FY 2003, FY 2004, FY 2005 and FY 2006).

**Table 33: Conformity Rates by Gender - Probation Sentences
Drug Offenders**

Severity Level	Gender	N	Presumptive Probation (%)	Border Boxes (%)	Downward Disposition (%)
D1	Male	24			100.0
	Female	5			100.0
D2	Male	11			100.0
	Female	2			100.0
D3	Male	383		87.5	12.5
	Female	90		94.4	5.6
D4	Male	1,273	82.7	0.2	17.1
	Female	483	96.7	0.2	3.1
Total	Male	1,691	62.3	19.9	17.8
	Female	580	80.5	14.8	4.7

Note: Based on 2,271 drug probation sentences reporting gender of offenders.

**Table 34: Conformity Rates by Gender - Probation Sentences
Nondrug Offenders**

Severity Level	Gender	N	Presumptive Probation (%)	Border Boxes (%)	Downward Disposition (%)
N1	Male	4			100.0
	Female	0			
N2	Male	1			100.0
	Female	0			
N3	Male	36			100.0
	Female	8			100.0
N4	Male	13			100.0
	Female	2			100.0
N5	Male	183		78.1	21.9
	Female	26		84.6	15.4
N6	Male	57	68.4	15.8	15.8
	Female	9	100.0		
N7	Male	737	92.5		7.5
	Female	98	98.0		2.0
N8	Male	475	94.5		5.5
	Female	308	98.4		1.6
N9	Male	953	93.5		6.5
	Female	242	96.7		3.3
N10	Male	274	96.0		4.0
	Female	83	98.8		1.2
Total	Male	2,733	85.0	5.6	9.4
	Female	776	93.3	2.8	3.9

Note: Based on 3,509 nondrug probation sentences reporting gender of offenders.