

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.

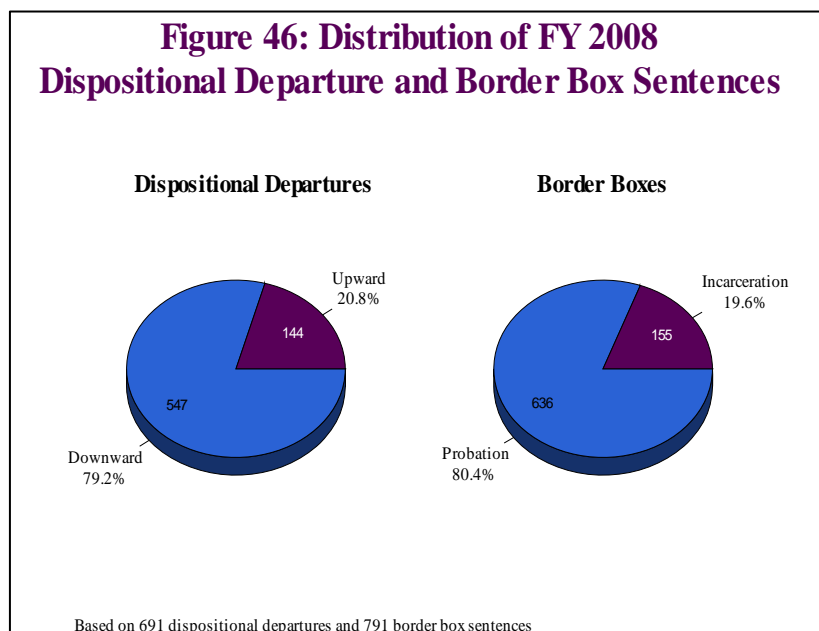
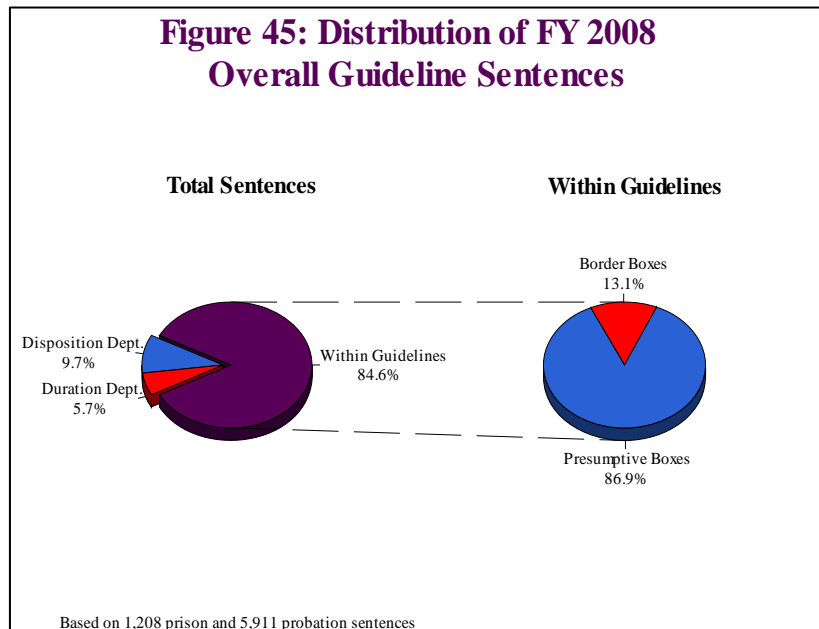
Only pure guideline sentences were utilized for this specific analysis. A pure guideline sentence is defined as a guideline sentence that is not imposed to run concurrent or consecutive with a "pre-guideline" sentence. In addition, the analysis is based on computed variables regarding departures and the consecutive sentences are excluded from this analysis. Sentences applied with special sentencing rules related to sentence disposition are excluded from this analysis, as well. The analyses on sentences applied with special sentencing rules are discussed at the end of the Chapter.

OVERALL CONFORMITY RATES

A total number of 7,119 pure guideline sentences in FY 2008 were utilized for this analysis, including 1,208 incarceration guideline sentences and 5,911 probation sentences. Figure 45 demonstrates that 84.6% of the 7,119 guideline sentences were within the presumptive guideline grids, 5.7% indicated durational departures and 9.7% were dispositional departures. Of all the sentences within the presumptive guideline grids, 5,229 sentences (86.9%) fell within either the presumptive prison boxes or presumptive probation boxes, while 791 sentences (13.1%) were located on designated border boxes. Figure 46 indicates that 79.2% (547 sentences) of the 691 dispositional departures were downward departures and 20.8% (144 sentences) were upward dispositional departures. More than

80% of the 791 border box sentences resulted in probation sentences with only 19.6% of this group sentenced to prison. The analysis of durational departure sentences is

only applicable to presumptive prison sentences.

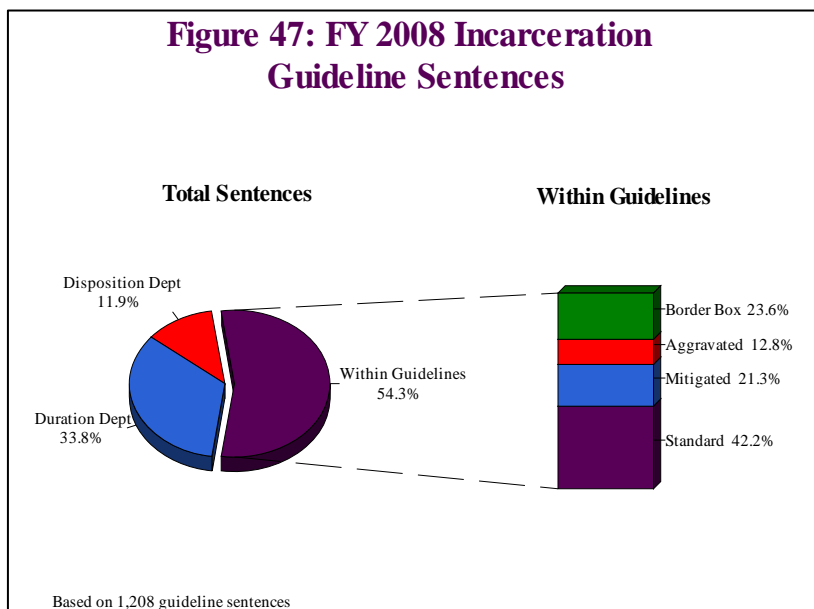


CONFORMITY OF PRESUMPTIVE PRISON GUIDELINE SENTENCES

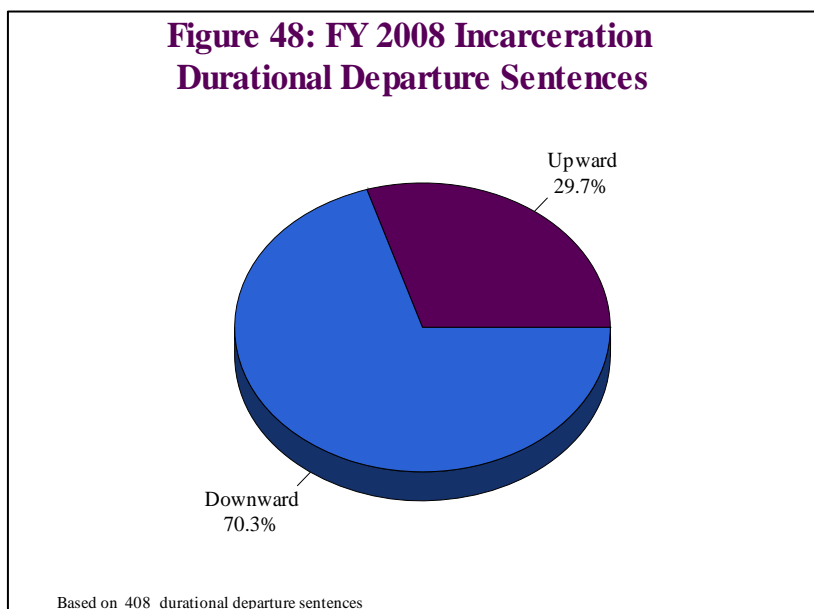
Sentences that are designated above the incarceration line of the sentencing grids are presumptive prison guideline sentences.

Revocations of probation conditions, either with or without new sentences, which result in prison sentences were excluded from this analysis. A total of 1,208 presumptive prison guideline sentences of FY 2008 were analyzed for this purpose.

More than 54% of total sentences fell within the presumptive incarceration range. Of these sentences within the guidelines, 42.2% were within the standard range, 12.8% were within the aggravated range, 21.3% were within the mitigated range and 23.6% were located within designated border boxes (Figure 47).



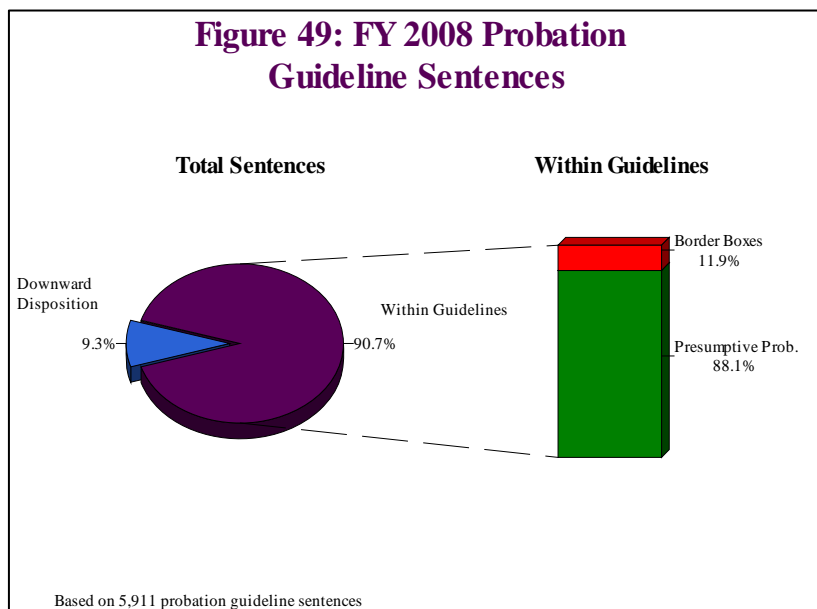
The analysis of durational departures demonstrates that 70.3% of the durational departure sentences departed downward from the sentence lengths indicated on the presumptive range, while 29.7% departed upward from the presumptive guideline ranges. The percentage change of the downward durational departure sentences is a 1.3% decrease from that of FY 2007 (Figure 48).



CONFORMITY OF PRESUMPTIVE PROBATION GUIDELINE SENTENCES

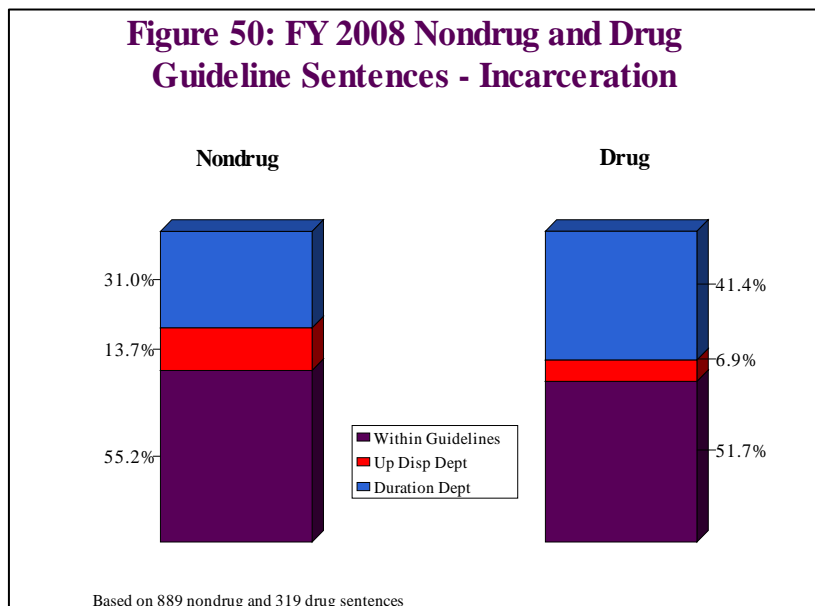
Presumptive probation guideline sentences refer to sentences that are designated below the incarceration line of the sentencing grids. The analysis of probation guideline sentences demonstrates that as expected, the majority of probation guideline sentences in FY 2008 (90.7% or 5,364 cases) fell within presumptive guideline range, among which 88.1% were within presumptive probation grids and 11.9% were within border boxes

(Figure 49). The sentences within presumptive guideline range (5,364) accounted for almost 66.1% of the total probation sentences imposed in FY 2008 (8,120), which decreased by 0.9% compared to the percentage rate of FY 2007 (67%). Further analysis of the dispositional departures indicates that probation sentences reflected downward dispositional departures of 9.3% of the total probation guideline sentences in FY 2008 (Figure 49). Upward dispositional departure sentences were reflected in presumptive incarceration sentences (Refer to Figure 47).

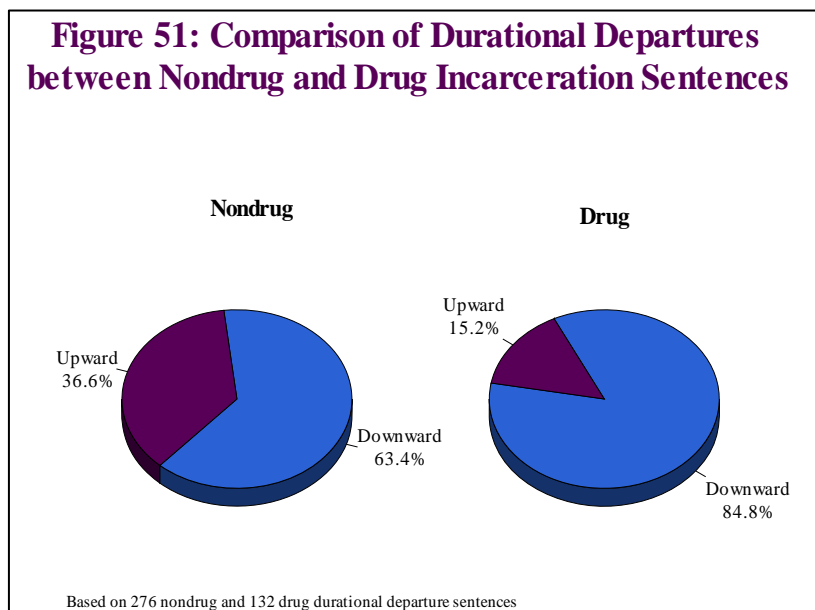


CONFORMITY OF NONDRUG AND DRUG GUIDELINE SENTENCES

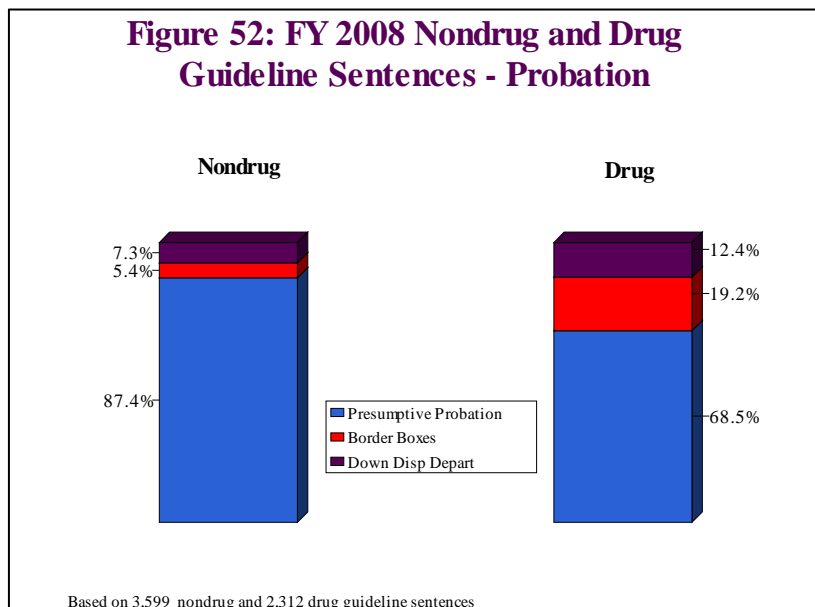
In terms of nondrug and drug sentences, the analysis of guideline incarceration sentences reveals that 13.7% of nondrug offenders showed upward dispositional departures, while 6.9% of drug offenders indicated upward dispositional departures. Additionally, nondrug offenders represented 31% durational departures while drug offenders showed 41.4% durational departures (Figure 50).



The examination of durational departures indicates that downward departures represented 84.8% of the total durational departures on the drug grid. However, on the nondrug grid, 63.4% of durational departures were downward (in Figure 51). The majority of the upward departures were found at severity levels 1, 2, 3, 4 and 6 of the nondrug grid, which include the most serious offenses (Table 24).



Disparities were identified between nondrug and drug offenders on probation, as well (Figure 52). Drug sentences represented a higher percentage of downward dispositional departures than nondrug sentences (12.4% vs. 7.3%). The rate of drug probation sentences resulting from border boxes was much higher than that of nondrug probation sentences (19.2% vs. 5.4%).



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 52).

CONFORMITY RATES TO THE GUIDELINES BY SEVERITY LEVEL

Table 24 presents the conformity rates of incarceration sentences to the guidelines at each severity level. Drug incarceration sentences, as a whole, indicated a 15.4% standard, 3.8% aggravated, 7.8% mitigated and 24.8% border box sentence distribution. Nondrug sentences revealed a 25.6% standard, 8.1% aggravated, 12.9% mitigated and 8.5% border box sentence distribution.

As for the departure sentences, drug sentences showed 6.3% upward durational departures and 35.1% downward durational departures, whereas nondrug sentences showed a 11.4% upward durational departure rate and a 19.7% downward durational departure rate. The highest rate of downward durational departures was identified at drug severity level 1 (81.1%) for drug incarceration sentences and nondrug severity level 3 (32.5%) for nondrug incarceration sentences. When examining dispositional departures, 13.7% 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 twelve years.

Table 24: Conformity Rates by Severity Level - Incarceration Sentences

Severity Level	N	Within Guidelines (%)				Departures (%)		
		Agg.	Standard	Mit.	Box	Durational		Dispositional
						Upward	Downward	Upward
D1	37	5.4	2.7	8.1		2.7	81.1	
D2	23	4.3	13.0	13.0		8.7	60.9	
D3	107	3.7	9.3	7.5	54.2	4.7	20.6	
D4	152	3.3	23.0	7.2	13.8	7.9	30.3	14.5
Subtotal	319	3.8	15.4	7.8	24.8	6.3	35.1	6.9
N1	71	14.1	19.7	9.9		25.4	31.0	
N2	21	14.3	28.6	23.8		14.3	19.0	
N3	154	11.7	26.6	13.6		15.6	32.5	
N4	46	10.9	26.1	13.0		19.6	30.4	
N5	198	5.6	18.7	8.1	36.4	6.6	24.7	
N6	50	4.0	22.0	16.0	8.0	30.0	12.0	8.0
N7	119	5.0	26.1	14.3		9.2	12.6	32.8
N8	48	6.3	31.3	8.3		4.2	10.4	39.6
N9	117	7.7	35.0	15.4		4.3	7.7	29.9
N10	65	7.7	30.8	20.0		1.5	1.5	38.5
Subtotal	889	8.1	25.6	12.9	8.5	11.4	19.7	13.7
TOTAL	1,208	7.0	22.9	11.6	12.8	10.0	23.8	11.9

The conformity rates of probation sentences to the guidelines by severity level are displayed in Table 25. Probation drug sentences indicated 12.4% downward dispositional departures, which should have been presumptive incarceration, while only 7.3% 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 (19.2% versus 5.4%). 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 in the past twelve years.

Table 25: Conformity Rates by Severity Level - Probation Sentences

Severity Level	N	Presumptive Probation (%)	Border Boxes (%)	Downward Disposition (%)
D1	11			100.0
D2	25			100.0
D3	486		90.1	9.9
D4	1,790	88.4	0.3	11.3
Subtotal	2,312	68.5	19.2	12.4
N1	4			100.0
N2	1			100.0
N3	35			100.0
N4	17			100.0
N5	247		74.5	25.5
N6	74	81.1	12.2	6.8
N7	875	95.1		4.9
N8	678	95.9		4.1
N9	1,347	95.8		4.2
N10	321	97.5		2.5
Subtotal	3,599	87.4	5.4	7.3
TOTAL	5,911	80.0	10.8	9.3

CONFORMITY RATES TO THE GUIDELINES BY RACE

The conformity rates to the sentencing guidelines by race are presented in Tables 26 and 27, respectively, for the drug and nondrug offenders admitted to prison in FY 2008. The examination of drug incarceration sentences within guidelines indicates that blacks received more standard sentences (19.4% vs. 13.4%) and mitigated sentences (9.2% vs. 7.4%) than whites. However, white offenders represented a higher percentage in aggravated sentences (4.2% vs. 3.1%) and border box sentences (25.9% vs. 22.4%) than black offenders. When reviewing sentence departures, whites indicated a lower percentage of upward durational departures (5.1% vs. 8.2%) and downward durational departures (34.7% vs.

35.7%), while black offenders received fewer upward dispositional departures (2% vs. 9.3%) than white offenders (Table 26).

The analysis of nondrug incarceration sentences demonstrates that white nondrug offenders represented higher percentages in mitigated sentences (13.8% vs. 10.8%), border box sentences (9.5% vs. 6.5%), upward durational departures (12.6% vs. 7.8%) and upward dispositional departures (14.4% vs. 10.8%) than black nondrug offenders. Similar with drug sentences, blacks received higher rates of standard sentences (27.7 vs. 24.8%) and downward durational departure sentences (26% vs. 17.5%) for nondrug offenses than whites. In addition, blacks received more aggravated sentences (10.4% vs. 7.3%) than whites (Table 27).

Table 26: 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	37	5.4	2.7	8.1		2.7	81.1	
	Black	0							
	Other	0							
D2	White	11	9.1	9.1	18.2			63.6	
	Black	12		16.7	8.3		16.7	58.3	
	Other	0							
D3	White	68	2.9	8.8	10.3	61.8	2.9	13.2	
	Black	38	5.3	10.5	2.6	42.1	5.3	34.2	
	Other	1					100.0		
D4	White	100	4.0	21.0	4.0	14.0	8.0	29.0	20.0
	Black	48	2.1	27.1	14.6	12.5	8.3	31.3	4.2
	Other	4		25.0		25.0		50.0	
Total	White	216	4.2	13.4	7.4	25.9	5.1	34.7	9.3
	Black	98	3.1	19.4	9.2	22.4	8.2	35.7	2.0
	Other	5		20.0		20.0	20.0	40.0	

Note: Based on 319 drug incarceration guideline sentences reporting race of offenders.

**Table 27: 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	56	14.3	19.6	10.7		28.6	26.8	
	Black	13	15.4	23.1			15.4	46.2	
	Other	2			50.0			50.0	
N2	White	18	16.7	22.2	27.8		16.7	16.7	
	Black	3		66.7				33.3	
	Other	0							
N3	White	108	10.2	25.9	15.7		18.5	29.6	
	Black	45	15.6	26.7	8.9		8.9	40.0	
	Other	1		100.0					
N4	White	35	11.4	34.3	14.3		17.1	22.9	
	Black	9	11.1		11.1		22.2	55.6	
	Other	2					50.0	50.0	
N5	White	150	4.0	20.0	8.7	38.7	7.3	21.3	
	Black	47	8.5	14.9	6.4	29.8	4.3	36.2	
	Other	1	100.0						
N6	White	35	2.9	17.1	17.1	8.6	28.6	14.3	11.4
	Black	14	7.1	35.7	14.3	7.1	28.6	7.1	
	Other	1					100.0		
N7	White	78	3.8	25.6	14.1		9.0	11.5	35.9
	Black	41	7.3	26.8	14.6		9.8	14.6	26.8
	Other	0							
N8	White	36	5.6	36.1	11.1		5.6	11.1	30.6
	Black	10	10.0	20.0				10.0	60.0
	Other	2							100.0
N9	White	77	6.5	29.9	15.6		6.5	5.2	36.4
	Black	37	10.8	45.9	16.2			13.5	13.5
	Other	3		33.3					66.7
N10	White	51	7.8	25.5	19.6		2.0	2.0	43.1
	Black	12	8.3	41.7	25.0				25.0
	Other	2		100.0					
Total	White	644	7.3	24.8	13.8	9.5	12.6	17.5	14.4
	Black	231	10.4	27.7	10.8	6.5	7.8	26.0	10.8
	Other	14	7.1	28.6	7.1		14.3	14.3	28.6

Note: Based on 889 nondrug incarceration guideline sentences reporting race of offenders.

Tables 28 and 29 exhibit the conformity rates by race for offenders sentenced to probation during FY 2008. White offenders received more presumptive probation sentences for drug offenses than black offenders (70.3% vs. 60.7%) but black drug offenders indicated a higher rate of border box sentences (21.1% vs. 18.9%) and downward dispositional departures (18.3% vs. 10.8%) than white drug offenders (Table 28). This racial conformity-rate pattern is consistent with that of FY 2007.

The analysis of conformity rates of the probation sentences of the nondrug

offenders reveals that similar to the drug sentence pattern, white nondrug offenders received more presumptive probation sentences than black nondrug offenders (88.8% vs. 82.6%), while black offenders represented a little higher percentage of border box sentences (5.4% vs. 5.3%) and a much higher percentage of downward dispositional departures than white offenders for nondrug offenses (12% vs. 5.8%). This sentencing conformity-rate distribution by race for nondrug offenders did not fluctuate much as compared with that of FY 2007 (Table 29).

Table 28: Conformity Rates by Race - Probation Sentences Drug Offenders

Severity Level	Race	N	Presumptive Probation (%)	Border Boxes (%)	Downward Disposition (%)
D1	White	10			100.0
	Black	0			
	Other	0			
D2	White	21			100.0
	Black	4			100.0
	Other	0			
D3	White	358		93.0	7.0
	Black	122		82.0	18.0
	Other	5		80.0	20.0
D4	White	1,400	89.8	0.4	9.9
	Black	350	82.6		17.4
	Other	35	91.4		8.6
Total	White	1,789	70.3	18.9	10.8
	Black	476	60.7	21.0	18.3
	Other	40	80.0	10.0	10.0

Note: Based on 2,305 drug probation sentences reporting race of offenders.

**Table 29: 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	25			100.0
	Black	9			100.0
	Other	0			
N4	White	11			100.0
	Black	5			100.0
	Other	1			100.0
N5	White	180		78.9	21.1
	Black	58		63.8	36.2
	Other	7		42.9	57.1
N6	White	61	86.9	8.2	4.9
	Black	9	33.3	44.4	22.2
	Other	4	100.0		
N7	White	668	96.0		4.0
	Black	190	92.1		7.9
	Other	13	92.3		7.7
N8	White	525	96.8		3.2
	Black	140	92.1		7.9
	Other	11	100.0		
N9	White	1,042	97.0		3.0
	Black	277	91.0		9.0
	Other	20	95.0		5.0
N10	White	241	98.3		1.7
	Black	76	94.7		5.3
	Other	2	100.0		
Total	White	2,758	88.8	5.3	5.8
	Black	764	82.6	5.4	12.0
	Other	58	82.8	5.2	12.1

Note: Based on 3,580 nondrug probation sentences reporting race of offenders.

CONFORMITY RATES TO THE GUIDELINES BY GENDER

The conformity rates to the sentencing guidelines between male and female offenders admitted to prison in FY 2008 are discussed in this section. For drug incarceration sentences, only males received aggravated sentences, which is consistent with the data observed in FY 2007. In addition, male drug offenders represented higher rates in standard sentences (17% vs. 2.7%) and mitigated sentences (8.5% vs. 2.7%). While females received more than double border box sentences for drug crimes than males (48.6% vs. 21.6%). The examination of departure sentences demonstrates that male drug offenders represented higher percentages in both upward and downward durational departures (6.4% vs. 5.4%; 35.5% vs. 32.4%), while female drug offenders represented a higher rate in upward dispositional departures

(8.1% vs. 6.7%) than their counterparts (Table 30).

The evaluation of nondrug incarceration sentences reveals that within guidelines, males represented higher percentages than females in aggravated sentences (8.4% vs. 3.6%), standard sentences (25.8% vs. 23.2%) and mitigated sentences (13.1% vs. 10.7%), which is pretty consistent with the data observed in FY 2007. Female nondrug offenders received more border box sentences than male nondrug offenders (12.5% vs. 8.3%). The analysis of departure sentences demonstrates that female nondrug offenders stood for the lower rates of upward durational departure sentences (5.4% vs. 11.8%) and downward durational departures (19.6% vs. 19.7%) than males. However, females represented a much higher percentage in upward dispositional departures (25% vs. 13%) than their counterparts (Table 31).

Table 30: Conformity Rates by Gender - Incarceration Sentences Drug Offenders

Severity Level	Gender	N	Within Guidelines (%)			Departures (%)			
			Agg	Standard	Mit.	Box	Durational Upward	Durational Downward	Dispositional Upward
D1	Male	32	6.3	3.1	9.4		3.1	78.1	
	Female	5						100.0	
D2	Male	20	5.0	15.0	15.0		10.0	55.0	
	Female	3						100.0	
D3	Male	96	4.2	10.4	7.3	51.0	4.2	22.9	
	Female	11			9.1	81.8	9.1		
D4	Male	134	3.7	25.4	8.2	9.0	8.2	31.3	14.2
	Female	18		5.6		50.0	5.6	22.2	16.7
Total	Male	282	4.3	17.0	8.5	21.6	6.4	35.5	6.7
	Female	37		2.7	2.7	48.6	5.4	32.4	8.1

Note: Based on 319 drug incarceration guideline sentences.

**Table 31: 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	68	14.7	20.6	8.8		25.0	30.9	
	Female	3			33.3		33.3	33.3	
N2	Male	18	16.7	27.8	16.7		16.7	22.2	
	Female	3		33.3	66.7				
N3	Male	143	12.6	25.2	14.0		16.8	31.5	
	Female	11		45.5	9.1			45.5	
N4	Male	42	9.5	21.4	14.3		21.4	33.3	
	Female	4	25.0	75.0					
N5	Male	186	5.4	19.4	8.6	34.9	7.0	24.7	
	Female	12	8.3	8.3		58.3		25.0	
N6	Male	45	4.4	20.0	15.6	8.9	28.9	13.3	8.9
	Female	5		40.0	20.0		40.0		
N7	Male	114	5.3	27.2	14.9		9.6	12.3	30.7
	Female	5						20.0	80.0
N8	Male	45	6.7	33.3	8.9		4.4	11.1	35.6
	Female	3							100.0
N9	Male	111	8.1	36.9	16.2		4.5	7.2	27.0
	Female	6						16.7	83.3
N10	Male	61	8.2	31.1	19.7		1.6	1.6	37.7
	Female	4		25.0	25.0				50.0
Total	Male	833	8.4	25.8	13.1	8.3	11.8	19.7	13.0
	Female	56	3.6	23.2	10.7	12.5	5.4	19.6	25.0

Note: Based on 889 nondrug incarceration guideline sentences.

Tables 32 and 33 demonstrate the conformity rates of the probation sentences by gender. The analyses of the offenders on probation show that females on both drug and nondrug grids received less downward dispositional departures than males (6.5% vs. 14.4%), (Table 32); (4% vs. 8.2%), (Table 33). 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 30 and 31). Females were less likely to receive a downward dispositional departure to probation if their sentences fell within a presumptive prison box (Tables 32 and 33). The above findings continue the trend that was present in the past twelve years (Annual Reports of FY 1996, FY 1997, FY 1998, FY 1999, FY 2000, FY 2001, FY 2002, FY 2003, FY 2004, FY 2005, FY 2006 and FY 2007).

**Table 32: Conformity Rates by Gender - Probation Sentences
Drug Offenders**

Severity Level	Gender	N	Presumptive Probation (%)	Border Boxes (%)	Downward Disposition (%)
D1	Male	7			100.0
	Female	4			100.0
D2	Male	14			100.0
	Female	11			100.0
D3	Male	373		89.0	11.0
	Female	112		93.8	6.2
D4	Male	1,328	85.7	0.3	14.0
	Female	458	96.3	0.2	3.5
Total	Male	1,722	66.1	19.5	14.4
	Female	585	75.4	18.1	6.5

Note: Based on 2,307 drug probation sentences reporting gender of offenders.

**Table 33: 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	30			100.0
	Female	4			100.0
N4	Male	14			100.0
	Female	3			100.0
N5	Male	223		75.8	24.2
	Female	24		62.5	37.5
N6	Male	62	82.3	11.3	6.5
	Female	12	75.0	16.7	8.3
N7	Male	757	95.0		5.0
	Female	115	95.7		4.3
N8	Male	400	93.5		6.5
	Female	276	99.3		0.7
N9	Male	1,067	95.2		4.8
	Female	276	97.8		2.2
N10	Male	245	97.1		2.9
	Female	74	98.6		1.4
Total	Male	2,803	85.6	6.3	8.2
	Female	784	93.9	2.2	4.0

Note: Based on 3,587 nondrug probation sentences reporting gender of offenders.

SPECIAL SENTENCING RULES

Special sentencing rules provide special treatment of certain crimes and sanctions. These special rules establish policies for the determination of criminal history and the imposition and computation of sentences in atypical situations which are not otherwise addressed by the sentencing guidelines. In addition, these special rules serve to assign appropriate severity rankings to crimes that are in some significant respect unusual and therefore not readily amenable to the standardized treatment afforded by the grids.

There were small numbers of special sentencing rules at the initial years of implementation of the guidelines, such as five special rules in 1994 and 1995. With the modification of sentencing guidelines and amendments of sentencing policies in each legislative year, the number of special sentencing rules has increased. As of the 2008 Legislative Session, twenty-five special sentencing rules have been established or amended. The most frequently applied special sentencing rules in the past five years were: person felony committed with a firearm; crime committed while incarcerated or on probation, parole, etc. and crime committed while on felony bond.

SB 123 mandatory drug treatment has not been considered as a special sentencing rule since 2006, therefore it is excluded in the following analyses. Tables 34 and 35 present numbers and percentages of sentencing practice with special sentencing rules in the past five years. The percentage of offenders admitted to prison with special sentence rules increased from 22.3% in FY 2004 to 26.7% in FY 2008. FY 2007 indicated the highest number (428 admissions) or percentage (29.3%) of special sentencing rules applied to prison

sentences in the past five years. The percentage of probation sentences imposed with special sentencing rules accounted for 8.9% in FY 2004 and increased to 10% in FY 2008 (Table 34). The total percentage of both prison and probation sentences applied with special rules increased from 11.5% in FY 2004 to 13% in FY 2008 (Table 35).

During FY 2008, a number of 352 pure guideline prison sentences and 602 pure guideline probation sentences were imposed with special sentencing rules, which accounted for 26.7% of prison pure guideline admissions (1,316 admissions) and 10% of pure guideline probation sentences (6,009) imposed in FY 2008 (Tables 34).

The top three special sentencing rules applied to prison sentences in sentencing practice during FY 2008 were “person felony committed with a firearm” (83 sentences) representing 23.6% of 352 prison sentences applied with special sentence rules; “crime committed while incarcerated or on probation, parole, etc.” (193 sentences) representing 54.8%; and “crime committed while on felony bond” (49 sentences) making up 13.9% of prison admissions with special sentencing rules during FY 2008 (Table 36).

These three special sentencing rules were applied most frequently to probation sentences imposed in FY 2008, as well. The special rule of “person felony committed with a firearm” (73 sentences) accounted for 12.1% of the total 602 probation sentences applied with special sentencing rules, “crime committed while incarcerated or on probation, parole, etc.” (262 sentences) accounted for 43.5% and “crime committed while on felony bond” (170 sentences) accounted for 28.2% (Table 37).

**Table 34: Pure Guideline Sentences Applied with Special Sentencing Rules*
By Prison and Probation
FY 2004 through FY 2008**

Fiscal Year	Prison Admissions			Probation Sentences		
	Guideline	with Special Rules		Guideline	with Special Rules	
		Number	Percent		Number	Percent
2004	1393	310	22.3	5592	495	8.9
2005	1345	371	27.6	5962	579	9.7
2006	1448	418	28.9	5936	494	8.3
2007	1459	428	29.3	5802	538	9.3
2008	1316	352	26.7	6009	602	10.0

* Sentences with special rules exclude those with special rule of SB123 mandatory drug treatment.

**Table 35: Pure Guideline Sentences Applied with Special Sentencing Rules
By Total Sentences
FY 2004 through FY 2008**

Fiscal Year	Guideline	with Special Rules	
		Number	Percent
2004	6985	805	11.5%
2005	7307	950	13.0%
2006	7384	912	12.4%
2007	7261	966	13.3%
2008	7325	954	13.0%

Note: The total number and percentage include both prison and probation sentences.

Table 36: Distribution of Special Sentencing Rules Applied To Prison Sentences – FY 2008

Special Rules Applied to Sentences	Number	Percent
Person felony committed with a firearm	83	23.6
Aggravated battery of a LEO	3	0.9
Aggravated assault of a LEO	5	1.4
Crime committed for benefit of a criminal street gang	2	0.6
Persistent sex offender	14	4.0
Felony DUI	2	0.6
Crime committed while incarcerated or on probation, parole, etc.	193	54.8
Crime committed while on felony bond	49	13.9
Extended juvenile jurisdiction imposed	2	0.6
Resident burglary with a prior residential, nonresidential or aggravated burglary conviction	23	6.5
Second forgery	2	0.6
Third or subsequent forgery	4	1.1

Note: The number and percentage are mutually exclusive.

Table 37: Distribution of Special Sentencing Rules Applied To Probation Sentences – FY 2008

Special Rules Applied to Sentences	Number	Percent
Person felony committed with a firearm	73	12.1
Aggravated battery of a LEO	4	0.7
Aggravated assault of a LEO	10	1.7
Crime committed for benefit of a criminal street gang	5	0.8
Crime committed while incarcerated or on probation, parole, etc.	262	43.5
Crime committed while on felony bond	170	28.2
Extended juvenile jurisdiction imposed	1	0.2
Resident burglary with a prior residential, nonresidential or aggravated burglary conviction	13	2.2
Second forgery	27	4.5
Third or subsequent forgery	37	6.1
Third or subsequent drug possession	5	0.8
Burglary with 2 prior burglary convictions	12	2.0
Other	27	4.5

Note: The number and percentage are mutually exclusive.