

March 2004

SENTENCES FOR ADULT FELONS IN WASHINGTON: OPTIONS TO ADDRESS PRISON OVERCROWDING —PART I (HISTORICAL TRENDS)—

BACKGROUND

The 2003 Washington State Legislature directed the Washington State Institute for Public Policy (Institute) to analyze the effect of sentences for adult felons. The study's goal is set forth in the authorizing legislation:¹

The Institute shall determine whether any changes could be made to the current state sentencing structure to address prison overcrowding and the need for new prison construction, giving great weight to the primary purposes of the criminal justice system. These purposes include: Protecting community safety; making frugal use of state and local government resources by concentrating resources on violent offenders and sex offenders who pose the greatest risk to our communities; achieving proportionality in sentencing; and reducing the risk of reoffending by offenders in the community.

In short, the main task is to determine if there are changes to Washington's sentencing structure that could reduce the growth in the prison population, taking into account the primary purposes of the criminal justice system. Of course, any reduction in prison use reduces prison costs, and this would provide a benefit to taxpayers. The tradeoff, however, is the degree to which lowering the incarceration rate would adversely affect the crime rate in Washington. The purpose of this study is to analyze these tradeoffs.

Our findings will be published in two parts. In this report—Part I—we provide an overall context for the study by reviewing the sentencing system in Washington and examining the trends in the growth of the prison population.

The second part of this study, to be published by June 30, 2004, will estimate the impact that prison sentences have on subsequent felony crimes—recidivism. The Institute will also develop measures to identify which offenders pose the lowest risk to public safety.

SUMMARY

The 2003 Washington State Legislature directed the Institute to determine if there are changes to Washington's sentencing structure that could reduce the growth in the prison population, and its associated costs, without endangering public safety. Washington's current sentencing structure was enacted by the Legislature in 1981. This Sentencing Reform Act (SRA) took effect in 1984.

Our findings will be published in two parts. In this report—Part I—we provide an overall context for the study by reviewing Washington's sentencing system and examining the growth trends of the prison population.

Part II, to be published by June 30, 2004, will estimate the impact that prison sentences have on subsequent felony crimes—recidivism.

In this report, we find that the Washington State prison population has increased considerably since 1986, and this growth has outpaced the growth of the adult population. We examine two legislative policy levers that have affected the prison population: the percentage of convicted offenders who go to prison and the length of time imprisoned. We analyze these two factors separately for violent, property, and drug offenders. We find that the SRA has affected these factors differentially. For example, since 1986 the length of stay in prison for property offenders has decreased but increased for sex offenders.

These changes in length of imprisonment and percentage of offenders imprisoned provide an opportunity to examine the impact of sentence lengths and imprisonment on recidivism. That is, do offenders sentenced to prison, or who receive longer prison sentences, recidivate more or less often than similar offenders who are not sentenced to prison or receive shorter sentences? Our findings on these questions will be addressed in Part II of the study.

¹ ESSB 5404 Sec. 608(2)(c)(i), Chapter 25, Laws of 2003.

ADULT SENTENCING IN WASHINGTON

In 1981, the Washington State Legislature passed the Sentencing Reform Act (SRA); it took effect in 1984.² This legislation defined six broad purposes for the state's sentencing laws:

- (1) *Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;*
- (2) *Promote respect for the law by providing punishment which is just;*
- (3) *Be commensurate with the punishment imposed on others committing similar offenses;*
- (4) *Protect the public;*
- (5) *Offer the offender an opportunity to improve him or herself;*
- (6) *Make frugal use of the state's and local governments' resources; and*
- (7) *Reduce the risk of re-offending by offenders in the community.*³

The first three goals of Washington's sentencing system can be grouped under the concept of "justice"; that is, they establish that punishment should be fair, consistent, and commensurate with the severity of the convicted person's crimes.

The fourth sentencing goal—protecting public safety—involves three additional concepts in criminology: general deterrence, specific deterrence, and incapacitation. General deterrence refers to the effect that a sentence has on dissuading other would-be criminals from committing crimes. Specific deterrence refers to the effect a sentence has on the subsequent criminal activity of the individual sentenced. Incapacitation keeps the convicted offender away from society.

The fifth goal of Washington's sentencing laws authorizes the state to provide opportunities for the rehabilitation of offenders. The 1999 Legislature added a seventh goal to the sentencing system: *reduce the risk of re-offending by offenders in the community*. Both goals concern public safety by focusing on reducing the likelihood of criminal activity once the offender is back in the community. The sixth goal emphasizes the value of using taxpayer money efficiently to accomplish the sentencing goals. In addition, the SRA eliminated parole supervision. The goals of justice and public safety can sometimes be in conflict. For example, the

legislature may implement the justice goal by requiring long prison sentences for certain serious crimes, even though a particular convicted felon may not pose a significant threat to subsequent public safety. On the other hand, a state's public policy for justice may establish relatively short sentences for less serious crimes, even though an individual offender may be at high risk for committing new offenses.

The sentencing system's decision-makers must balance these sometimes conflicting goals. The main decisions include determining which offenders will be incarcerated and, for those incarcerated, the length of their sentences.

In more than half the states, the judicial branch of government has wide flexibility in making these decisions. Also, in many states the executive branch (parole boards and correctional agencies) influences the length of incarceration.

In contrast, the Washington State legislature has asserted the primary role in determining these decisions for felony offenses. As a result of the SRA, Washington is one of 14 states with a form of determinate sentencing for adult felons.

Under this system, the Washington legislature enacts a statewide "sentencing grid" that judges use to sentence convicted adult offenders. Judges can make case-by-case exceptions to the legislature's grid, called exceptional sentences. However, the law presumes that the grid determines the sentence for nearly all offenders.

Washington's Adult Sentencing Grid. In Washington State, the Sentencing Guidelines Commission was created by the Legislature to examine sentencing issues and to make recommendations to the legislature.⁴ The grid produces two types of sentences:

- 1) Incarceration in a state prison for more than one year; and
- 2) Local sanctions, which may include a jail sentence in a county facility.

Both types of sentences may be accompanied by community supervision by the Department of Corrections (DOC) to enforce court-ordered sentencing conditions such as restitution, victim compensation, and community service.

² RCW 9.94A.010.

³ The 1999 Legislature modified the sixth condition by adding the phrase "and local governments" to the original SRA language; they added the seventh condition.

⁴ The Sentencing Guidelines Commission derives its authority from the Sentencing Reform Act of 1981, RCW Chapter 9.94A, <<http://www.sgc.wa.gov/>>.

Washington's adult grid contains a standard sentencing range, which includes a minimum and maximum sentence. The grid uses two basic factors to define a sentence range: the severity of a convicted offender's current offense and the offender's criminal history. These two factors combine to determine a convicted felon's location on the grid. The judge can then sentence within the grid's standard ranges.

Washington's sentencing laws also include factors that can augment the sentence. For example, sentences can be modified because of a deadly weapon finding. There are also drug-related sentence enhancements. Additionally, a 1992 voter-approved initiative established life imprisonment without the possibility of release for persistent offenders (referred to as "three strikes" and "two strikes" sentences).

The legislature has also established two alternatives to imprisonment that judges may impose: the First-Time Offender Waiver and the Special Sex Offender Sentencing Alternative. In addition, two legislatively established programs provide an opportunity for offenders to earn reductions to their prison sentence: Drug Offender Sentencing Alternative, and the Work Ethic Camp.

Toward the end of their prison sentence, offenders can earn partial confinement at a community work release facility. These offenders are still considered incarcerated.

The number of offenses involved in the sentencing decision also influences the length of incarceration. Statutes define how these multiple sentences are to be served. Sentences for multiple offenses are generally served concurrently. That is, the longest concurrent sentence determines the length of incarceration. Sentences are served consecutively, however, in cases involving two or more separate serious violent or weapon offenses. In some cases, the decision to run the sentences consecutively or concurrently is discretionary, but in others a departure from the state policy requires an exceptional sentence.

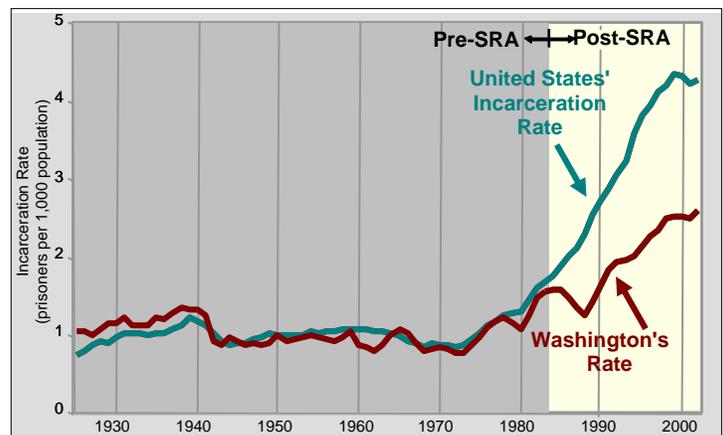
Under Washington's laws, the actual time spent incarcerated by offenders sentenced to prison may be reduced by one or more of the following earned time credits: time spent in county jail, good behavior in jail or prison, and credit earned by participation in prison programs.

Statutes dictate the maximum earned-time credit for incarcerated offenders: 15 percent for serious violent offenders, 33 percent for most offenders, and 50 percent for a limited number of offenders. As a result, the time spent incarcerated may be less than the minimum sentence established by the grid. Some types of sentences are not eligible for earned-time reductions.⁵ The legislature directed the Institute to evaluate changes in earned-time statutes.⁶

The sentencing framework established by the SRA over 20 years ago has remained fundamentally the same, but has undergone some adjustments.

Exhibit 1 compares the growth in Washington State's incarceration rate to the rest of the United States.⁷ From 1925 until the early 1980s, the incarceration rates were nearly identical.

Exhibit 1
Prison Populations: 1925 to 2002
Incarceration Rates Before and After
Washington's Sentencing Reform Act (SRA)



Beginning in the late 1970s, however, these rates began to rise. Since the SRA took effect in 1984, Washington's incarceration rate has grown more slowly than the national average. Between 1984 and 2002, Washington's incarceration rate increased 67 percent, while the national rate grew by 144 percent. The SRA itself appears to be a determining factor in causing Washington's rate to grow more slowly than the national rate.⁸

⁵ RCW 9.94A.728.

⁶ RCW 9.94A.7282.

⁷ The incarceration rate is the number of people in prison each year for every 1,000 people living in the state.

⁸ T. Marvell, "Sentencing Guidelines and Prison Population Growth," *Journal of Criminal Law and Criminology* 85, no. 3 (1995): 696-709; J. Sorensen and D. Stemen, "The Effects of State Sentencing Policies on Incarceration Rates," *Crime and Delinquency* 48 (2002): 456-475.

Report Focus. This report examines trends in the Washington State prison population since 1986, the first year reliable data from DOC's databases are available. Crimes are categorized by type rather than SRA offense seriousness level. Legislators have changed the seriousness levels of specific offenses several times since SRA's implementation in 1984. Examining types of offenses allows us to analyze the results of legislative changes.

The three categories of offenses used in this study are violent, property, and drug.⁹ Because the study legislation directs the Institute to concentrate on violent offenders, four offense types within the violent category are explicitly analyzed: assault, robbery, sex, and murder.

This report first examines the growth in the prison population. We then examine the two factors that mathematically determine prison population: (1) number of offenders sentenced to prison, and (2) length of time imprisoned.¹⁰

PRISON POPULATION GROWTH SINCE 1986

Exhibit 2 displays the number of offenders incarcerated in Washington State prisons on December 1 of each year from 1986 through 2003 for the three categories of offenses. The number of inmates in all three groups has increased substantially since 1986. The total prison population has grown by 144 percent.

During this same period, the number of 18- to 50-year-old adults in Washington State increased by 32 percent, indicating that population growth alone does not explain this increase in the number of persons in prison.

Violent offenders constitute the majority of the prison population; the number of violent offenders in prison grew by 113 percent since 1986. Although there are fewer drug offenders than violent offenders, this group has increased the

most during this time period—up 1,358 percent since 1986. Since 1992, the growth in the number of drug offenders has moderated. The property offender population grew steadily, almost doubling from 1,500 in 1986 to nearly 3,000 in 2003.

Exhibit 2
Prison Population by Offense Category

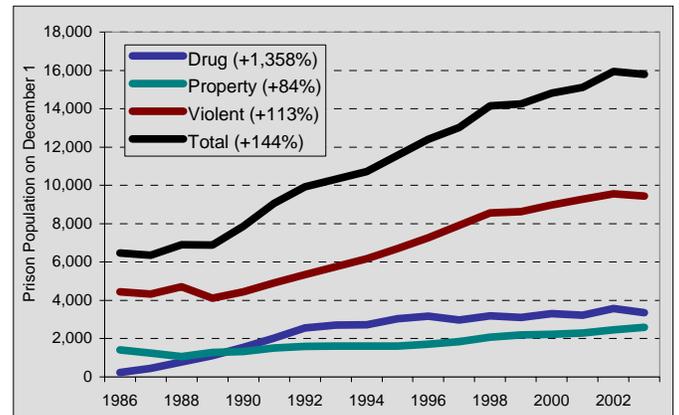
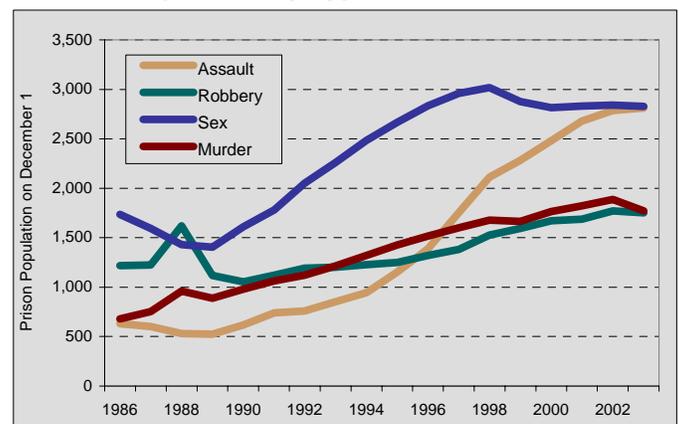


Exhibit 3 examines the violent offender prison population in more detail; it is separated into four offense types: assault, robbery, sex, and murder.

Exhibit 3
Prison Population by Type of Violent Offense



While the populations of all four groups increased, two groups showed sharp increases: sex offenders and those convicted of assault. The sex offender growth rate has leveled off since 1998.

Prison Population Growth Conclusions. The state's prison population has increased considerably since 1986. The drug offender population has increased the most, followed by violent and property offenders. Violent offenders comprise 58 percent of the current prison population compared with 66 percent in 1986.

⁹ In this study, offenders are classified by the most serious offense resulting in a conviction. The decreasing order of seriousness is as follows: murder, sex, robbery including kidnapping, assault including weapon offenses, property, and drug offenses. All data for this report are from DOC databases as of December 31, 2003.

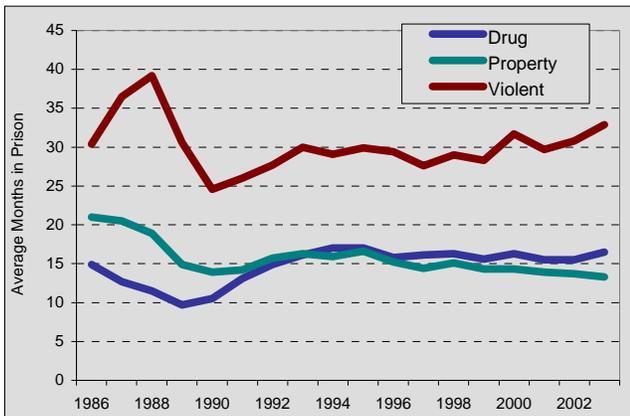
¹⁰ The effect these two factors have on prison populations is defined by a formula known as Little's Law: the prison population equals the number of offenders sentenced to prison each year (the arrival rate) multiplied by the average years spent in prison (length of imprisonment).

LENGTH OF IMPRISONMENT

In this part of the report, trends in length of incarceration are examined, based on the year offenders were released from prison.¹¹ Part II of this report will examine how these changes in the length of incarceration impact recidivism.

Exhibit 4 shows the average months of imprisonment for violent, property, and drug offenders.¹² Since 1986, the average length of imprisonment for violent offenders has increased by 8 percent from 30.4 months to 32.9 months. For drug offenders, the average length of imprisonment changed from 14.9 to 16.5 months, an 11 percent increase. During the same period, average imprisonment for property offenders decreased from 21.0 to 13.3 months, a 37 percent reduction.

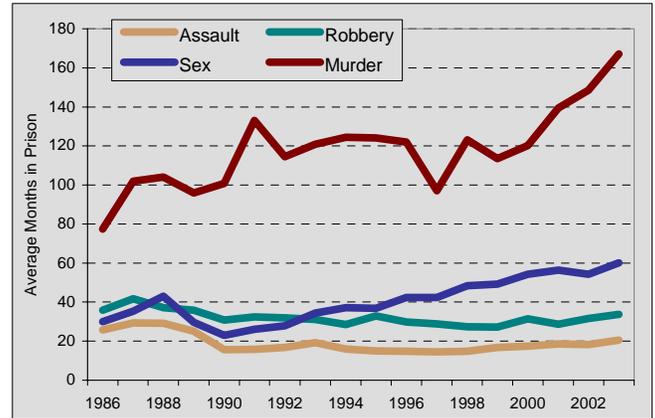
Exhibit 4
Average Months in Prison
by Offense Category



In Exhibit 5, we examine more closely the average months of imprisonment for the violent offenders. The length of incarceration for those convicted of robbery has decreased slightly since 1986. There has been a 21 percent decrease in prison confinement for assault offenders. Large increases in the length of incarceration for both

murder and sex offenders are evident. The average length of sex offender incarceration doubled from 30 to 60 months between 1986 and 2003. Imprisonment for murder more than doubled from 77 to 167 months.

Exhibit 5
Average Months in Prison
by Type of Violent Offense



Length of Imprisonment Conclusions. Since 1989, the length of imprisonment for drug offenders increased until 1994; since then it has remained the same. The average length of imprisonment for property offenders has decreased since 1986.

The length of confinement for assault offenders has decreased somewhat since 1986 while increasing substantially for both murder and sex offenders. The length of confinement for robbery offenders has decreased slightly.

These findings imply that the increases in prison populations for drug, sex, and murder offenders are at least partly attributable to increases in length of imprisonment for these offenders. Since the length of imprisonment for property, assault, and robbery offenders has not increased, the growth in these subpopulations results from increasing numbers of offenders sentenced to prison.

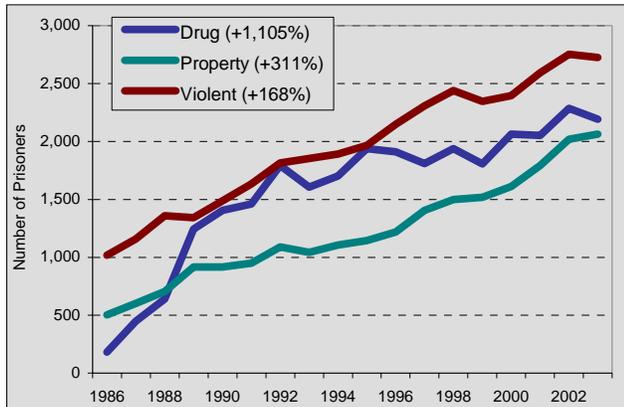
¹¹ The Washington State Caseload Forecast Council appropriately uses length of confinement by admission year to predict future prison populations. We use actual length of stay, because our goal is to estimate how the actual amount of time served affects recidivism.

¹² Length of imprisonment includes time actually incarcerated in prison prior to release to the community. Offenders serving life sentences are excluded from these averages.

PRISON ARRIVAL RATES

We now examine trends in the number of offenders sentenced to prison each year—the arrival rate.¹³ Exhibit 6 shows that between 1986 and 2003, the number of violent offenders sentenced to prison increased by 168 percent, property offenders by 311 percent, and drug offenders by 1,105 percent.

Exhibit 6
Number of Offenders Sentenced to Prison by Offense Category



The first question is whether these large increases in arrivals to prison are attributable to a higher percentage of offenders being sentenced to prison rather than to community supervision.

Exhibit 7 shows that the increase in the violent offender arrival rate is attributable to the increase in offenders sentenced for assaults—a 631 percent increase since 1986. Sex offenders sentenced to prison increased rapidly until 1992 and then declined. Robbery offenders sentenced to prison increased by 64 percent, and the number of murder offenders remained fairly constant.

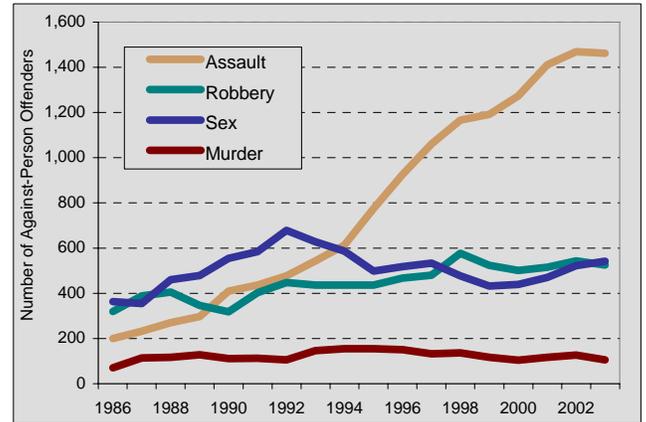
Exhibit 8 displays the percentage of convicted offenders receiving prison sentences from 1986 to 2002.¹⁴ The percentage of violent offenders sentenced to prison has increased from 35 percent in 1986 to 42 percent in 2002. The

¹³ Offenders given one of the two alternatives to a prison sentence—First-Time Offender Waiver and Special Sex Offender Sentencing Alternative—are included as convicted but not imprisoned. These alternatives will be analyzed in Part II.

¹⁴ Data for 2003 are not shown because ESSB 5990 (Chapter 379, Laws of 2003) eliminated community supervision for certain property offenses. These cases are not in the DOC databases, thereby the percentage sentenced to prison in 2003, based solely on DOC data, is not adequate.

percentage of drug offenders imprisoned increased rapidly until 1992 and then declined to about 26 percent in the last few years. The percentage of property offenders sent to prison has been steadily increasing.

Exhibit 7
Number of Violent Offenders Sentenced to Prison by Type of Violent Offense



Further analysis reveals that 46 percent of the growth in imprisonment for assault is attributable to Third Degree Assaults,¹⁵ which may be related to domestic violence.¹⁶ Another 33 percent is attributable to Violations of a Protection Order, which is also related to domestic violence.¹⁷

Exhibit 8
Percentage of Convicted Offenders Sentenced to Prison by Offense Category

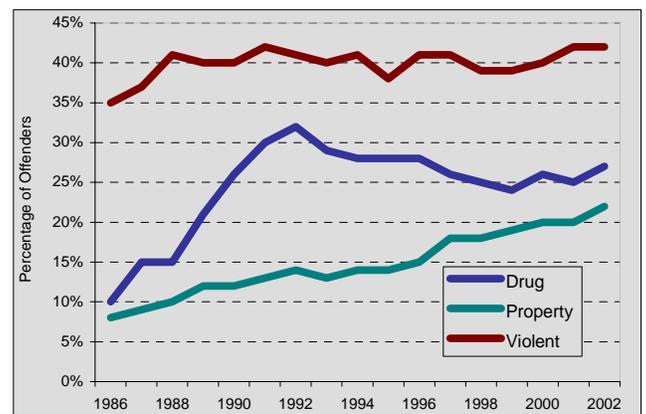


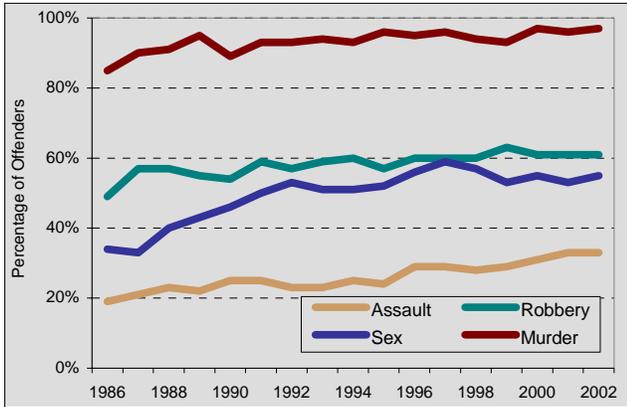
Exhibit 9 displays the percentage of sentences to prison for violent offenders. There is a steady increase in the percentage sent to prison for all four types of offenders.

¹⁵ RCW 9A.36.031.

¹⁶ RCW 10.31.100(2)(c). Legislation passed in 1984 requires the arrest of individuals accused of assault involving a family member or other individual with whom the offender is living.

¹⁷ RCW 26.50.110.

Exhibit 9
Percentage of Violent Offenders Sentenced to Prison by Type of Violent Offense



Prison Arrival Rate Conclusions. The arrival rates for drug, property, and violent offenders have been increasing since 1986. The increase in the property offender arrival rate is partially due to greater percentages of property offenders being sentenced to prison rather than community supervision.

An initial surge in prison sentences for drug offenders during the late 1980s is primarily due to increases in the percentage of drug offenders sentenced to prison. Since 1993 the percentage of drug offenders sentenced to prison has declined, moderating the arrival rate.

The increased percentage of violent offenders sentenced to prison is modest compared with the increased number of violent offenders sentenced to prison. As a result, the increasing prison arrival rate is mostly attributable to increases in the number of offenders convicted of violent crimes.

The increase in prison arrival rates for violent offenders is primarily attributable to increases in those imprisoned for assaults. There have been steady increases in the percentage of violent offenders sentenced to prison for sex, robbery, and assault offenses.

OFFENSE SERIOUSNESS AND OFFENDER SCORE

The groups of offenders examined thus far have been organized by the nature of the most serious offense for which the person is sentenced. Exhibit 10 displays the trend in the average SRA offense seriousness level.¹⁸ Since 1990, the

¹⁸ The seriousness level and offender score are treated as ordinal measures and averaged to simplify describing trends. The offense seriousness levels vary between 0 and 15, and the offender scores between 0 and 9.

average offense seriousness level has decreased from 3.4 to 2.9.

Exhibit 10
Trend in Average Offense Seriousness Level for Sentences

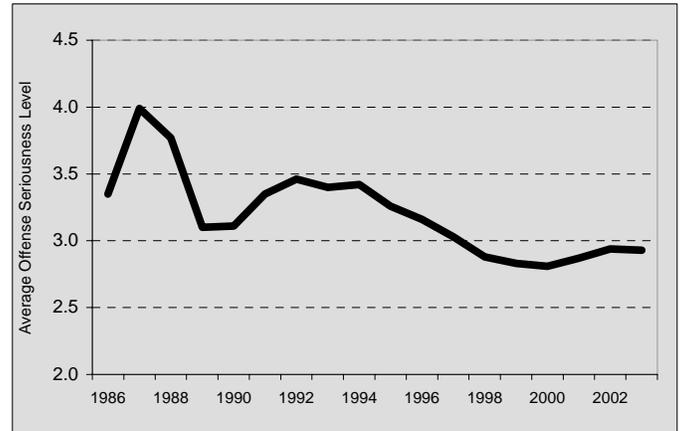
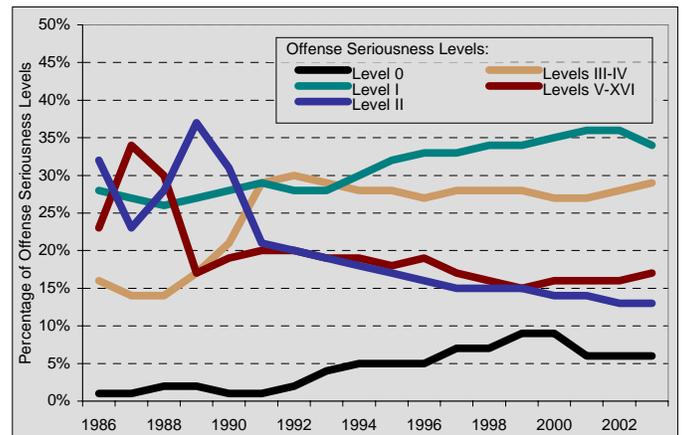


Exhibit 11 takes a closer look at the trend in offense seriousness levels.

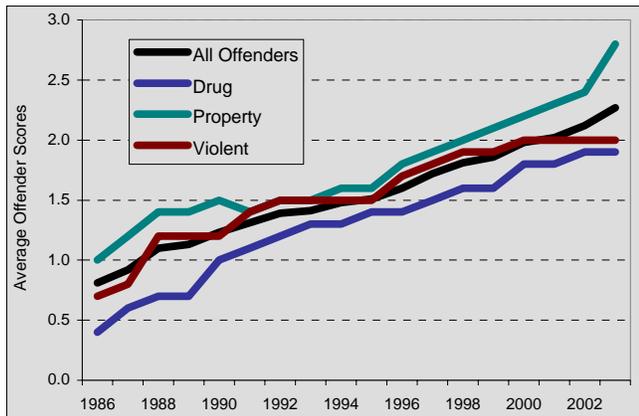
Exhibit 11
Trend in the Percentage of Offense Seriousness Levels



The exhibit shows the percentage of offender sentences in five groups of offense seriousness levels. The percentage of offenses that are not ranked in the SRA, offense seriousness level 0, has increased from 1 percent in 1986 to a little over 5 percent in 2003. Since 1990, the percentage of offenders sentenced with an offense seriousness Level I has increased, the percentage of sentences in seriousness Level II and Levels V–XVI have decreased, and percentages in Levels III–IV have remained constant. The increase in the percentage of seriousness Level 0 and Level I offenders is causing the decrease in the average seriousness levels shown in Exhibit 10.

Exhibit 12 indicates that the average offender score for all offenders has been steadily increasing—at least doubling from less than 1.0 in 1986 to over 2.0 in 2003. In addition, the average offender score is increasing for all three categories of offenders: drug, property, and violent.

**Exhibit 12
Trend in Average Offender Scores**



The increasing average offender score may be attributable to more accurate recordkeeping and to the accumulation of criminal history as the offender population is re-convicted of new crimes. The increases in the percentage of offenders sentenced to prison and their length of confinement may be partially attributable to these increasing offender scores.

CONCLUSIONS

The Washington State prison population has increased considerably since 1986, and this growth has outpaced the growth of the adult population. Washington's rate of prison growth, however, has been considerably slower than the national average during these same years.

Exhibit 13 summarizes the percentage change in prison population and key factors associated with the prison population.

**Exhibit 13
Summary of Percent Changes
Between 1986 and 2003**

Offender Category	Prison Population	Percentage Sentenced to Prison	Length of Time in Prison
Drug	+1358%	+174%	+10%
Property	+84%	+265%	-37%
Violent	+113%	+29%	+8%
Assault	+345%	+84%	-21%
Robbery	+44%	+32%	-6%
Sex	+63%	+69%	+101%
Murder	+161%	+14%	+116%
Total	+153%	+94%	-16%

The drug offender prison population has increased the most, followed by violent and then property offenders. As a result of these increases, violent offenders comprise 58 percent of the current prison population compared to 66 percent in 1986. Among the violent offender prison population, assaults have the largest increase, followed by murder.

The percentage of offenders sentenced to prison rather than community supervision has increased since 1986. The percentage of imprisoned drug and property offenders has increased the most.

Offenders imprisoned for sex crimes and murders have had the largest increase in length of confinement in prison (over 100 percent). Property, assault, and robbery offenders have had decreased lengths of confinement. As a result, the length of confinement for the total prison population has decreased by 16 percent.

These changes in the length of imprisonment and percentage of offenders imprisoned provide an opportunity to examine the impact of sentence lengths and imprisonment on recidivism. This topic will be examined in Part II (due June 30, 2004).

For questions about this report, please contact Robert Barnoski at (360) 586-2744 or barney@wsipp.wa.gov.

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**Washington State
Institute for Public Policy**

The Washington Legislature created the Washington State Institute for Public Policy in 1983. A Board of Directors—representing the legislature, the governor, and public universities—governs the Institute and guides the development of all activities. The Institute's mission is to carry out practical research, at legislative direction, on issues of importance to Washington State.