



Vermont

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Felony Sentencing In Vermont 2001-2006

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Felony Sentencing in Vermont

The Vermont Sentencing Commission was charged with determining whether or not there were differences in sentencing outcomes amongst the counties. Anecdotal evidence from practitioners suggested that certain counties were more willing to incarcerate than others. Race and gender discrepancies in sentencing have also been a concern in Vermont, however, no study had yet examined whether such discrepancies were real. Accordingly, the Commission asked the Center for Justice Research to design and conduct a study that would answer these questions.

The analysis conducted illustrates that county is a significant factor in both the decision to incarcerate as well as the length on the minimum and the maximum. The severity of the offense was significant in all three analysis as was gender. Race was significant on the IN/OUT decision but not in the length of the minimum or the maximum sentence. Criminal History was significant on the IN/OUT decision and the maximum time sentenced, but not on the minimum. The severity of the offense was the strongest predictor of the minimum sentence.

Research Design:

Vermont's counties vary widely with regards to crime. Some counties may only dispose of a few felony cases per year. Therefore, the research design had to span several years in order to find enough dispositions to make the research relevant. Further, the research had to be able to compare across specific felonies that were common to all counties. The design covered those case disposed of from 2001 to 2006 and the most common felonies disposed of for that time: Aggravated Assault, Aggravated Domestic Assault, DWI3 or higher, Marijuana Trafficking, Felony Sale of Cocaine, Grand Larceny, Forgery, Burglary, and Fraud.¹

The court data on that the Center maintains is charge based, not case based. The Center defined a case as all charges filed for arraignment on the same day. Those cases were then tracked through to disposition. Assuming the most serious charge in the case drove the sentence, the most serious charge disposed was used as the basis of analysis.²

Criminal Histories for the defendants were then ordered. At the time of the study, criminal histories were only available in paper format. Those histories were entered into a database that recorded all charges in the history (including those dismissed), the disposition, parole and probation violations, any failure to appears, and successful discharges from probation/parole. Criminal histories are also the best source for gender and race/ethnicity information, and those too were recorded.

¹ Escape was the 2nd most common felony in Vermont for the study period. However, the Sentencing Commission decided to exclude escape charges because one defendant could earn multiple charges for each day she failed to appear for a furlough assignment. This stacking of charges, the Commission concluded, made it impossible to judge the true nature of the offense.

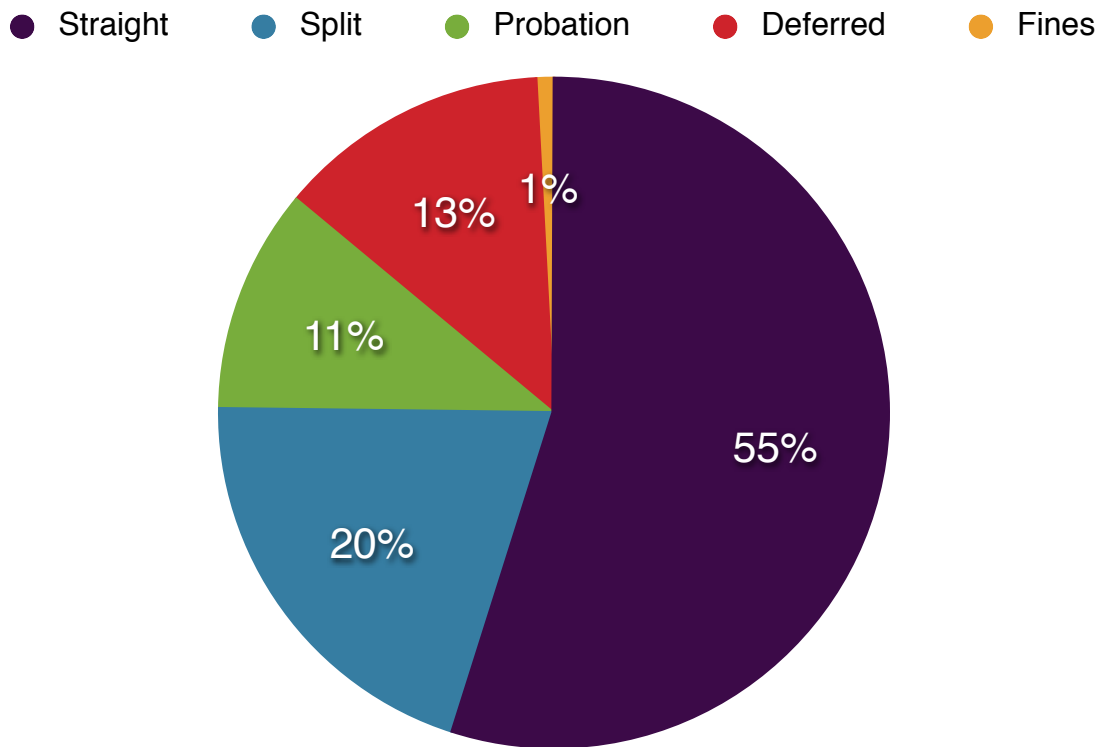
² The Vermont Courts have a seriousness ranking system that was used for the analysis. The more serious charges are scored higher than the less serious charges.

One data issue could not be resolved. That is the issue of sentences to pre-approved furlough. Defendants sentenced to pre-approved furlough do not actually serve time in DOC facilities. They may be sentenced to a work crew sentence, an alcohol program or some other rehabilitative program. In both the court data and in the criminal histories, sentences to pre-approved furlough appear as sentences to straight incarceration. Funds and time did not allow for a personal search of the individual dockets to determine the pre-approved furlough issue. Of the felonies studied, DWI3 is the most likely to receive a sentence of pre-approved furlough, all though it is theoretically possible in all of the studied felonies.

Descriptives:

Complete data was available for 3,650 cases. There were 135 Aggravated Assaults, 541 Burglary, 349 Domestic Assaults, 310 Drug cases, 1465 DWI3rd 248 Forgery, 385 fraud cases and 217 Grand Larceny Cases. Forgery, 385 fraud cases and 217 Grand Larceny Cases.

Straight incarceration was the most common sentence, with 2003 sentences. There were 739 split sentence, 394 probation sentences, 479 sentences deferred and 31 fine sentences imposed.

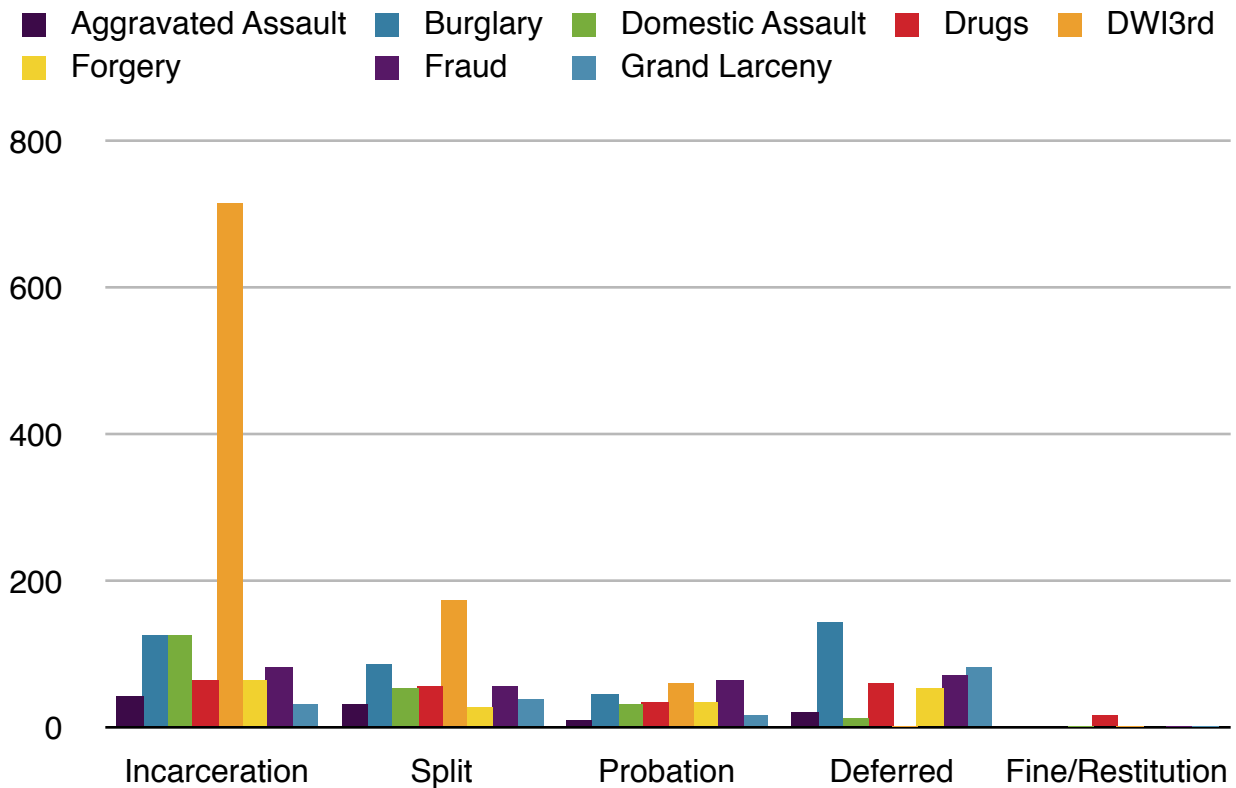


Criminal History

Nine hundred and ninety-five defendants had no criminal history. Of those with no criminal history, 310 (31.2%) were sentenced to incarceration, 179 (18%) to split sentences, 135 to probation (13.6%) 355 (35.7%) to deferred sentences and 15 (1.5%)

to fine and restitution. Those with no criminal history accounted for 74% of those sentenced to deferred, 48.4% of those sentenced to fine/restitution and 34.3% of those sentenced to probation.

There were 2595 first time felons. One Hundred and nine were convicted of Aggravated Assault, 407 of Burglary, 229 of Domestic Assault, 240 of Drugs, 958 of DWI3+, 189 of Forgery and 177 of Grand Larceny. One thousand two hundred and sixty-five were sentenced to incarceration, 532 to a split sentence, 314 to probation, 456 received deferred sentences and 27 received fine/restitution. The chart below shows the offense and the sentence type for first time felons.



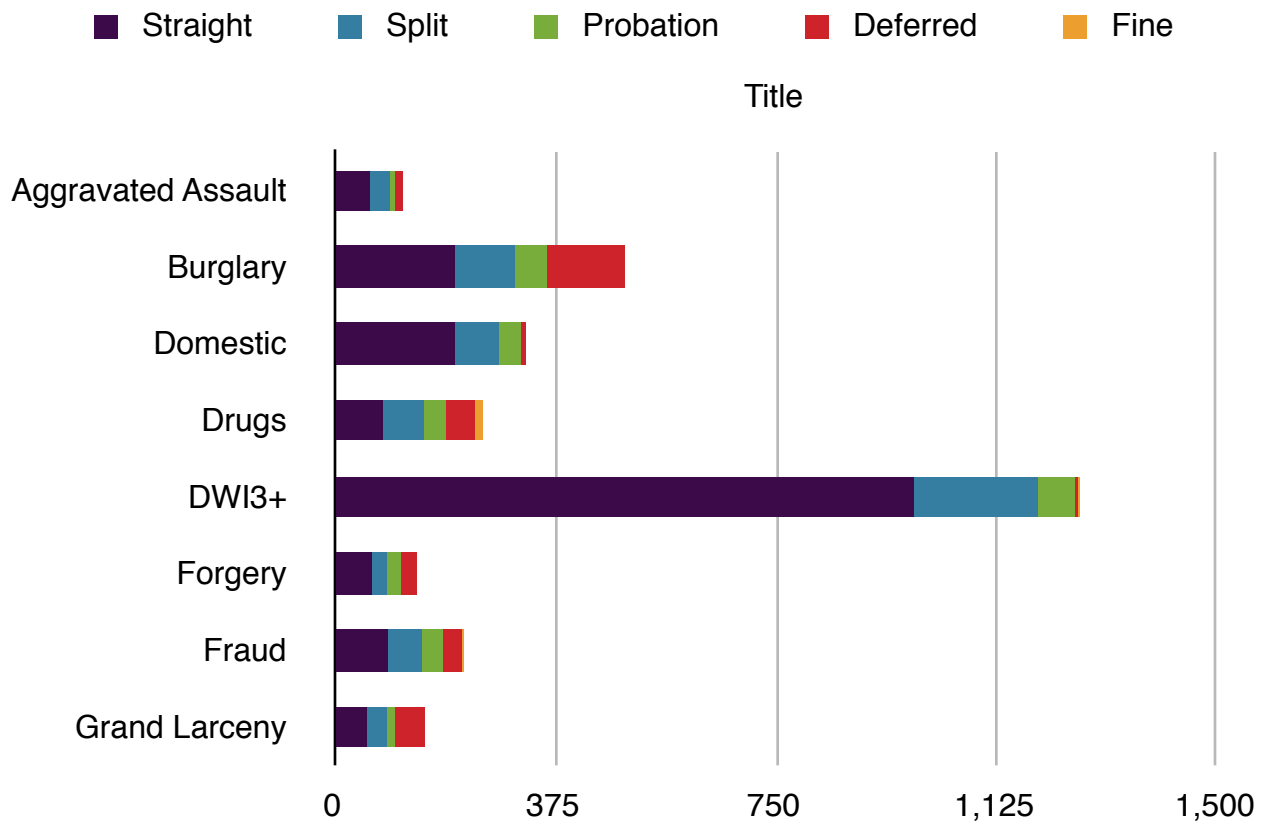
The average minimum sentence for first time offenders was 1.40 years, with the mode and median both 1.00 years. The average maximum sentence as 4.52 years with both the mode and median at 5 years.

Race and Gender

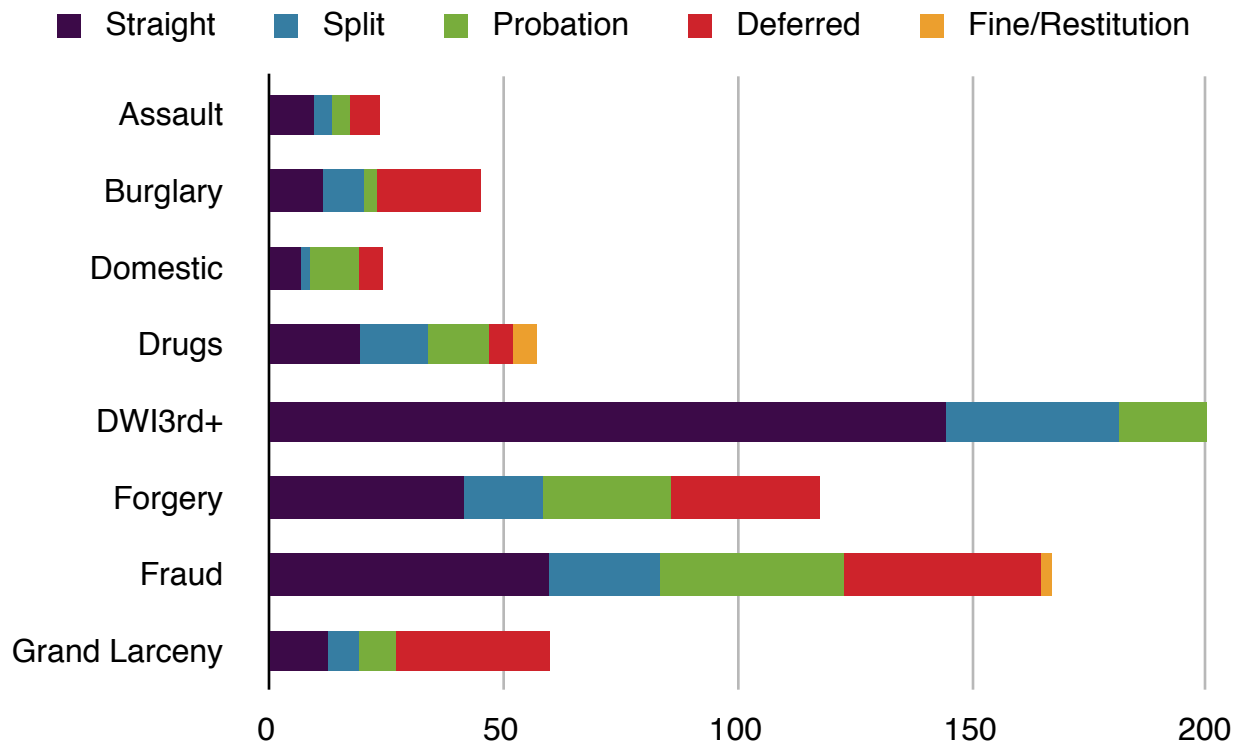
The study cohort included 2942 men (80.8%) and 699 women (19.2%). The most common offenses for women were DWI3+ (28.6%) grand larceny (28%)Fraud (23.7%). Although Forgery accounted for only 16.7% of all the convictions for women, women made up 47.7% of all the convictions. Three hundred and one women (43.1%) were sentenced to incarceration.

The most common final charge for men was also DWI 3+, with 1265 (43% of men) being convicted. Men accounted for 83% of all DWI3+ convictions. Four hundred and ninety-three (16.8%) men were convicted of burglary, and 326 (11.1%) of domestic assault. The charts below illustrate the charge, sentence by gender of the defendant.

MEN:

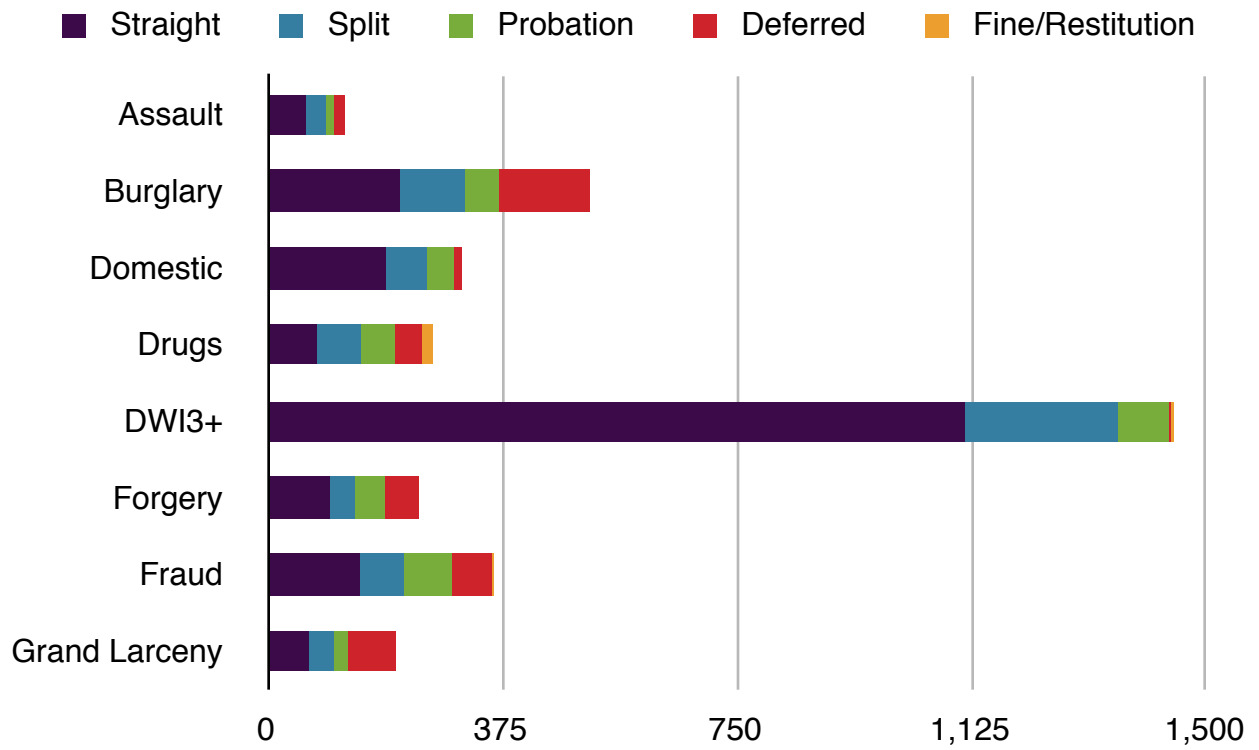


WOMEN

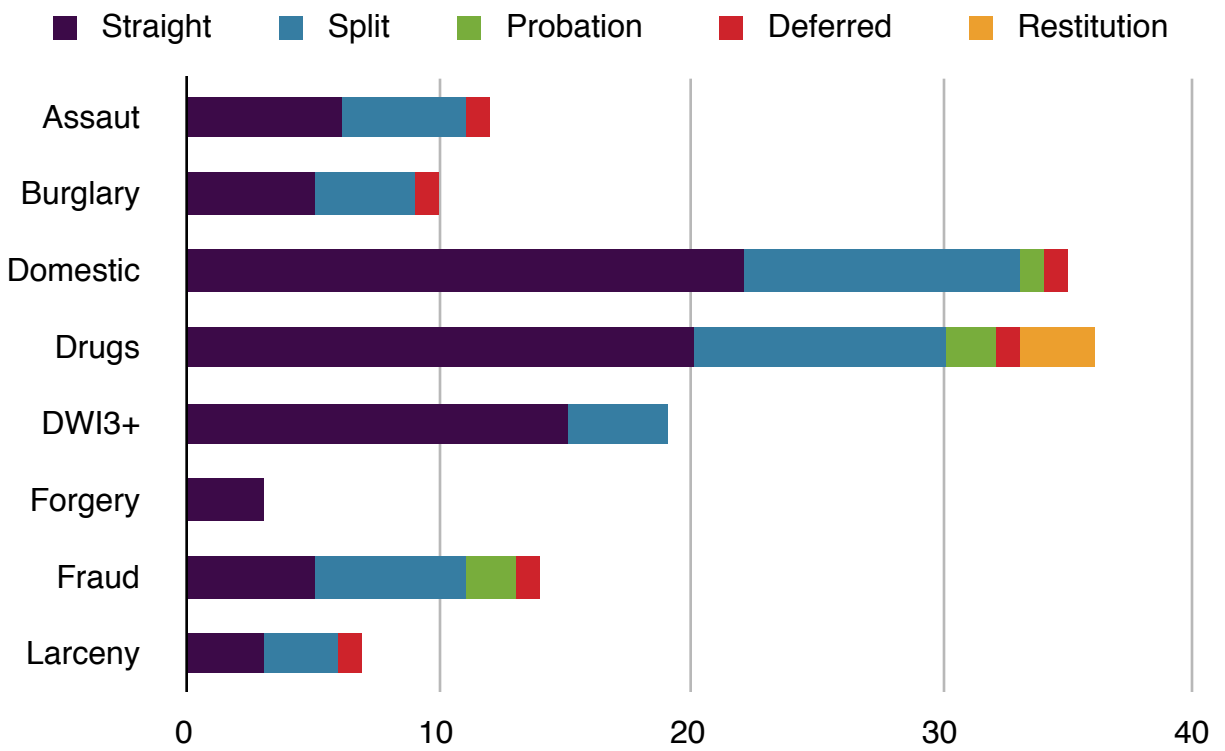


Race data was available either through the criminal history or the court data for 98.5% of the cases. (N=3595). The cohort included 3454 (96.1%) Caucasians, 128 African-Americans (3.6%), 9 Asians (.3%) and 1 Native American (.0%). The most common crime for Caucasians was DWI3+ (41.8%). The most common offenses for African-Americans were Domestic Assault (26.6%) and Drug offenses (25.0%). The chart below illustrates the charge, sentence and race of the defendant. For ease of analysis the race variable was coded as Caucasian and non-Caucasian.

Caucasian



Non-Caucasian



Analysis

Logistic regression was used to model the in/out decision and OLS regression was used to model the minimum and maximum time sentenced.

Variables:

Independent Variables:³

Criminal History	Calculated from prior records as [prior felony convictions + (prior misdemeanor convictions *5) + (prior probation violations*.5) + (prior failure to appears*.1)
Offense Severity	Ranking provided by the Vermont Courts.
County	Categorical data dummy coded and Chittenden County as the reference category (largest N).
Race	Determined from Criminal Histories and Court Data White =1, Non-White =0. Categorical, White used as reference category.
Gender	Determined from Criminal Histories and Court Data. Male =1 Female =0. Categorical, male used as reference category.

Dependent Variables

In/Out	Sentences of straight incarceration and split sentences were considered In, coded 1. All other sentences were considered Out and coded 0.
Minimum Sentence	In years.
Maximum Sentence	In years.

³ The state of residence of the defendant was to be a variable. However, only 22 defendants were from out of state. Further, the state of residence was missing in 100 cases.

Logistic Regression In/Out Decision N = 3,650

The model correctly predicted that a defendant would be sentenced to incarceration 95.5% of the time, while it predicted that a defendant would not be sentenced to incarceration 23.8% of the time. The model's overall percentage was 78.4%.

Variable	Beta	s.e	p-value
Criminal History	.234	.018	.000
Severity	.028	.003	.000
County (df 11)	NA	NA	.000
Gender	-.564	.102	.000
Race	1.058	.277	.000

df= 14

Intercept = 1.164

Chi-Squared 628.959 $p = .000$

As expected, the legal variables of criminal history and charge severity were statistically significant. The legislature specifically asked if the county was significant, and it is. That significance may be due to organizational influences in the State's Attorney's office or within the courtroom itself. Further research is needed to determine the cause of the difference between counties. The extra legal factors of race and gender are also significant. In this model, women, holding all other variables constant, would be less likely to receive an incarceration sentence. Non-whites, holding all other variables constant would be more likely.

OLS Regression Minimum Sentence (Straight/Split Sentences) N=2,734

Variable	B	t	p-value
Criminal History	-.002	-.348	.728
Severity	.009	6.135	.000
<i>County *</i>			
Addison	-.258	-2.160	.031
Bennington	-.214	-.2580	.010
Cal/Essex	.342	3.586	.000
Frnk/Gl	-.410	-4.844	.000
Lamoille	-.114	-1.135	.256
Orange	-.333	-2.223	.026
Orleans	.149	1.404	.161
Rutland	-.275	-3.309	.001
Washington	-.612	-7.424	.000
Windsor	.410	3.980	.000
Race	.057	.496	.620
Gender	-.224	-3.512	.000

R² = .070

F= 14.560 p= .000

* Reference Category is Chittenden County

In determining the minimum time to serve, criminal history is not statistically significant. The severity of the offense is statistically significant, and for every .009 increase in the severity ranking, the minimum sentence would increase by one year. Indicating that it is the the severity of the offense that is really driving the minimum sentence. Race is not a significant factor in the sentence of the minimum, however gender is. Women receive less then men on the minimum, all other variables held constant. County is still generally a significant factor in sentencing. The reference county was Chittenden, the largest county.

Although, ANOVA indicates a significance level of .000 for the independent variables, the R² is very low. The model correctly predicts the variance in the sentence only 7% of the time. As the severity of the offense is the strongest predictor, it may be that factors related to the crime, such as victim's statement use of a weapon or extent of injuries are

also driving the sentence. The data set did not include these variables, and they are to some extent, impossible to determine from the charge alone. For example, there is no charge difference for burglary of a dwelling at night vs. daytime. Future studies should try to include more legal variables to get a more accurate model of prediction.

OLS Regression Maximum Sentence (Straight/Split Sentences) N=2,734

Variable	B	t	p-value
Criminal History	.025	2.171	.030
Severity	.010	2.655	.008
<i>County*</i>			
Addison	-1.042	3.317	.001
Bennington	-.494	-2.271	.023
Cal/Essex	-.088	-.351	.726
Frnk/Gl	.213	.961	.337
Lamoille	-.307	-1.164	.244
Orange	-1.251	-3.179	.001
Orleans	.466	1.671	.095
Rutland	-.470	-2.154	.031
Washington	-.128	-5.94	.553
Windsor	-.907	-3.357	.001
Race	.033	.117	.907
Gender	-.363	-2.166	.030

R²= .023

F=4.569 p=.000

* Reference category is Chittenden County

Criminal History is statistically significant in the maximum time sentenced, as again is the severity of the offense. The severity of the offense contributes more to the overall maximum sentence than the criminal history. Overall, the county is significant as well. Race is not statistically significant, but gender is again, with women receiving less time than men.

As with the model for the minimum sentence, the model for the the maximum sentence the ANOVA significance was .000 but the R^2 was low, indicating that the model correctly predicted the variance in the sentence just 2.3% of the time. Again, this indicates other factors not accounted for may be contributing to the maximum sentence.

Conclusion:

The Vermont Legislature was interested in determining if there was a difference amongst the counties in sentencing, and there is. Whether the difference is acceptable is for policy makers to decide.

The study raised many new questions, especially in the role of race in sentencing. It was suggested by policy makers that race may be acting as a proxy for ties to the community on the IN/OUT decision. That should be explored further. However, it should be noted that only 22 of the final cohort had residences outside the state of Vermont.

That criminal history was not significant on the minimum sentence was not surprising. It is significant on the IN/OUT decision, reflecting perhaps a history of non-incarcerative sentences and the need to increase the sanctions of a particular defendant. Criminal History is statistically significant in the maximum sentence, again, perhaps reflecting a sense of judicial frustration with the individual defendant.