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Research on Sentencing Reform

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Introduction

From its beginning, Criminology has focused on the issue of sentencing. The work of the Italian philosopher and jurist Cesare Beccaria, *On Crimes and Punishments,*[1] is frequently cited as one of the most significant contributions in the history of that field. Beccaria's essays were an effort to provide a new model for the operation of a humane and just criminal justice system. This small work not only influenced the development of a new area of academic study, but also had profound influences on the emerging democracies of the Western world.[2] In this work, Beccaria elaborated a fundamental principle for understanding sentencing: the principle of proportionality -- punishments were to be in proportion to the crimes. Beccaria also provided a model for punishment whereby the pain associated with the punishment should be just slightly greater than the pleasure derived from the criminal behavior. Using this utilitarian model, Beccaria argued that this level of punishment would be efficient in reducing the crime, but would also be fair in that its level could be justified by the actions of the offender. For the next 150 years in Criminology and in law, efforts were made to develop a system of sentencing that reflected this fundamental principle and insight. The neo-classical school of criminology, which followed Beccaria, sought to refine this by identifying categories of individuals for which the model was not appropriate, e.g., the mentally ill, the very young, the disabled; categories of citizens to whom the model was thought to be inappropriate. Thus emerged the notion that the nature of the offense and selected characteristics of the offender should determine criminal sentencing.

The realist school of jurisprudence, founded by Roscoe Pound (1920), focused attention

on how these principles, on which many could agree, were actually applied. Gradually, a body of research began to emerge that questioned whether the Beccarian principles had in fact been achieved in the United States. Early studies in plea bargaining and later a series of works on the impact of factors such as race on sentencing actions, resulted in finding that our system of sentencing was neither consistent nor fair, and was in need of substantial reform. Two modern works forcefully documented this position. The work by Judge Marvin Frankel, *Criminal Sentences: Law Without Order*,[3] presented a forceful argument for the proposition that sentencing, even in our supposedly best courts, was highly variable, strongly influenced by personal characteristics of the offender, and was affected strongly by the quality of representation that the defendant received. Frankel not only identified this problem but also developed a specific solution to address it -- the sentencing commission. The second work to emerge during the period was a report from the National Academy of Sciences, *Research on Sentencing: The Search for Reform* (1983)[4]. This report brought together leading social scientists and lawyers under the direction of Alfred Blumstein, to document the current level of knowledge about sentencing, to address the then established notion of unwarranted disparity in sentencing, and to begin to outline a program of research to address sentencing reform. This publication, now 25 years old, continues to be one of the primary sources for organizing our thinking about the nature of research on sentencing. Since the 1970s, research on disparity in sentencing has continued, but much more has been done, and more attention has been paid to, the issue of sentencing reform. Unlike the earlier period heralded by Beccaria, the contemporary period of focus on sentencing reform has attempted to identify the needed reforms through research, and to assess alternative reforms by testing them in the real world. These reforms have followed two basic

approaches. One approach includes various efforts to impose mandatory sentences. These largely legislative efforts address disparity in sentencing by mandating certain penalties or by mandating that certain individuals convicted of certain crimes be penalized in ways different from the past. The second approach has been the one argued by Judge Frankel, that of sentencing guidelines. Sentencing guidelines have emerged since the 1970s and now exist in 23 states in a variety of forms. Guidelines and the variety of ways of mandating sentencing represent the two major approaches to sentencing reform that have been tried over the last 25 years. In response to the many recent efforts to change sentencing, the National Institute of Justice (NIJ), with support from the Office of Correctional Programs, instituted a series of research efforts to assess some of the most prominent sentencing reforms of the 1980s and 1990s, and to provide guidance for future improvements in sentencing practices. This paper summarizes the results of the NIJ sponsored efforts and offers suggestions based on this research for a sentencing research agenda.

Sentencing Disparity

What do we know about unwarranted disparity?

Criminal sentences should vary. No one expects that the sentence given to a person convicted of a petty arson should be similar to a sentence given to someone convicted of armed robbery. The concern has never been with the disparity in sentencing but with what has come to be called unwarranted disparity -- that is disparity that is not associated with legally relevant factors. In the last 25 years, the research on unwarranted disparity has gone through a number of stages that speak more to the increase in methodological rigor than they do to the fundamental question: do social factors (especially race) play a role in sentencing, and if so, what is that role?[5] There are other non-legal, social factors that have an impact on sentencing, most notably gender. Consistently, women are sentenced to less punitive and to lower lengths of sentences than males.

Yet this gender disparity has received less attention from researchers and few people believe this is a problem that needs addressing. In contrast, the problem of race and ethnicity in sentencing is uniformly seen as one that does need to be corrected. The extant research suggests that the decision to incarcerate is driven primarily by, if not exclusively by, legally relevant characteristics. On the other hand, the length of sentence for those incarcerated is largely determined by legally relevant factors, however, race and ethnicity do play a role in this part of sentencing.

The National Center for State Courts (NCSC) has completed research on the variation in sentencing across jurisdictions.[6] They sought to determine whether variations in the policies in states with regards to sentencing practices were associated with different levels of incarceration and other forms of punishments in those states. Using three indicators of the willingness of the state to incarcerate offenders (the number of state prisoners per 100,000 state population, the number of state trial court commitments per 100,000 population, and the per capita state expenditure for corrections), the 50 states were classified into three categories of most punitive, moderately punitive and least punitive. Within sampled states in each of these categories, jurisdictions were selected for more careful analysis. Within these jurisdictions, approximately 300 cases were sampled and analyzed regarding processing and, in particular, to outcomes. The NCSC's report conclusively demonstrated that across 11 courts in states that vary along this dimension of punitiveness, the same criteria were correlated with making decisions regardless of the punitiveness of the states. While there was some variation in the likelihood of offenders being sent to prison across this range of punitiveness, these differences were not related to the punitive policies. However, when the researchers addressed the issues of sentence length imposed, there was a "profound" difference in the sentence length across states that varied in punitiveness policies.[7] The National Center found a set of factors that are consistently related to

the sentence length, but these were greatly enhanced by the philosophy or punitive level within that jurisdiction. The conclusion from this research, which is consistent with other contemporary work, is that the decision to incarcerate is one that is driven primarily by factors that are ordinarily described as legally relevant, whereas a wide range of other characteristics (system and individual level), have an impact on sentence length. These variations in sentence length, particularly those due to systematic disparities, should be at the core of current efforts to control unwarranted sentencing variation.[8]

While researchers have focused on the issue of unwarranted disparity in achieving a system of fairness and efficiency, many believe that the public has been more concerned with the sentencing of those offenders committing the most serious crimes. As violent crime increased from the late 1980s into the 1990's, substantial pressure began to build on politicians to address the issue of the repeat and violent offender. In response, various mandatory sentencing efforts were undertaken. Two of the most prominent in recent years have been the *violent offender incarceration* and *truth in sentencing* (VOI/TIS) statues, and various *three strikes* laws. In the next section we will review research addressing three strikes legislation, followed by an analysis of VOI/TIS research.

Mandating Sentencing

Three Strikes and You're Out

In the early 1990s, in response to a particularly brutal crime committed by a repeat offender, California enacted one of the most widely noted laws on three strikes. The statute mandated a 25-year sentence for individuals convicted of a third felony. During the course of the development of this statue, NIJ funded researchers at the RAND Corporation to analyze the

potential benefits and costs of this form of mandatory sentencing.[9] The researchers concluded that, if fully implemented, the new law could reduce serious felonies committed by adults by 22 to 34% below what would have occurred under the then current regime. Their analysis predicted that in such a situation two thirds of the crime deferred would be property crimes, and one third would be violent crime. They further estimated that this crime reduction would cost the state of California as much as $6.5 billion. In order to achieve this level of spending on criminal justice and corrections, the RAND researchers estimated the need for substantial reductions in state support for higher education and many other social services. Consequently, it was anticipated that while the three strikes law in California, and in other jurisdictions, would reduce crime, it would also be very expensive to implement, and would result in substantial increases in the felony prisoner population size, including large numbers of individuals serving essentially life sentences.

The research on the impact of three strikes has demonstrated more modest outcomes. The National Council on Crime and Delinquency (NCCD) conducted an analysis that looked at the implementation of three strikes type legislations throughout the United States and focused attention on its implementation in California.[10] NCCD noted widespread adoption of three strikes legislation and the existence in many jurisdictions of legislation already on the books that were functionally equivalent to three strikes legislation. However, using aggregated data on convictions, sentences and crime rates, NCCD noted a very modest, if any, impact on these factors in California. NCCD further noted that the implementation of three strikes legislation in California introduced another source of sentencing disparity -- as a small number of counties used the legislation aggressively and most others used it hardly at all. The most comprehensive

and thoughtful analysis of the impact of the three strikes legislation has been conducted by Elsa Chen.[11] Chen's work provides more detailed assessment of the three strikes impact and, as we will discuss later, the impact of truth-in sentencing. Chen's focus is on the volume and composition of correctional populations as a result of three strikes legislation. Chen analyzed the effects of three strikes laws nationwide with special emphasis on the states of California and Washington. Her work demonstrated two findings that are consistent with the NCCD findings on three strikes impact: 1) that few states had significantly utilized the three strikes prosecutions; and consequently, 2) the impact in those states was, at best, modest. In the state of California, where most attention had been focused, the impact of three strikes was also modest primarily because, again, few jurisdictions in the state had utilized three strikes provisions. Overall, Chen concluded that the three strikes legislation had had little meaningful impact on prosecution, sentencing and corrections, and that this approach to correctional reform was unlikely to have these consequences in any jurisdiction. Chen's analysis, which incorporated careful collection and review of comparable data across states and within these jurisdictions, represents a significant contribution to our understanding of the impact of three strikes laws.

In summary, the research on three strikes legislation clearly indicates that three strikes was a response to sentencing reform that was not well supported by prior research, and that its development did not benefit from our understanding of the potential of using sentencing to increase prison populations and decrease crime. The estimates provided by the RAND Corporation were worst-case scenarios that never materialized. Finally, even in California and Washington where there has been some utilization of three strikes, implementation of this law

has been uneven, modest in numbers, and the impact on crime and prison populations has been far less than expected.

Violent Offender Incarceration/Truth-In-Sentencing (VOI/TIS) Legislation

NIJ's research portfolio of evaluations of VOI/TIS legislation includes a RAND Corporation national evaluation of VOI/TIS;[12] an assessment of the impact of VOI/TIS on local criminal justice systems also conducted by RAND;[13] and consideration of the truth and sentencing developments in the state of Virginia conducted by the National Center for State Courts (NCCS) and the Virginia Criminal Sentencing Commission (VCSC)[14]. These three reports provide us with a careful consideration of the implementation and impact of VOI/TIS nationally, within one state, and at the local criminal justice level. The studies identify a number of issues raised in trying to evaluate the impact of this particular legislation. Established in 1995 and administrated by the Office of Corrections Program (OCP), the *violent offender incarceration truth-in sentencing program* provided funds to state and local authorities to defer costs associated with compliance with the program, including increased correctional costs. Since VOI/TIS emerged at a time when many states were concerned with rising levels of violent crime, one issue was whether state law makers were encouraged to implement legislation to incarcerate violent offenders more frequently, or to require they serve 85% of their announced sentence, in order to qualify for the VOI/TIS grants. The RAND research concludes that the answer is probably no -- the Federal legislation was not a primary factor in the enactment of these types of laws at the state level. They conclude that the changes in the law and practice were much more likely to be generated by local conditions and cases. Still the question can be asked, did the

funds, whether they brought about changes in law or practice, impact the level of incarceration or the term of sentence for violent offenders? The RAND answer to both of these questions is also no. The findings failed to demonstrate that the law substantially increased prison capacity, nor did it result in longer terms served. This is consistent with the work of Chen, who, using a more quantitative approach, found similar minimal impacts. These results appear to be inconsistent with the observation that prison capacity expanded during the time that VOI/TIS dollars were allocated to states. In fact, the research suggests that prison capacity increases did not result in increased levels of incarceration, as other forms of supervision were substituted for what could have been an expanded prison population. The RAND and Chen results are consistent, on these points and leave little doubt that while the VOI/TIS legislation has provided funding for states, it has had minimal impact on VOI/TIS type state legislation; and it has not resulted in significantly more offenders in prison through longer sentences.

RAND's work on the implementation of VOI/TIS at the local level helps us understand how these aggregate findings at state and national levels occurred. This report notes that any criminal justice legislation has to be operated through the behavior of local criminal justice actors. The local norms that guide these actors will greatly determine the impact of legislation.[15] The RAND work which studied implementation of VOI/TIS in a number of jurisdictions across the United States, found substantial variation in its implementation, and therefore, considerable variation in its impact. While this could change if pressure for harsher treatment for offenders continues, at least to this point, the relatively minor impact of VOI/TIS on its primary expected outcomes (incarceration levels and length of term for violent offenders) can best be understood in terms of the balancing of system pressures that occur at the local level. Careful documentation of

this in multiple local jurisdictions provides us with significant insight into the way in which prosecutors, defense attorneys, judges and others interpret the meaning of the importance of cases, and modify charging and sentencing practices to assure that cases receive what is considered the appropriate sentence within each jurisdiction.

The research in Virginia by the NCSC offers us insight into how careful attention to the implementation of a sentencing strategy can result in achieving the goals policy makers' set for sentencing reform. In Virginia, truth in sentencing became effective on January 1, 1995. As a result of a series of legislative and administrative actions, parole was abolished, good time allowances were significantly reduced almost to the point of being eliminated, and prison terms for violent and serious offenders were increased substantially. Virginia implemented the full range of laws and policies that were anticipated by VOI/TIS, so that new admissions would serve at least 85% of their sentence. The striking finding from the evaluation of the experience in Virginia is how successful their efforts have been. Indicators of this include compliance with the increased sentences for violent offenders remained constant after the enactment of the truth-in-sentencing legislation, the rates of trial and conviction remained relatively constant, and informal indicators suggest that local criminal justice practitioners did not seek to avoid the consequences of the changes. Although the predicted increase in the prison population did not occur (primarily due to the decline of arrests in the state) the overall pattern of activities following truth-in-sentencing were consistent with the goals of state criminal justice policymakers. The NCSC evaluation points to one overriding element to explain why Virginia appears to be one of the most substantial exceptions to the general finding on the impact of truth-in-sentencing and violent offender incarceration legislation. That is, the extent to which

Virginia relied upon extensive and careful data analysis to guide the development and implementation of the statutes and policies. Virginia created a sentencing commission that continued existing voluntarily guidelines, but which generated substantial information to assist in setting the appropriate terms, to provide correctional impact statements, and to anticipate problems that might emerge from the implementation of the law. The compliance rate in Virginia remained constant as judges became convinced that deviation from sentencing guidelines would be documented and used in consideration of their reappointment. Thus, the combination of legislative and administrative changes, coupled with a substantial research capability to assess the appropriateness of changes and to monitor their implementation, resulted in a state level demonstration that substantial changes in sentencing practices can be achieved when they are guided by competent and comprehensive research efforts. The combination of VOI/TIS and a strong sentencing guideline, even though voluntary, accounts for the impact of sentencing reform felt in Virginia.[16]

Sentencing Guidelines

Since Judge Frankel's work in 1972, there have been substantial developments in the area of sentencing guidelines. Most often noted are those in Minnesota and the Federal sentencing guidelines. NIJ has not undertaken a comprehensive evaluation of all sentencing guideline systems, but sponsored reviews of guidelines in North Carolina and Florida. The Research Triangle Institute (RTI) conducted the North Carolina evaluation,[17] while ABT Associates conducted evaluations of Florida and North Carolina.[18] Both North Carolina and Florida had as a goal the use of sentencing guidelines to increase the time served by violent offenders. The ABT

analysis, using interrupted time series techniques, concludes that this goal was achieved. While the effect in Florida was more substantial than in North Carolina, both were able to achieve their policy goal. Similarly to Virginia, the ability to achieve this goal is largely attributable to the operation of a guideline system. While at the time of the evaluation the Florida guideline system was less developed than some other states, nonetheless, it provided a mechanism to achieve the legislature's desired impacts. In North Carolina, the goal was to increase the proportion of violent offenders who received a term of incarceration, and to decrease the proportion of property and drug offenders receiving incarceration, as well as decreasing their terms. All of these goals were substantially achieved. The Virginia, North Carolina and Florida experience demonstrate that when a state has a clear policy goal, has an established mechanism to collect and analyze data relative to that criminal justice goal, and has an established system to monitor the implementation, substantial changes in sentencing practices can be achieved. The absence of these conditions, as observed in the other evaluations of sentencing reforms discussed above, almost always result in less satisfying outcomes for policy makers.

The RTI evaluation of North Carolina focused on the effect of the introduction of sentencing guidelines on the processing of cases in the criminal justice system. While the research found some processing changes associated with implementing the guidelines, the overall conclusion was that the impacts were minimal. The exception was when they considered prison infractions. Some critics of structured sentencing have argued that as one structures sentencing (either through mandatory sentencing or guidelines), an unintended impact could be the diminution of incentives for good prisoner behavior, and a more difficult situation for prison administrators. The RTI analysis of infractions shows that, following the introduction of

guidelines, the infraction rate increased, as did the assault rate. This suggests that jurisdictions implementing structured sentencing do need to pay attention to the impact it may have on prison management, and inmate and staff safety.

Other Unintended Consequences of Sentencing Reforms

Sentencing changes that result in longer sentences will result in prisoners spending substantially more of their life in a prison setting. When that happens, some unintended consequences (like the increase in prison infractions noted above) may occur. Two pieces of research funded by NIJ address the unintended health care implications of sentencing policies like three strikes, truth-in-sentencing, and other efforts to mandate longer sentences for offenders. While neither project directly addressed the effects of sentencing changes, they did seek to understand how health care costs change as a prison population ages. ABT Associates sought to develop a model to project health care costs by using data on federal prisoners to model the course of 200 specific medical conditions.[19] Their goal was to use the condition specific models to develop a comprehensive model that could be used to assess the health care obligations associated with different patterns of prison terms. While this was not accomplished, this work did advance our thinking about such models. Instead of assuming that aging populations in prisons have a direct and continuously increasing impact on prison health care budgets, the authors point out two important mitigating factors. First, offenders in prisons are very likely to be in a healthier environment than they are when they are not incarcerated. Their medical care, lifestyle, and eating habits are healthier. The longer someone is in prison his or her health may actually improve, relative to what it would be outside. Second, prisons with rapid turnover may

experience high health care costs because, during even short stays, medical conditions that may be chronic will be addressed. Thus, institutions with high turnover may have very high per capita costs, and while those with stable populations, lower per capita costs. These insights and the data this study provides on the occurrence of those medical conditions frequently found in inmates, provide a firm foundation for future work on this issue.

One aspect of prisoner health care that is likely to increase as prisoner populations age is the need for assistance with activities of daily living (ADL) (for example, bathing, eating, dressing, etc.). Research directed by Mara, McKenna & Sims address this consequence of the graying of the prison population.[20] Using a national mail survey and a detailed study of correctional institutions in Pennsylvania, the authors' estimate that almost all prisons have inmates with ADL needs. Overall, about 2% of inmates have such needs, and the relative percentage of those with ADL needs increases with age, with close to 25% of those 65 and older needing this assistance. The authors also reviewed the Pennsylvania's healthcare provision models to respond to ADL needs, and discussed their relative strengths and weaknesses, as well as suggesting strategies which correctional policy-makers should consider in dealing with the increasing number of aged prisoners. As with the ABT research, this work is not directly related to sentencing reform, but rather, establishes a foundation to develop better ways of responding to an older prisoner population, regardless of the reasons why this demographic of prisoners is changing.

Conclusion

From this review of sentencing research conducted over the last five years, we can

conclude the that while incarceration decisions are driven by legally relevant factors, sentence disparities for those incarcerated do occur as a result of system and individual characteristics. Further, measures sought by state and Federal lawmakers to "get tough on crime" by implementing three strikes laws have shown to have a minimal impact on crime and the prison population due to uneven and under-utilization of the law. More importantly, even if such laws were uniformly implemented, the lessons revealed in the violent offender and truth-in-sentencing research show that implementing reforms guided by competent and comprehensive research efforts will result in substantial and meaningful changes in sentencing practices. If policy makers want to change who goes to prison for how long in a way that might reduce crime with minimal costs they will need to be guided by research on the sentencing process in their jurisdiction and assure that as change is implemented it is carefully monitored. Whether one agrees with the goals the State of Virginia established for its sentencing reforms, it is clear they achieved their goals when other states did not because they used data and research to develop, guide and modify their policies and practices.

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[1] Beccaria, Cesare, marchese di, *On Crimes and Punishments*, 1963.

[2] For example, in his biography of John Adams, David McCullough notes that only five years after the publication of this work Adams used it to explain why he would accept the assignment as the attorney for the British troops who fired on the colonialists at the Boston Massacre. *John Adams*, New York: Simon & Schuster, 2001.

[3] Marvin E. Frankel, *Criminal Sentences: Law Without Order*, New York: Hill and Wang, 1973.

[4] Alfred Blumstein, Jacqueline Cohen, Susan Martin and Michel Tonry, *Research on Sentencing: The Search for Reform*. Washington DC: National Academy Press, 1983.

[5] Marjorie S. Zatz, "The Changing Forms of Social/Ethnic Diseases in Sentencing," *Journal of Research in Crime and Delinquency* 24:69-92.

[6] Hanson, Roger A., Thomas H. Cohen, and Brian J. Ostrom *Criminal Sentences Under Alternative State Punitive Policies*, National Institute of Justice Grant No. 94-IJ-CX-0040. Williamsburg, VA: National Center for State Courts, 2000.

[7] pg. xiii

[8] The most obvious issue is the variation in federal sentencing guidelines for offenses involving

crack and powder cocaine.

[9] Greenwood, Peter W., C. Peter Rydell, Allan F. Abrahamse, Jonathan P. Caulkins, James Chiesa, Karyn E. Model, and Stephen P. Klein. *Three Strikes and You're Out: Estimated Benefits and Costs of California's New Mandatory-Sentencing Law*. Santa Monica: RAND, 1994.

[10] Austin, James, John Clark, Patricia Hardyman and D. Alan Henry. *The Impact of "Three Strikes and You're Out"*. National Institute of Justice Grant No. 96-CE-VX-0009 San Francisco: The National Council on Crime and Delinquency, 1999.

[11] Chen, Elsa. *Impacts of Three Strikes and Truth in Sentencing on the Volume and Composition of Correctional Populations*. National Institute of Justice Grant No. 99-IJCX-0082, 2000.

[12] Turner, Susan, Terry Fain, Peter W. Greenwood, Elsa Y. Chen, and James R. Chiesa. *National Evaluation of the Violent Offender Incarceration/ Truth-in-Sentencing Incentive Grant Program*. Prepared for the National Institute of Justice Grant No. 96-CE-VX-0006. Santa Monica, CA: RAND, 2001.

[13] Merritt, Nancy, Susan Turner, Peter Greenwood and Terry Fain. *The Impact of Violent Offender and Truth-in-Sentencing Legislation: How the Local Criminal Justice System Responds to the Challenge*. National Institute of Justice Grant No. 96-CE-VX-0001. Santa Monica, CA: RAND, 1999.

[14] Ostrom, Brian J., Fred Cheesman, Ann M. Jones, Meredith Peterson and Neal B. Kauder. *Truth-in-Sentencing in Virginia: Evaluating the Process and Impact of Sentencing Reform*. National Institute of Justice Grant No. 96-CE-VX-0005. National Center for State Courts and the Virginia Criminal Sentencing Commission, 1999.

[15] For a classic discussion of this see James Eisenstein and Herbert Jacob, *Felony Justice*. New York: Little, Brown and Company, 1977.

[16] This does not mean these reforms are themselves good, just that this approach allows states to better achieve the sentencing outcomes they have decided are desirable.

[17] Collins, James J., Donna L. Spencer, George H. Dunteman, Harlene C. Gogan, Peter H. Siegel, Brad A. Lessler, Kenneth Parker and Thomas Sutton. *Evaluation of North Carolina's Structured Sentencing Law: Final Report*. National Institute of Justice Grant No. 96-CE-VX-0013. Research Triangle Park, NC: Research Triangle Institute, 1999

[18] Truitt, Linda, William M. Rhodes, Ryan N. Kling, and Quentin E. McMullen. *Multi-Site Evaluation of Sentencing Guidelines: Florida and North Carolina*. Cambridge, MA: ABT Associates, Inc., 2000.

[19] Rhodes, William, Patrick Johnston, Quentin McMullen, and Lynne Hozik. *Unintended Consequences of Sentencing Policy: The Creation of Long-Term Healthcare Obligations*. Prepared for National Institute of Justice. Cambridge, MA: ABT Associates, Inc., 2000

[20] Mara, Cynthia Massie, Christopher K. McKenna, and Barbara Sims. *Unintended Consequences of Sentencing Policy: Key Issues in Developing Strategies to Address Long-Term Care Needs of Prison Inmates*. National Institute of Justice Grant No. 98-CE-VX-0011. Middletown, PA: The Pennsylvania State University at Harrisburg, 2000.

Sentencing Guidelines

Sentencing guidelines, or structured sentencing laws, established in the last two decades, responded to concerns of unfair sentencing practices, disparities between sentences received and time served, and the lack of satisfaction with correctional rehabilitative models associated with indeterminate sentences. Federal sentencing guidelines were implemented with the passage of the Sentencing Reform Act of 1984. While structured sentencing systems vary they have certain central elements.

Sentencing guidelines or structured sentencing systems limit judicial discretion by providing specific criteria that judges are expected follow when making sentencing decisions. Usually, these criteria include the seriousness of the offense and the is the offender's criminal history. The criminal history of the offender is evaluated to assess the likelihood that an offender will recidivate. This evaluation includes items such as the number of misdemeanor and felony offenses (as a juvenile and an adult), the number of previous incarcerations, whether or not the offender is on probation or parole. The seriousness of the offense, combined with the offender's criminal history, determines whether the recommended detention is for probation or incarceration and if it is incarceration the length of the sentence. In many jurisdictions there are aggravated or mitigating circumstances that a judge use to give a sentence outside of the specified guidelines.

Three Strikes and You're Out

In 1993, 12 year old Polly Klaas was abducted and murdered by Richard Allen Davis, a habitual offender who had been imprisoned and then released early. In response California enacted a "three strikes" law which mandated that individuals with two prior convictions for serious or violent offenses receive a sentence of 25 years to life for a third felony conviction. By 1996, 24 states and the Federal government had passed some form of "three strikes" law.

While the state laws differ, most states categorize murder, rape, robbery, and assault as a serious or violent offense eligible for classification as a "strike". Some states also include nonviolent offenses, including drug offenses, treason, embezzlement and bribery. Parole also differs among states -- while in some states the third strike results in a life sentence without the possibility of parole, other states allow for parole, but only after a substantial portion of the sentence had been served (e.g., after 25, 30 or even 40 years).

From the perspective of crime control, three strikes or habitual offender laws are based on deterrence theory and incapacitation. It is assumed that offenders who have two prior felony convictions will deter from re-offending due to the foreseeable harsh consequences of a third felony conviction. For those who are convicted on a third offense incapacitation is used to protect the public.

Violent Offender Incarceration/Truth-In-Sentencing

The 1994 Crime Act provided, over a four-year period, ten billion dollars to implement the Violent Offender Incarceration (VOI) and Truth-in-Sentencing (TIS) program as part of an effort to ensure that time served was commiserate with sentences received and to "get tough" on crime by incarcerating violent juvenile and adult offenders. VOI and TIS programs provide funds to state and local authorities for putting more offenders in prison and the construction costs associated with these efforts.

TIS Program participation requires state lawmakers to enact legislation that required violent offenders to serve at least 85%, or an average of 85% of their sentence. TIS grants were given to states based on the percent of violent crimes over the past three years.

VOI participation does not require legislative action, only assurances by the state that violent offenders would serve a substantial portion of their sentences. States could increase grant funding received by showing increases in the number of violent offenders sentenced to prison, increases in the average time served, and/or increases in the average percentage of sentences served. In addition, states are eligible grant increases if they show at least a 10% increase in violent offenders sentenced prison.