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EVALUATION OF MINNESOTA'S FELONY SENTENCING GUIDELINES

Nontechnical Summary of Final Report of NIJ Project
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by

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ACQUISITIONS

INTRODUCTION

Beginning in the early 1970's, the wisdom of indeterminate sentencing was increasingly called into question. Not only did the broad discretionary authority granted judges under indeterminate systems allow for substantial sentencing disparities, but many came to view the very foundation of indeterminate sentencing, the rehabilitative ideal, as unworkable. As a result, more highly structured systems of determinate (or "fixed") sentencing and sentencing guidelines were proposed. While reflecting various interests, the overriding concern of these reform efforts has been to make sentencing practices more uniform, more predictable, and freer of socioeconomic biases.

Yet, evaluations of determinate sentencing and sentencing guidelines have tended to reveal little change over previous practices. More troubling is the fact that many states which enacted determinate sentencing also experienced substantial increases in prison populations. The most widely cited exception to this general trend is the felony sentencing guidelines enacted in Minnesota in 1980. Indeed, during the first two years of implementation, Minnesota's guidelines brought about significant reductions in sentencing disparities and did so without placing additional burdens on correctional resources.

Several structural features of the Minnesota guidelines help account for their initial success. First, the Minnesota guidelines, unlike most other states, are "presumptive" in nature. That is, they are backed by the weight of law. Any departure from the prescribed sentence must be accompanied by a written statement from the sentencing judge specifying the reasons for departure. Departures may be used to mitigate or aggravate

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a sentence, but both the defense and the state may appeal the departure. In most other states, sentencing guidelines are "voluntary"--that is, they are "advisory" to the court and make compliance a matter of judicial discretion.

Second, the Minnesota guidelines are "prescriptive" guidelines. The standards embodied in the guidelines are the product of a legislatively created Sentencing Guidelines Commission (MSGC). The legislature directed the Sentencing Commission to "consider" prior sentencing practices, but did not require them to be bound by such practices when establishing guidelines. The MSGC chose to establish its own standards for sentencing policy and selected a "modified just deserts" (retributionist) philosophy to guide the construction of sentencing standards. The "modified just deserts" philosophy gives primary emphasis to the severity of current conviction and secondary importance to prior criminal record in setting penalties. In the Commission's view, "proportionality in sentencing" would only be achieved when prison sentences were reserved primarily for violent person offenders rather than property offenders. This philosophy constituted a distinct break with pre-guideline practices. Most other states have followed a "descriptive" approach to guideline construction, in which past practices are the basis from which new standards are crafted.

Third, the Minnesota guidelines regulate "dispositional" (whether or not to imprison) and "durational" (length of confinement) decisions. Presumptive prison sentences are primarily reserved for serious person offenders, and the presumptive ranges for length of confinement are quite narrow (about 7% above or below the presumptive sentence). In most other states, sentencing guidelines regulate only durational decisions and typically allow broader judicial discretion in setting length of confinement.

Finally, the MSGC chose to incorporate a "cap" on prison populations in its calculation of the presumptive sentence. This means that sentencing standards are governed by "administrative" criteria such as prison capacities as well as by concerns for what is a fair or reasonable sentence. Few other states have imposed this type of constraint on prison populations. (It should be noted, however, that most offenders in

Minnesota receive a "stayed" [nonexecuted] prison sentence. The conditions attached to a stayed sentence are not regulated by the guidelines, and judges may impose any legally permissible penalty, including jail time, as a condition on these sentences. Consequently, these types of sentencing practices may create, and to a certain extent have created, problems for local correctional facilities.)

In summary, the Minnesota guidelines were structured to bring about significant and immediate changes in sentencing practices. However, because the guidelines are both rigorous and imposed by an "external" agency (the MSGC), they are also the type of determinate sentencing system most likely to invite circumvention. Indeed, it is often suggested that, when confronted with sentencing guidelines as rigorous as those in Minnesota, criminal justice practitioners will seek "loopholes" in departure standards, plea bargaining practices, or other methods to achieve the outcomes they, as opposed to the Commission, desire. The true test, then, of the Minnesota guidelines is the degree to which its initial successes can be maintained over time.

RESEARCH QUESTIONS AND DATA SOURCES

The purpose of the present study was to perform a comprehensive analysis of charging, plea negotiation, and sentencing practices at three stages (1981, 1982, 1984) in the evolution of the Minnesota guidelines. Guideline practices were, in turn, contrasted to pre-guideline data from 1978. Specifically, the guiding research questions were:

1. What changes in charging, plea negotiation, and sentencing practices occurred as a result of guideline implementation? Have these initial changes persisted over time, or have practices reverted to pre-guideline levels?
2. Have the factors which influence charging, plea negotiation, and sentencing practices changed as a result of the guidelines? If so, has this contributed to greater or lesser sentencing uniformity, neutrality, and predictability?

3. What was the impact of legal, policy, or organizational changes on charging, plea negotiation, and sentencing practices after guideline implementation? And, what do these changes imply about the long-term viability of determinate sentencing reform?

Three data sources were used to examine these questions. First, statewide data were used to examine general trends in case-processing and sentencing practices over the three guidelines periods. Second, indepth data from eight Minnesota counties (including the Minneapolis and St. Paul metropolitan area) were used to evaluate changes in the factors influencing charging, plea bargaining, and sentencing practices. Finally, a questionnaire was distributed to prosecutors, judges, and public defenders in the same eight county region from which the indepth data were drawn. Two hundred (57.8%) of the questionnaires were returned. These data are used to supplement the results obtained through statistical analyses of the statewide and indepth data.

FINDINGS

Sentencing Trends. Imprisonment rates rose steadily over guidelines periods, increasing from 15.0% in 1981 to 19.6% in 1984. However, the 1984 imprisonment rate was still below the pre-guideline rate of 20.3% in 1978. The average length of prison confinement had also increased by 1982, but, as a result of adjustments implemented by the MSGC in 1983, had declined by 1984. Dispositional departure rates rose appreciably over guidelines periods, increasing from 6.2% in 1981 to 7.0% in 1982 and 9.9% in 1984. This increase was higher for mitigated than for aggravated departures. Overall rates of durational departures declined from 8.4% in 1981 to 7.6% in 1984. Mitigated durational departures were approximately twice as common as aggravated departures at all time periods. Use of jail as a condition of a stayed sentence increased sharply over guidelines periods, rising from only 44.7% in 1978 to 66.1% in 1984.

Statistical analyses performed on the indepth data indicated several trends in the decisions to impose a prison sentence and the length of prison confinement. In general,

both types of decisions were more predictable and uniform after implementation of the guidelines, although the gains in durational predictability and uniformity were less dramatic than those for dispositional decisions. While the impact of social factors did not increase under the guidelines, neither were they eliminated. For instance, race and employment status continued to have an impact on both dispositional and durational decisions as well as some departure decisions. The magnitude of these effects, however, was relatively small.

Statistical analyses were also performed to determine the extent to which sentencing proportionality had increased or decreased under the guidelines. For the MSGC, sentencing proportionality would be improved if the most severe punishments (prison sentences) are reserved for serious person offenders. Following implementation of the guidelines, sentencing proportionality increased well over pre-guideline levels. However, the proportion of persons incarcerated who are person offenders has declined over guideline periods, dropping from 56.9% in 1981 to 44.6% in 1984. The latter is only slightly higher than the pre-guideline level of 43.9%.

In summary, although uniformity, neutrality, and proportionality of punishment have improved as a result of the guidelines, there has been some movement back to pre-guideline levels in both sentencing uniformity and proportionality. Most of this change has occurred since 1982.

Charging and Plea Bargaining Trends. Looking first to charging trends, data from the eight county subsample revealed little change in the average severity of the most serious charged offenses. This suggests that prosecutors were not more likely to engage in "overcharging" as a result of the guidelines. However, the number of multiple offenses charged increased steadily over time. An independent assessment of the criminal complaint suggests that at least some of this increase was due to an increase in the potential to charge multiple offenses. Nonetheless, the rise in multiple charges suggests that prosecutors were inflating the number, but not the severity, of offenses charged after the guidelines.

Although overall rates of plea bargaining remained fairly stable, there was a shift in the type of plea agreements entered after the guidelines. Plea agreements involving charge dismissals steadily increased from 32.5% in 1978 to 42.7% in 1984. Charge reductions were more common prior to the guidelines (occurring in 14% of the cases) and have stabilized at about 8% of the cases after the guidelines. Pleas involving a sentence concession were less common after the guidelines, but have risen steadily since the guidelines went into effect (53.9% in 1978, compared with 41.7% in 1981, 47.1% in 1982, and 48.6% in 1984). Moreover, there was significant county variation in plea bargaining practices, with some counties relying more on sentence bargaining while other relied more heavily on charge bargaining. These differences persisted after guideline implementation.

Commentators have long contended that no system of determinate sentencing, no matter how carefully constructed, can be immune to prosecutorial manipulation through charging and plea bargaining practices. The findings outlined above suggest that prosecutors have indeed "adjusted" their practices after guideline implementation. However, additional statistical analyses indicated that, while these adjustments may account for some of the decline in sentencing uniformity and proportionality, they have not affected sentencing neutrality. Offense variables and county of adjudication were the principal determinants of charging and plea negotiation practices. Offender characteristics had little impact on prosecutorial practices over both pre- and post-guideline periods.

Attitudes of Criminal Justice Officials. The survey of criminal justice officials largely confirmed the findings from the analyses of sentencing and prosecutorial practices. In general, criminal justice officials felt that the guidelines had become a "fact of life" in Minnesota. Over four out of five officials indicated that the guidelines frequently or always influenced their decisions regarding a case; 90% believed the guidelines had proven effective in achieving proportionality in sentencing; 92% believed they had been successful in achieving sentencing uniformity; and 88% felt they had proved successful

in achieving sentencing neutrality. And, about three in five thought the guidelines represented an improvement over the older system of indeterminate sentencing.

However, the survey results also indicate that many criminal justice officials have granted the guidelines only grudging acceptance and, over time, have sought and found ways to sidestep guidelines policies. In general, prosecutors were the most dissatisfied with the guidelines, defense attorneys the most satisfied, and judges tended to fall somewhere in between. Prosecutors (and many judges) tended to view the guidelines as overly lenient, especially on persistent property offenders, and too inflexible. When asked what changes they would prefer to see in the guidelines, 16% of prosecutors and 20% of judges advocated their abolition. A majority of each indicated they would prefer to see changes that would make the guidelines more flexible and discretionary. Prosecutors candidly stated (and judges and defense attorneys concurred) that they were adjusting their charging and plea negotiation practices to circumvent what they felt were "unreasonable" sentencing policies. The principal means for achieving this end was to increase the number of charges brought against a defendant. In addition to serving as a powerful bargaining tool, the number of charges filed can, if convictions result, automatically increase the offender's presumptive sentence under the guidelines.

CONCLUSIONS AND IMPLICATIONS

The successes of Minnesota's experiment in sentencing reform are indisputable. Compared with pre-guideline practices, sentencing in Minnesota is now more uniform, more predictable, and more socioeconomically neutral. In addition, violent person offenders are more likely to be imprisoned than before the guidelines. And, these changes were accomplished without placing additional burdens on state correctional resources. However, it is also clear that these "successes" in sentencing policy have eroded in recent years. Several modifications in Minnesota sentencing law during the early years of the guidelines help explain these changes. In each case, these modifications have expanded the opportunities available to criminal justice officials who might wish

to circumvent guideline policies and, therefore, have provided an "open door" through which non-guideline ends might be effectuated. The most relevant of these modifications are summarized below.

First, in 1981 the Minnesota Supreme Court ruled that multiple but contemporaneous convictions could be used to enhance an offender's "criminal history score." Since criminal history score contributes to the severity of the presumptive sentence, this ruling provided prosecutors with an incentive to charge out more offenses in order to improve their bargaining position and/or to "stack" charges against the defendant in order to obtain a more severe sentence. Many of our survey respondents indicated that this type of enhancement was a principal way in which prosecutors were able to sidestep the spirit, if not the letter, of guideline policies.

In that same year, the legislature enacted an "intrafamilial sexual abuse" statute, which granted judges the right to sentence apart from the guidelines when it was thought to be in the best interests of the victim and/or family unit. Also in 1981, the Minnesota Supreme Court allowed "amenability to probation" as a legitimate grounds for sentencing departures. And, it was decided by the legislature (in 1981) and the Supreme Court (in 1982) that prosecutors and judges should have greater flexibility in imposing mandatory minimums for weapons violations. Each of these changes expanded the discretionary authority of criminal justice officials relative to the guidelines--precisely at the time when increases in sentencing departures and decreases in uniformity and proportionality became apparent.

Finally, the composition of the MSGC had changed by the end of 1982, with five (out of nine) new members and a new Chair appointed. Both authoritative reports and recent experience have shown the new MSGC to be less "activist" than the initial Commission. These changes introduced less consensus on sentencing policy and a reduced interest in broader policy issues. The current Commission has focused more on "fine-tuning" the existing guidelines than on reconciling extant case law and legislation with the policies outlined by the original Commission. In short, the current Commission has

at least tacitly delegated to the courts substantial authority in the evolution of sentencing policy.

All of these changes help account for the decreased effectiveness of the Minnesota guidelines in recent years. However, it warrants repeating that the Minnesota guidelines have produced positive results net of any detracting factors. More importantly, the Minnesota approach provides a policy guide for other jurisdictions interested in sentencing reform. Any reform effort must be able to withstand the inevitable backlash of older policies and practices. The results of the present study indicate that the Minnesota guidelines have stood firm to many of these challenges and remain a successful experiment in sentencing reform.