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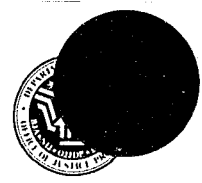
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National Institute of Justice

Research  
in Brief

James K. Stewart, Director

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# Sentencing Guidelines: Their Effect in Minnesota

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ACQUISITIONS

Beginning in the early 1970's, the wisdom of indeterminate sentencing was increasingly questioned. Critics argued that the broad discretionary authority of judges permitted substantial sentencing disparities. Many persons came to view the very foundation of indeterminate sentencing—the rehabilitative ideal—as unworkable.

Reformers proposed as remedies more highly structured systems of determinate

(or "fixed") sentencing and sentencing guidelines. These reform efforts reflected various interests, but the overriding concern was to make sentencing practices more uniform, more predictable, and freer of socioeconomic biases.

Evaluations of determinate sentencing and sentencing guidelines, however, tend to reveal that they brought little change. Even more troubling, many States that enacted determinate sentencing also expe-

rienced substantial increases in prison populations.

Most widely cited as an exception to this trend were the felony sentencing guidelines enacted in Minnesota in 1980. During the first 2 years of implementation, Minnesota's guidelines significantly reduced sentencing disparities without putting additional burdens on correctional resources.

## From the Director

Sentencing is perhaps the most important and difficult function of criminal justice. Punishment for crime ought to be both appropriate and certain—"if you do the crime, you will do the time," as the saying goes.

But in practice, sentencing of individuals convicted of similar crimes often varies so dramatically that there is no reasonable expectation of the actual penalty for an offense. Without at least a baseline for penalties, deterrence, justice, and protection for all of us may be jeopardized.

Public concerns about crime and punishment have led virtually every State to take a new look at criminal sentencing policies

over the past decade. Today, the Nation has many different types of sentencing systems, and there is a growing body of empirical research that can help answer policymakers' questions about the effects of different approaches to structuring sentencing policies.

The States, as Justice Brandeis explained, can be the laboratories of democracy. This *Research in Brief* describes one State's initial experience with specifically authorized changes in sentencing. When Minnesota enacted felony sentencing guidelines in 1980, it combined a sentencing commission, presumptive sentencing guidelines, and appellate sentence review.

As the Minnesota experience suggests, developing sentencing policy is and should

be a dynamic process among legislators, policymakers, and the public. The information presented here illustrates how the various elements may interact in setting sentencing policies.

Penalties for crime are society's expression of its most important values. As States strive to establish sentencing approaches that achieve greater certainty and reduce the number of victims of crime, research on the effects of policy changes can help inform a thorough public debate on the policies of punishment in our society and move us toward our ultimate goal of justice.

James K. Stewart  
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As a result, the Minnesota guidelines attracted national attention. To date, at least one State—Washington—has adopted a similar system. Sentencing commissions similar to the independent body that created and monitored the Minnesota guidelines have been proposed or established in several States.

Because of the interest in determinate sentencing, the National Institute of Justice commissioned a study of the Minnesota guidelines. The research examined the guidelines' scope and authority and compared charging, plea bargaining, and sentencing practices before the guidelines were implemented in 1980 and in the 4 years after. The findings and policy implications of the study are summarized in this *Research in Brief*.

Initially, compliance with the guidelines was high and disparities in sentencing sharply reduced. More violent offenders went to prison, and the prison population dipped below the earlier rate. Within 2 years, however, both appellate court rulings and legislative changes changed the guidelines' impact. Nevertheless, uniformity of sentencing remained well above preguideline levels.

## The research

The present research sought to learn whether the Minnesota guidelines have survived the test of time and thus are a viable model of sentencing reform. The study summarized in this *Brief* analyzed charging, plea negotiation, and sentencing practices at three stages—1981, 1982, 1984—in the evolution of the Minnesota guidelines. Practices under the guidelines were, in turn, contrasted to preguideline data from 1978.

These questions guided the research, which was limited to them and their consequences:

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- 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?
- Have the factors that influence charging, plea negotiation, and sentencing

practices changed as a result of the guidelines? If so, has this contributed to more or less uniformity, neutrality, and predictability in sentencing?

- What was the impact of legal, policy, or organizational changes on charging, plea negotiation, and sentencing practices after the implementation of the guidelines?

## The guidelines' structure

Several features of the Minnesota guidelines help account for their initial success. First, the Minnesota guidelines, unlike those in most other States, are "presumptive"—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.

A judge's departure from the guidelines may be used to reduce or increase a guidelines sentence, but both the defense and the State may appeal sentences they feel are inappropriate. In most other States, sentencing guidelines are "voluntary"—that is, they are "advisory" to the court, and compliance is a matter of judicial discretion.

Second, the Minnesota guidelines are "prescriptive" guidelines. The standards embodied in the guidelines are the product of the legislatively created Minnesota Sentencing Guidelines Commission (MSGC). The legislature directed the Sentencing Commission to consider prior sentencing practices but did not require the commission to be bound by such practices.

The Commission chose to establish its own standards for sentencing policy and selected a "modified just deserts" philosophy—emphasizing retribution—to guide the development of sentencing standards. In setting penalties, this philosophy emphasizes first the severity of the current conviction and, second, the prior criminal record.

In the Commission's view, "proportionality in sentencing" would only be achieved when prison sentences were reserved primarily for violent offenders rather than property offenders.

While higher imprisonment rates for violent offenders than property offenders was also consistent with the directives of the Community Corrections Act, this choice constituted a distinct break with preguideline practices. Most other States have followed a "descriptive" approach to guidelines construction, in which past practices formed the basis for new standards.

Third, the Minnesota guidelines regulate judicial decisions about whether or not to imprison and about the duration of

incarceration. Presumptive prison sentences are primarily reserved for offenders convicted of serious crimes against persons.

The legally set ranges for length of confinement are quite narrow—about 7 percent above or below the presumptive sentence. In most other States, sentencing guidelines do not regulate whether or not a prison sentence is imposed, and typically allow broader judicial discretion in setting the length of confinement.

Table 1 shows the Minnesota guidelines grid.

Finally, the Commission 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 the vast majority of offenders in Minnesota received a "stayed" (nonexecuted) prison sentence. The conditions attached to a stayed sentence are not regulated by the guidelines. Judges may impose any legally permissible penalty, including jail time, as a condition on these sentences. These sentencing practices may create, and to a certain extent have created, problems for local correctional facilities.

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 Commission), they are also the type of determinate sentencing system most likely to be circumvented.

Indeed, it is often argued that rigorous sentencing guidelines lead criminal justice practitioners to seek loopholes in these standards, through departing from the guidelines, charging practices, plea bargaining practices, or other methods to achieve the outcomes they believe are appropriate. The true test, then, of the Minnesota guidelines is the degree to which their initial effects can be maintained over time.

What do these changes imply about the long-term viability of determinate sentencing reform?

To answer the questions, the study used three data sources. First, statewide data were used to examine general trends in case-processing and sentencing practices over the three postguideline time periods. Second, indepth data from eight Minnesota counties (including the Minneapolis-St. Paul metropolitan area) were used to evaluate changes in the factors influencing charging, plea bargaining, and sentencing practices. Third, a questionnaire was distributed to prosecutors, judges, and public defenders in the same eight-county region.

Two hundred (56.2 percent) of the questionnaires were returned. These responses supplemented results from the statistical analyses of the statewide and indepth data.

## The findings

The following summarizes the findings from the research:

**Sentencing trends.** Imprisonment rates (the percentage of all convicted felons who received a prison sentence) rose steadily over guideline periods, increasing from 15 percent in 1981 to 19.6 percent in 1984. However, the 1984 imprisonment rate was still below the preguideline rate of 20.3 percent in 1978. The average length of prison confinement had also increased by 1982. As a result of adjustments implemented by the commission in 1983, however, this figure had declined by 1984. (See table 2.)

The rate of departure from the guidelines regarding disposition rose appreciably during the study period. This "dispositional departure rate" increased from 6.2 percent in 1981 to 7 percent in 1982 to

9.9 percent in 1984. The increase was greater for mitigated than for aggravated departures.

Rates of departure from the guidelines relating to duration of confinement declined from 8.4 percent in 1981 to 7.6 percent in 1984. Departures that mitigated the duration of the sentence were approximately twice as common as those that aggravated the duration. Use of jail as a condition of a stayed sentence increased sharply from the preguideline to the postguideline period, rising from 44.7 percent in 1978 to 66.1 percent in 1984.

Statistical analyses of the indepth data indicated several trends in 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 gain in durational predictability and uniformity were less

Table 1

Minnesota's sentencing guidelines grid

Conviction offense	Severity level	Criminal history score						
		0	1	2	3	4	5	6 or more
Unauthorized use of motor vehicle Possession of marijuana	I	12*	12*	12*	13	15	17	19 18-20
Theft related crimes (\$250-\$2,500) Aggravated forgery (\$25-\$2,500)	II	12*	12*	13	15	17	19	21 20-22
Theft crimes (\$25-\$2,500)	III	12*	13	15	17	19 18-20	22 21-23	25 24-26
Nonresidential burglary Theft crimes (over \$2,500)	IV	12*	15	18	21	25 24-26	32 30-34	41 37-45
Residential burglary Simple robbery	V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
Criminal sexual conduct, 2d degree (a) and (b)	VI	21	26	30	34 33-35	44 42-46	54 50-58	65 60-70
Aggravated robbery	VII	24 23-25	32 30-34	41 38-44	49 45-53	65 60-70	81 75-87	97 90-104
Criminal sexual conduct, 1st degree Assault, 1st degree	VIII	43 41-45	54 50-58	65 60-70	76 71-81	95 89-101	113 106-120	132 124-140
Murder, 3d degree Murder, 2d degree (felony murder)	IX	105 102-108	119 116-122	127 124-130	149 143-155	176 168-184	205 195-215	230 218-242
Murder, 2d degree (with intent)	X	120 116-124	140 133-147	162 153-171	203 192-214	243 231-255	284 270-298	324 309-339

Numbers in the table refer to the length and range of the presumptive sentence. Cells above the dark line represent the area of the grid in which the presumptive sentence is a stayed prison term. Below the dark line a prison term is the presumptive sentence. The presumptive durations of confinement are in months.

\* One year and one day

Source: Minnesota Sentencing Guidelines Commission (1984:2)

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. From the commission's view, sentencing proportionality would be improved if the most severe punishments (prison sentences) were reserved for violent offenders. After the guidelines were implemented, sentencing proportionality increased. However, the proportion of persons imprisoned who were violent offenders declined over the study periods, dropping from 56.9 percent in 1981 to 44.6 percent in 1984. The 1984 figure is only slightly higher than the preguideline level of 43.9 percent.

To sum up: Uniformity, neutrality, and proportionality of punishment improved as a result of the guidelines. Since 1982, however, there has been some movement back to preguideline levels in both sentencing uniformity and proportionality.

#### Charging and plea bargaining trends.

The study tracked charging trends using data from the eight-county subsample. For a summary of these trends, see table 3. The analysis revealed little change in the average severity of the most serious charged offenses, suggesting that prosecutors were not more likely to engage in "vertical overcharging" under 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 the potential to charge multiple offenses. Nonetheless, the rise in multiple charges suggests that prosecutors were increasing 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 concession granted after the guidelines. Plea agreements involving charge dismissals steadily increased from 32.5 percent in 1978 to 42.7 percent in 1984. Those involving charge reductions were more common prior to the guide-

Table 2

#### Statewide sentencing trends before and after the Minnesota guidelines

	1978	1981	1982	1984
Imprisonment rate <sup>1</sup>	20.3%	15.0%	18.6%	19.6%
Average length of prison confinement in months <sup>2</sup>	81.0	36.0	39.9	35.8
Dispositional departure rate (overall) <sup>3</sup>	n/a	6.2%	7.0%	9.9%
Aggravated departure rate	n/a	3.1%	3.4%	4.0%
Mitigated departure rate	n/a	3.1%	3.6%	5.9%
Durational departure rate (overall) <sup>4</sup>	n/a	8.4%	7.3%	7.6%
Aggravated departure rate	n/a	2.6%	2.4%	2.6%
Mitigated departure rate	n/a	5.8%	4.9%	5.0%
Jail time imposed as a condition of a stayed prison sentence <sup>5</sup>	44.7%	54.8%	54.4%	66.1%
Imprisonment rate involving violent offenders <sup>6</sup>	43.9%	56.9%	49.2%	44.6%

<sup>1</sup> The imprisonment rate refers to the percentage of all convicted felons who received a prison sentence.

<sup>2</sup> In the preguideline period (1978), the average length of prison confinement is based on the maximum duration of confinement imposed under the indeterminate sentence.

<sup>3</sup> A dispositional departure involves either the imposition of a prison sentence when the presumptive sentence was a stayed prison sentence (aggravated departure) or the imposition of a nonprison sentence when the presumptive sentence involved a prison sentence (mitigated departure).

<sup>4</sup> A durational departure involves either the imposition of a prison sentence that is longer (aggravated) or shorter (mitigated) than the presumptive length of imprisonment.

<sup>5</sup> Based only on cases in which a prison sentence was not imposed.

<sup>6</sup> The imprisonment rate involving violent offenders refers to the percentage of persons imprisoned who committed a violent crime. The percentages in the table for this variable are based on the eight-county sample.

lines—when they occurred in 14 percent of the cases—and stabilized at about 8 percent of cases after the guidelines.

Pleas involving sentence concessions were less common after the guidelines, but they have risen steadily since the guidelines went into effect: 53.9 percent in 1978, compared with 41.7 percent in 1981, 47.1 percent in 1982, and 48.6 percent in 1984.

Moreover, there was significant variation in plea bargaining practices among Minnesota counties. Some counties relied more on sentence bargaining while others relied more heavily on charge bargaining. These differences persisted after the guidelines went into effect.

Commentators have long contended that no system of determinate sentencing, no

matter how carefully constructed, can be immune to the influence of the prosecutor's discretion in charging and plea bargaining practices. The evaluation's findings suggest that prosecutors did indeed "adjust" their practices after guideline implementation. However, additional statistical analysis county-by-county shows that these adjustments may account for some of the decline in sentencing uniformity and proportionality, but they did not affect sentencing neutrality.

The principal determinants of charging and plea negotiation practices remained the offense itself and the county of adjudication. The characteristics of the offender had little impact on prosecutorial practices over both pre- and postguideline 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. More than four out of five officials indicated that the guidelines frequently or always influenced their decisions regarding a case. Other responses showed:

- 90 percent believed the guidelines had proven effective in achieving proportionality in sentencing.
- 92 percent believed they had been successful in achieving sentencing uniformity.
- 88 percent felt they had proved successful in achieving sentencing neutrality.
- About three in five thought the guidelines represented an improvement over the older system of indeterminate sentencing.

However, the survey results also revealed that many criminal justice officials granted the guidelines only grudging acceptance and, over time, sought and found ways to sidestep guidelines policies.

In general, prosecutors were the most dissatisfied with the guidelines and defense attorneys the most satisfied. Judges tended to fall somewhere in between these two points. Prosecutors—and many judges—tended to view the guidelines as too inflexible and overly lenient, especially on persistent property offenders.

When asked what changes they would prefer to see in the guidelines, 16 percent of prosecutors and 20 percent of judges advocated their abolition. A majority of judges and prosecutors said they would prefer to see the guidelines made 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 to 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, increase the offender's criminal history score and thus automatically increase the presumptive sentence under the guidelines.

Table 3

### Charging and plea bargaining trends in the eight-county sample

	1978	1981	1982	1984
Average severity of most serious charge filed by the prosecutor (1–10 scale) <sup>1</sup>	3.91	3.93	3.94	4.11
Multiple charges filed by prosecutor	— <sup>2</sup>	14.8%	20.9%	24.6%
Overall rate of plea bargaining <sup>3</sup>	74.2%	65.7%	74.9%	75.5%
Plea bargaining involved charge dismissal	32.5%	33.2%	38.8%	42.7%
Plea bargaining involved charge reductions	14.0%	8.3%	7.9%	8.2%
Plea bargaining involved sentence concessions	53.9%	41.7%	47.1%	48.6%

<sup>1</sup> Average severity of the most serious charge is based on the 10-point scale developed by the commission to measure the severity of the convicted offense.

<sup>2</sup> Comparable data on whether multiple charges were filed were not available in the preguideline sample.

<sup>3</sup> The overall rate of plea bargaining includes cases involving charge dismissals, charge reductions, and sentence concessions. The sum of the rates of each of these separate forms of plea bargaining will not add up to the overall rates because some felons received both charge bargains and sentence concessions.

### Policy implications

Based on the criteria used in this study the successes of Minnesota's experiment in sentencing reform are indisputable. Compared with preguideline practices, sentencing in Minnesota is more uniform, more predictable, and more socioeconomically neutral than it was before the guidelines. Findings show that violent offenders are more likely to be imprisoned now than before the guidelines. And these changes were accomplished without placing additional burdens on State correctional resources.

It is also clear, however, that in sentencing policy this new course has not been rigidly maintained in more recent years. Several modifications in Minnesota sentencing law during the early years of the guidelines help explain the change. In each case, the modifications expanded the opportunities for circumventing guideline policies and thus provided an "open door" for relaxed compliance. The most relevant modifications are summarized below.

First, in 1981 the Minnesota Supreme Court ruled that multiple but contemporaneous convictions could be used to increase 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 more offenses to improve their bargaining position, to add charges against the defendant to obtain a more severe sentence—or both. This type of charging 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 Minnesota legislature enacted an "intrafamilial sexual abuse" statute, which granted judges the right to deviate from the guidelines in sentencing when it was thought to be in the best interest of the victim or family or both. Also in 1981, the Minnesota Supreme Court allowed "amenability to probation" as legitimate grounds for not applying the guidelines in sentencing. And it was decided by the legislature (in

1981) and the State Supreme Court (in 1982) that prosecutors and judges should have greater flexibility in imposing mandatory minimum sentences for weapons violations.

Each of these changes expanded the discretionary authority of criminal justice officials in relation to the guidelines—precisely at the time when increases in sentencing departures and decreases in uniformity and proportionality became apparent.

By the end of 1982, the composition of the Minnesota Sentencing Guidelines Commission had changed, with the appointment of five new members (out of nine) and a new Chair. Both authoritative reports and recent experience suggest that the new Commission is less activist than the initial Commission. The changes in composition and philosophy lessened consensus on sentencing policy and 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 these changes help account for the decreased levels of compliance with the Minnesota guidelines in recent years. Nonetheless, the Minnesota guidelines produced measurable results. In 1984, uniformity, neutrality, and proportionality in sentencing were still above the preguidelines level.

The Minnesota approach also provides a valuable policy guide for other jurisdictions considering sentencing reform. The Minnesota experience shows that reforms must be able to withstand the inevitable backlash from older policies and practices. The results of this research indicate that the Minnesota guidelines have stood firm in the face of many of these challenges, and the Minnesota experience remains a milestone experiment in sentencing reform.

### Additional readings

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