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# JUSTICE

## RESEARCH NOTES

### What Is the Relevance of Justice Research and Development in the 1990s?

**T**he dramatic social, political and economic changes taking place in Canada today bring into question many assumptions about long-held societal values and goals and the legal and other mechanisms that can best serve indi-

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vidual and national aspirations. This complex of forces poses an enormous challenge for the development of fair and equitable justice policies.

The Department of Justice Research and Development Directorate recently undertook a planning exercise that resulted in a comprehensive three-year plan to help the Department meet the demands of the 1990s. Uppermost in this plan was the development and maintenance of a sound information base.

The following excerpts from that planning document illustrate the overall rationale for the research and development program. It will also help to explain why the Department believes it is important that its research reports and the results

of the development activities generated here be shared more widely. A continuing objective is to make these materials available for comment, criticism and use by all Canadians who believe that good information — and, in particular, information obtained from good social science research and demonstration projects — provides a powerful instrument for sensitive and innovative problem solving. That, for example, is one of the major purposes of *Justice Research Notes*.

### Organization of the Policy Research Function

The Research and Development Directorate is responsible for a highly interdependent set of functions, all of which are intended to support and improve the ability of the Department to be innovative and effective in response to challenges and opportunities. The Directorate is responsible for all the social science-based (empirical) research; for the development and evaluation of demonstration projects; for statistical analysis; and, in conjunction with the Canadian Centre for Justice Statistics and the Ministry of the Solicitor General, for the promotion and development

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## Sentencing: Are Native People Getting a Fair Deal?

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**A** recent study commissioned by the Department of Justice on the comparative treatment of native and non-native people in sentencing by the courts questions the findings of existing studies and calls for more research on which to base firm conclusions.

The study, by G.S. Clark and Associates, found data to suggest that in terms of the outcome of their cases and length of sentence, native people in Canada are not treated more severely than are non-native people. The report generally agrees with this view on the basis of available evidence, but it maintains that much more broadly based research is needed on sentencing

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disparities before reliable conclusions can be drawn. The report also provides a suggested framework for such a study.

The literature reviewed for the study included both Canadian and international materials (in which minority and nonminority groups were compared) and covered both empirical research and theoretical approaches to sentencing disparities.

The report points out that although a number of Canadian studies and at least one Australian study state that native people appear not to be discriminated against in the sentencing process, other Canadian studies suggest otherwise. In Winnipeg, for example, it was found that native people were fined more frequently than were other offenders for regulatory offences, and that in British Columbia they were acquitted less frequently and found guilty more often than were other offenders for summary conviction offences. In the latter instance, it should be noted, the reverse was found to be true when offenders had no prior record.

### More Study Needed of Sentencing Patterns

Several studies examined in the review stressed that in attempting to understand sentencing patterns it is important to take into account the context within which sentencing occurs. Certain U.S. and Canadian studies, for example, indicated that judicial decisionmaking varies according to the size of the local minority and the degree of urbanization of the court catchment area.

On the whole, the data contained in the studies reviewed do not support the thesis that native offenders are sentenced more harshly than other offenders. However, the findings are based, in some instances, on incomplete data sets and inconsistent methodological approaches. More thorough research is needed.

The report suggests a framework for the study of sentencing disparities, based on a series of decision points in the justice process incorporating police data, court data and corrections data. The model accounts for structural factors such as community type, and process factors such as the variables encountered in judicial decision-making.

## Effectiveness of Sentencing Options

The report reviews a range of sentencing option programs in various provinces. There are two kinds of universal programs providing services to native communities: province-wide programs designed to serve native and non-native clients alike, such as the court fine option program in Saskatchewan; and hybrid programs that involve provision-of-service contracts with native communities. These introduce alternatives and a degree of local control in the sentencing process. Examples are the court fine option program, the community service orders program, and the youth justice committees in Manitoba.

Lack of information about the extent of native people's use of the province-wide programs precluded any real assessment in the review of their effectiveness. However, practitioners in the field suggested that the most serious problem for native people in conflict with the law was accessibility to the programs. Generally, practitioners viewed the hybrid programs operated by native communities as being successful, although there have been few program evaluations.

## A Twofold Task

Although the report concurs that there is some indication that native people are not treated more severely in the sentencing process, it notes that the evidence on sentencing patterns is limited and is therefore inconclusive. To resolve this issue, which takes on some urgency given the recurring questions about alleged disparities, more research is needed that addresses native and non-native comparisons in all major components of the sentencing process.

The report maintains, in addition, that more detailed information is needed about the ways in which particular elements of the sentencing process affect native people. This will provide valuable information for determining which sentencing option programs would be of greatest benefit to native communities in Canada. ◀

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*Sentencing Patterns and Sentencing Options Relating to Aboriginal Offenders*, by Scott Clark, G.S. Clark and Associates Ltd. Working Document. WD1990 10a. Research Section, Department of Justice. For copies, contact: Research Section, Department of Justice Canada, Ottawa K1A 0H8. (613) 957-9632.