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AN EMPIRICAL ASSESSMENT OF SENTENCING PRACTICES IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

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AUTHOR'S NOTE

In a study such as this, so many people are critical to the development and execution of the research, and to the production of the report, that it is difficult to express acknowledgements adequately. Many of the ideas and approaches used in the study are the product of conferences and discussions with INSLAW staff, and with individuals in the District of Columbia judicial system. Without those discussions, the report certainly would be less than it is. It is also possible that it would have been better if I had used more of the suggestions that were made. In any event, I would like to thank all who participated--in design, data collection, analysis, and editorial work. I am particularly indebted to Mark W. Foster and Judith Lucianovic, whose seminal ideas in the Interim Report to the District of Columbia Law Review Commission (January 1977) have been incorporated essentially intact into this final report, and to Etta Johnson and Bill Falcon, who are responsible for much of Chapter I. My special thanks go to Jean Shirhall, who edited the report.

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not have been brought to fruition. Bruce Beaudin, Jay Carver, and Dan Welch of the Bail Agency not only facilitated our access to critical Bail Agency case files, they also made space for us in their offices, and educated our research staff in the meaning and utilization of the data contained in those files.

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I. INTRODUCTION

The objective of this report is to describe sentencing decisions in the Superior Court of the District of Columbia, to identify the factors most closely associated with the variation in those decisions, and to suggest a methodology by which that variation could--if so desired--be reduced.

As will be discussed in this chapter, some kinds of variation are commonly considered justifiable, while other kinds are not. For instance, when a conviction for homicide results in a more severe sentence than a conviction for simple assault, variation has occurred but it is both legally and--to most people--philosophically justifiable. However, when comparable defendants are convicted of the same offense but nevertheless receive different sentences, the variation is less justifiable and is usually designated a "disparity." Expanded discussion of these ideas follows shortly. In the meantime, it is important to note that the intent of this report is not to classify the variation that has occurred in the Superior Court as ethically desirable or undesirable, but is rather to make an empirical statement about the factors that are associated with the variation in sentencing decisions and to suggest some ways in which that variation might be reduced.

This chapter briefly considers the historical, legal, and philosophical background of current sentencing practices, the public debate that surrounds sentencing, and the main findings

of empirical research into the determinants of sentencing.[1] These considerations helped shape the design of the study, which is detailed in Chapter II.

A. BACKGROUND OF THE SENTENCING PROBLEM

Toward the latter part of the nineteenth century, the view that sentencing should serve rehabilitative rather than punitive purposes gained momentum. "Let the punishment fit the crime" was replaced by a new philosophy: "Let the treatment fit the needs of the individual offender."[2] Measures to treat the offender, according to this philosophy, should serve a therapeutic function and should be designed "to effect changes in the behavior of the convicted person."[3]

Given the ascendancy of rehabilitation as the primary purpose of sentencing, the next logical step was for legislatures to modify the sentencing power of the judiciary. Because rehabilitation takes place--if at all--some time after sentencing, the sentencing judge is clearly not in a position

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[1] The discussion that follows is intended to provide a general frame of reference for the study. Expanded discussion of the concepts and issues that are raised may be found in The Interim Report to the District of Columbia Law Review Commission: Sentencing Issues and Problems (Institute for Law and Social Research, Washington, D.C., January 1977). The reader who desires a more exhaustive commentary is urged to consult that document and the other works cited in this chapter.

[2] President's Commission, The Challenge of Crime in a Free Society (Washington, D.C.: Government Printing Office, 1967), p. 163.

[3] See Alan M. Dershowitz, "Criminal Sentencing in the United States: An Historical and Conceptual Overview," The Annals, January 1976, pp. 129-30.

to know the specific time at which it has occurred. Consequently, the authority of the judge to specify the period of incarceration that had to be served was replaced by the authority to set the lower and upper limits of that period. Actual release date--somewhere within those limits--would then be determined by prison or parole authorities and would depend on their judgment about the offender's degree of rehabilitation.

At the corrections level, this change clearly introduced a degree of discretion and potential for disparity that had not previously existed. Offenders given identical--though indeterminate--sentences might now serve dramatically different periods of time. Moreover, since the criteria for identifying rehabilitation were, at best, murkily defined, the reason for differences in time served might never be clear. In addition, the indeterminate sentence structure that was established by most legislatures was itself so general that disparity at sentencing was also possible. That is, the lower and upper limits that judges were empowered to impose were so broadly specified in statutes relating to sentencing that they offered little if any guidance to the sentencing judge. As a result, offenders who had committed similar offenses and had similar backgrounds could and often did receive quite different sentences.

The general consequence, then, of the introduction of the philosophy of rehabilitation and its accompanying structure of indeterminate sentencing was that it was difficult to know

what kind of sentence would be given, except within very general limits, and difficult to know how much time would be served.[4] Reactions to these two consequences have tended to be critical. "The tendency toward individualized treatment of persons within the custody and control of the state," Allen observed, "creates its own problems and perils.... Programs of individualized treatment inevitably involve the exercise of wide discretionary powers...."[5] A similar point was made by the author of a widely read sentencing study of the early 1960s: "Legal innovations, such as the indeterminate sentence, have infused greater flexibility into the administration of criminal justice at the expense of precision and certainty in the law."[6]

The National Advisory Commission on Criminal Justice Standards and Goals concluded in its 1973 report on corrections:

> In view of the crucial and complex nature of sentencing decisions, the current state of that process in this country is nothing less than appalling. In the vast majority of jurisdictions, the decision as to where and how a man may spend years of his life is made by one man, whose discretion is virtually

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[4] Ibid.

[5] Francis A. Allen, The Borderland of Criminal Justice (Chicago: University of Chicago Press, 1964), pp. 133-34.

[6] Edward Green, Judicial Attitudes in Sentencing (London: MacMillan, 1961), pp. 1-2.

unchecked or unguided by criteria, procedural requirements, or further review.[7]

And Chief Justice Warren E. Burger observed: "Discretion in sentencing has been a doubled-edged sword. It permits the judges to accommodate unusual circumstances relative to each defendant. But this sometimes results in the defendants who ought to be similarly treated receiving substantially disparate sentences."[8]

Commenting on the sentencing process in the federal court system, Senator Kennedy observed: "Today the standard sentence imposed in Federal Courts is indeterminate, under which our hypothetical bank robber can receive a 1 to 24 year prison term--with the Federal parole board, not the judge, deciding at which point the offender should be released from prison."[9]

Federal Judge Marvin E. Frankel's condemnations of current sentencing practices have been widely cited. Noting the "unchecked and sweeping powers we give to judges in the fashioning of sentences" and expressing deep concern that "our

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[7]National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: Government Printing Office, 1973). It is interesting to note, however, that sentencing by jury--which broadens the participation in sentencing decisions--is no more appealing to the Commission than sentencing by judge. Abolition of the jury approach has in fact been recommended by the Commission (Courts, Standard 5.1:110) and by the American Bar Association ("Sentencing Alternatives and Procedures," Section 1.1, Approved Draft, 1968).

[8]Quoted in Lesley Oelsner, "Burger Asks Review of U.S. Sentencing," New York Times, January 2, 1977, p. 1.

[9]Edward M. Kennedy, "Should Prison Parole Be Abolished?" Boston Globe, July 10, 1977, pp. A1, A4.

laws characteristically leave to the sentencing judge a range of choice that should be unthinkable in a 'government of laws, not of men',"[10] he maintains: "sentencing is today a wasteland in the law. It calls above all, for regulation by law."[11]

In response to these criticisms, some legislatures have moved toward limiting sentencing discretion in recent years, either by reducing the options available to judges, or by curtailing or eliminating the discretion of parole boards to determine when an inmate is ready for release.[12]

The federal government also seems to be moving toward a more structured process. The sentencing provisions of the Federal Criminal Code Reform Act of 1977 (S.1437) are intended to curb judicial discretion, eliminate indeterminate or open-ended sentences, and make criminal sentencing fairer and more certain.[13]

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[10]Marvin E. Frankel, Criminal Sentences: Law Without Order (New York: Hill and Wang, 1973), p. 5.

[11]Quoted in Barbara L. Johnston, et al., "Discretion in Felony Sentencing--A Study of Influencing Factors," Washington Law Review, vol. 48, no. 4 (1973), p. 880.

[12]For an example of a retreat from a virtually total legislative commitment to rehabilitation, consider the case of California. Prior to enactment of the Uniform Determinate Sentencing Act of 1976 (effective July 1, 1977), many offenders sentenced to imprisonment in California were subject to confinement for life, and discretion was granted to the Adult Authority to establish subsequently the length of sentence to be served. See National Advisory Commission on Criminal Justice Standards and Goals, Corrections, p. 151.

[13]For a current assessment of various proposals affecting sentencing discretion in federal courts, see James Eaglin (cont.)

Inevitably, many concerned individuals are reaching the conclusion that indeterminate sentencing has not and cannot induce rehabilitation,[14] that it has few if any other benefits, and that it has many costs, not the least of which is wide disparity due to excessive judicial and correctional discretion. As a consequence, increasing attention is being directed toward developing methods and approaches that will remove much of this discretion, thereby also limiting or removing disparities. One of the first steps in this process is to identify and document the degree of disparity that presently exists and to identify the factors associated with it. The following review briefly summarizes research that has been done to date on this question.

B. SENTENCING STUDIES: A MIXED VERDICT

Sentencing studies have generally confirmed the existence of wide disparities in sentencing.[15] Analyses have examined

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and Anthony Partridge, An Evaluation of the Probable Impact of Selected Proposals for Imposing Mandatory Minimum Sentences in the Federal Courts, Federal Judicial Center, FJC-R-773 (Washington, D.C., 1977).

[14] What many regard as a particularly telling blow to those who espouse rehabilitation as the primary purpose of sentencing was administered by Robert Martinson and associates. See "What Works? Questions and Answers About Prison Reform," Chapter 14 in John A. Gardiner and Michael A. Mulkey (eds.), Crime and Criminal Justice (Lexington, Mass.: Lexington Books, 1975). This chapter originally appeared as an article in Public Interest, Spring 1974. For the full text of the study, see Douglas Lipton, Robert Martinson, and Judith Wilks, The Effectiveness of Correctional Treatment: A Survey of Treatment Evaluation Studies (New York: Praeger, 1975).

[15] A selected bibliography of empirical studies relating to sentencing disparity appears in Appendix A.

the impact of numerous suspected causes of disparate sentences, including the following:

- Defendant's age, race, sex, socioeconomic status (income, education, occupation), criminal history (arrests, convictions, incarcerations, parole or probation revocations), marital status, work history, criminal status at time of arrest (on parole or probation), number of dependents, attitude in court, motive for the crime, pretrial release status (jail, bail, personal recognizance), and birthplace.
- Identity of the judge, prosecutor, defense counsel (retained or appointed), and victim (person or institution).
- Gravity of the offense, including drug-alcohol abuse, weapon usage, victim injury; number of charges filed; original police charge(s).
- Background, philosophy, and other characteristics of the judge.
- Method of determining guilt--plea, bench, or jury trial--and the strength of the evidence pointing toward guilt.
- Location (urban or rural) or type of court (lower or superior).
- Availability of jail space.[16]

Pre-1960 analyses of these and other factors indicated more often than not that sentences were biased by extralegal considerations, such as the defendant's race and economic status. Many of these studies have been criticized for using inadequate data or limited analytic technique and for failure

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[16]Federal courts have ruled that prisons in several states were so overcrowded that inmates were being subjected to cruel and unusual punishment in violation of the Eighth Amendment. Judges have been reported as pursuing alternatives to confinement and reducing sentences because of overcrowding in the prisons. See "Yesterday's 'Baby Boom' is Overcrowding Today's Prisons," U.S. News & World Report, March 1, 1976.

to take into consideration such factors as the seriousness of the offense and the prior record of the accused.

Recent studies, however, seem to conclude more frequently that sentencing decisions are less affected by extralegal factors. Instead, it is increasingly suggested that sentences are based on such legally relevant considerations as the gravity of the crime and the criminal history of the accused. Whether these more recent findings differ from past results because of better research design, improved statistical tools, greater judicial objectivity, or other reasons is not entirely clear.

In spite of the recent trend, it would not be true to say that the more current studies represent anything approaching a consensus: similar studies often produce contradictory results; many studies have been criticized on methodological or analytic grounds; and the paucity of empirical data has often been noted.[17]

Nevertheless, many observers of the sentencing process appear to be in substantial agreement with this comment by

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[17]For example: "... adequate empirical data bearing on the issue is sparse at best. Although a number of social researchers have attempted to measure the degree to which discrimination is operative in sentence dispositions, the findings of these endeavors have often proven to be contradictory."--Carl E. Pope, Sentencing of California Felony Offenders (Washington, D.C.: Government Printing Office, 1975), p. 10. Also: "Recently more sophisticated studies have attempted to pinpoint the reasons for the obvious disparity in sentencing by analyzing the characteristics of the offender, the crime and the judge.... However, these studies suffer from methodological shortcomings and frequently fail to account for variables such as judges' backgrounds."--Johnston, "Discretion in Felony Sentencing," pp. 861-62.

Federal Judge Marvin Frankel:

> Some writers have quibbled about the definitiveness of the evidence showing disparity. It is among the least substantive of quibbles. The evidence is conclusive that judges of widely varying attitudes on sentencing, administering statutes that confer huge measures of discretion, mete out widely divergent sentences where the divergences are explainable only by the variations among the judges, not by material differences in the defendants or their crimes.... The evidence grows every time judges gather to discuss specific cases and compare notes on the sentences they would impose on given defendants.[18]

Consistent with Judge Frankel's comment, one study's findings "seriously challenge the underlying assumption of indeterminate and discretionary sentencing that it is possible to individualize a sentence for a particular offender." The results of the study were generated by moderate judges, "yet the individualized sentences of these non-aberrant judges were directly dependent upon the judge's background and unconscious biases rather than upon the defendant's needs."[19]

C. APPROACHES TO THE REDUCTION OF DISPARITY

A number of different strategies have been proposed to reduce the kind of sentencing disparity that is generally

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[18]Frankel, Criminal Sentences, p. 21.

[19]Johnston, "Discretion in Felony Sentencing," p. 872. In fact, this view is not new. In 1940, for instance, other researchers stated: "... the conclusion seems unescapable that the [sentencing] differences are due primarily to diverse attitudes on the part of the individual judges toward various crimes and that the severity or lightness of the punishment depends in each instance very largely on the personality of the trial judge."--Matthew F. McGuire and Alexander Holtzoff, cited in Green, Judicial Attitudes, p. 13.

considered to permeate the sentencing process. These range from the specification by legislative mandate of sentences for each type of charge, to the relatively informal structure that is represented by the voluntary judicial sentencing council.

Though the legislative approach would transfer discretion from a judicial to a political authority, it would not necessarily abolish variation in sentences given, unless, of course, specific sentences were mandated for all charges, without regard for any other circumstances. It could, however, formalize variation in sentencing in such a way that discretion with respect to sentence determination would no longer exist. For example, if a state legislature required the imposition of a 15-year, flat-time sentence for armed robbery with a prior felony conviction, and a 10-year, flat-time sentence for the same offense with no prior conviction, variation would still exist but judicial discretion would not. Whether this kind of approach is considered desirable is, perhaps, partly determined by one's feelings about the extent to which wisdom is located in the legislature rather than the judiciary; and partly by one's degree of confidence that a formalized structure can be devised that will be appropriate for future and as yet probably unforeseen circumstances.

Whatever opinion is held on this question, it seems clear that support of a legislatively determined sentence structure implies an orientation toward the issue that is somewhat at odds with the traditional view that judicial decision making

should not be subject to political pressure. The process of appointing or electing judges underlines this view. Federal judges are appointed for life, contingent upon good behavior. State and local judges, though elected by popular vote, tend to hold much longer terms than legislative representatives. Consequently, judges are, in principle, less subject to political and public influence than legislators and, therefore, have more independence in their decision making activities. Of course, this does not mean that in practice judges are uninfluenced by nonjudicial considerations. It does suggest, however, that the sentencing decision would be politicized by transferring it to the legislative branch of government.

Another factor to be considered in the removal of discretion from the judiciary is the use of sentencing indeterminancy as a means of eliciting defendant cooperation. Prosecutors often use the promise of a recommendation for a lighter sentence as a method of plea bargaining and getting additional information from offenders. This additional information, in many instances, leads to successful prosecution of criminals who would otherwise be untouched. Judges have done the same kind of thing though less frequently. Perhaps the most famous instance in recent times is the sentence of 35 years given by Judge John Sirica to James McCord after conviction for the Watergate break-in, a sentence that was subsequently reduced when McCord agreed to cooperate with the prosecutor. Whether these uses of sentencing discretion are considered desirable or undesirable is again

a matter of individual philosophy. However, they would almost certainly be lost under a legislatively determined sentencing structure. Of course, since prosecutors are unlikely to be able to conduct their business without plea bargaining tools, they would in all likelihood increase the use of charge reduction as a bargaining method, thus compensating for reduced judicial discretion by an increase of prosecutory discretion, the latter being, if anything, less subject to review than the former.

One strategy that lies between the two extremes of legislative mandate and unfettered judicial discretion is to establish sentencing guidelines. A major premise of this procedure is that "once the judges of a given jurisdiction are accurately informed as to what they have been doing in the past, then they can more clearly focus on what they should do in the future. And, these changes, made by the judges themselves, are much more likely to be accepted and implemented...."[20]

Another major assumption is that, although sentences are imposed on a case-by-case basis, the steady buildup of these individual sentencing decisions results in the incremental development of a sentencing policy, however latent it may be.[21] The task then becomes one of identifying, through various analytic techniques, the principal factors that appear to have

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[20] Leslie T. Wilkins, et al., Sentencing Guidelines: Structuring Judicial Discretion (Washington, D.C.: Law Enforcement Assistance Administration, 1976), p. 108.

[21] Ibid., p. 31.

accounted for a large percentage of sentencing decisions made in the recent past in the jurisdiction studied. Formerly implicit and constituting what might be termed a latent policy, these factors would be made visible and explicit.

Such factors, in effect, represent the collective experience of the bench and can form the basis for the development of overt guidelines by which to reduce the frequency of sentencing disparity in the future. The guidelines would indicate the expected sentences to be imposed in given types of cases on the basis of recent practice.

One set of recently developed guidelines is cast in the format of a sentencing matrix.[22] Running down the left side is a series of numerical scores reflecting the seriousness of the offense. Across the top of the chart is another set of scores, indicating offender characteristics, such as prior record. To determine the guideline sentence for any given case, the offense and offender scores are computed with the aid of simple worksheets and the intersection of the two scores is located on the chart in much the same way that the mileage between two cities is determined from charts on road maps. At the intersection, the guideline sentence is indicated--whether to incarcerate, and, if so, the suggested term.

Basically, the "guideline sentence is merely additional--but very significant--information for the sentencing judge, explaining what the 'average' sentence of all judges in that

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[22] Ibid. p. 46.

jurisdiction in the recent past would have been in the actual individual case before the judge."[23] The guideline sentence is seen as a frame of reference against which a judge can evaluate the sentence he or she tentatively plans to impose. If that sentence conforms to the one suggested by the guidelines, the judge will presumably feel more comfortable in handing down such a sentence, with the various factors that enter into the computation of offense and offender scores constituting the reason for the sentence.

The establishment of guidelines does not mean that sentences deviating from them can never be given. In fact, the approach fully recognizes the occasional necessity of imposing sentences that fall outside the guidelines range. In such cases, court policy might require that written reasons support such a departure. Furthermore, adjustments can be made by systematic review, perhaps on an annual basis, so that they reflect the most current thinking of the court. This is most easily accomplished, of course, in courts employing computerized information systems. A number of advantageous by-products are cited as flowing from the guidelines approach:

- Judges recently elected or appointed gain instant access to current sentencing practice. In effect, new judges have the collective wisdom of the entire local judiciary at their fingertips.

- Delay resulting from judge shopping should be less of a problem, for all judges would be using common sentencing criteria as embodied in the guidelines.

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[23] Ibid., p. 95.

- Dissemination of the guidelines to prosecutors, defendants, and defense attorneys may result in improved attorney-client relationships and more open and informed plea bargaining.[24]

Criticisms and disadvantages are also associated with the guidelines approach. First, unjust or unfair sentencing practices may simply be formalized and applied in a more consistent manner. This reduces discretion and disparity, but is not easily seen as desirable. In addition, the guidelines may not eliminate sentencing disparities between independent jurisdictions, even though evenhandedness may be achieved within the jurisdictions. Nevertheless, guidelines advocates maintain that the approach is a worthwhile first step that shows promise of being accepted by judges, and of being able to reduce substantially the sentencing disparities within each court.

As an initial step toward the possible implementation of a guidelines procedure in the District of Columbia, the research discussed in this publication attempts an identification of the principal determinants of felony sentencing decisions in the Superior Court for the District of Columbia. The design of the study and the organization of this report are presented in Chapter II.

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[24] Ibid, pp. 102-106.

II. THE DESIGN OF THE RESEARCH

The focus of this report is the sentences given to 1,665 offenders who--after arrest in 1974--were convicted of a felony. Felony, rather than misdemeanor, convictions are emphasized because felony convictions involve the kinds of offenses about which public and judicial concern is highest. Moreover, sentencing decisions for felonies are more problematic than those for misdemeanors because of the wider range of sentencing options available and because of the severity of the penalties that can be imposed. Finally, a greater amount of information is normally developed on felons than on misdemeanants, and consequently, more factors can be examined for possible impact on the sentencing decision.

As stated previously, this study has two primary objectives: to describe and then to explain sentencing patterns in the District of Columbia Superior Court. In this chapter, the research plan adopted for the achievement of these objectives will be explicated. There are four sections. The first presents a conceptual framework for the assessment of variation and the investigation of the sentencing decision; the second contains a discussion of the sources of data that were available, the data elements that were incorporated into the study, and the strengths and weaknesses of the resulting data base; the third focuses on the methodology by which the data were analyzed; and the fourth describes the organization of the remainder of this report.

A. A CONCEPTUAL FRAMEWORK FOR THE ANALYSIS

Sentencing in the Superior Court is usually though not necessarily performed by the judge who was the trial judge in the case.[1] After conviction, but before sentencing, a presentence report is produced by the probation officer assigned to the case. The report is narrative in style and normally contains a summary of the offense, details on the defendant's criminal career (if any) and socioeconomic background, a brief description of the processing of the case from arrest to conviction, and a recommendation concerning the sentence. The latter is normally general in content, but--depending on the wishes of the judge and the working style of the probation officer--may be specific. The presentence report is intended to be a summary of the case, thereby saving the judge the time and trouble of refamiliarizing himself with the contents of the case file, and, according to the judges with whom the matter was discussed, it is the primary document that they consult before determining sentence. The presentence report is considered sensitive and confidential by the judges and is filed separately from the case folder. Access to it by nonjudicial personnel is restricted. It is not customary, for instance, for the prosecutor to be conversant with the contents of the report.

Before pronouncing sentence, then, the judge can consult the presentence report or the case file, hear statements--if

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[1] Judges may be excused from the sentencing process for a justifiable cause.

any--by the defendant and the prosecutor, and take into account the recommendations of the probation officer. In addition, the judge has available his or her knowledge of sentencing precedent in similar cases. Schematically, the sentencing decision may be represented by the process depicted in Figure II-1.

Analysis of the decision would ideally capture data elements representing each of the factors that potentially influence the deliberation process. However, certain of those elements are beyond the reach of a study such as this. First, statements made by the defendant and the prosecutor at the sentencing hearing are not recorded in any readily usable form. Second, the demeanor of the defendant and the nature of the psychological interaction among the defendant, the defense attorney, and officials of the court are impossible to describe unless directly observed at the hearing. Even then, an interpretation of the behavior of the principal actors would be difficult to make. In addition, sentencing precedent in similar cases is rarely available to the judge and virtually never available (given the present state of recordkeeping in most courts) to the researcher. Consequently, the influence of these various factors on the judge's decision could not be measured for use in the present study. Four areas of potential influence remain, each of which could be a source of sentencing variation.

The first of these is the nature of the offense. This may be expressed in two ways: the first relates to the charge(s); the second relates to the characteristics of the crime. Felons convicted of different charges will naturally receive different

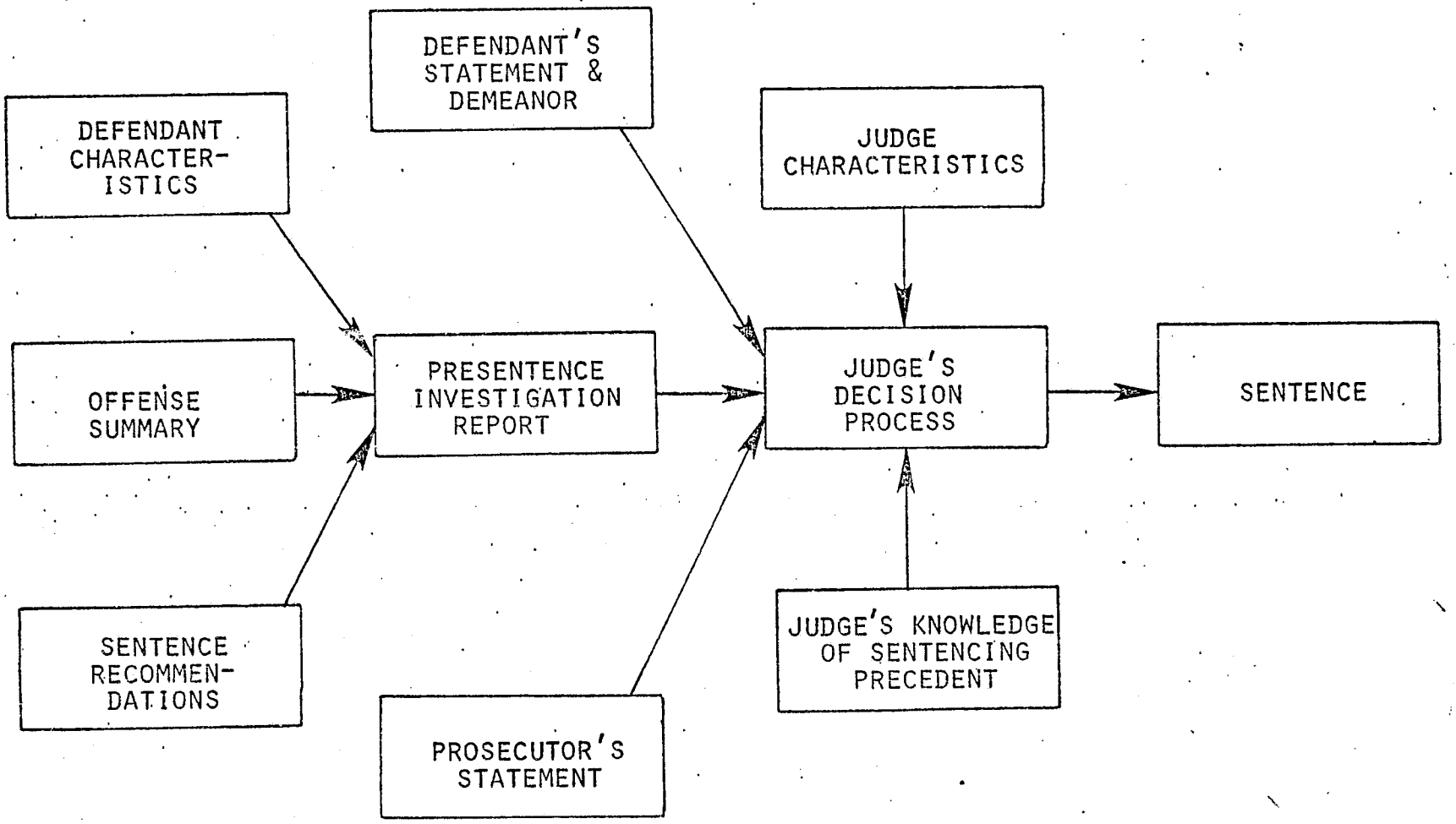

FIGURE II-1. A CONCEPTUAL MODEL OF THE SENTENCING DECISION

kinds of sentences. For instance, the maximum sentence permitted by statute for conviction of robbery (15 years) is substantially greater than that permitted for conviction for attempted robbery (3 years), and this difference is reflected in the sentences given for the two types of crime even when the statutory maximums are not imposed. This does not mean, of course, that all robbery convictions result in sentences that are greater than the statutory maximum for attempted robbery. In fact, more than one-third of all robbery convictions in the D.C. Superior Court result in probation. However, it does mean that the range of sentences given for any convicted charge is likely to be influenced by the upper limit for that charge. In this study, then, the charge at conviction will play an important role in the analysis. This raises another question. Does the charge at arrest, when different from the charge at conviction, have a similar kind of influence on the sentence? For instance, let us say that an individual is arrested and charged with burglary I, but, after negotiation, pleads guilty to burglary II. Another individual--in an unrelated case--is charged with burglary II and pleads guilty as charged. Thus, both individuals were convicted, by plea, of the same charge. Does the difference in original charges bring about a different sentence? Complementary but separate INSLAW research on plea bargaining in the D.C. Superior Court suggests that--for most types of charges--it does not,[2] and that the breakdown of charges, in

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[2]William M. Rhodes, Plea Bargaining: Who Gains? Who Loses? PROMIS Research Publication no. 14 (INSLAW, 1978, forthcoming), see especially Chapter 4.

general, does not result in measurable sentencing concessions. Naturally, there are specific exceptions to this general pattern. While the plea bargaining study focused on the charge at arrest, this study will examine the charge at conviction, and will incorporate a somewhat different aspect of the effects of pleading, namely the situation in which one individual goes to trial and is convicted while another pleads guilty, both for comparable offenses. This will test whether a plea of guilty is associated with sentencing leniency, even if no charge breakdown took place.

One additional way in which the nature of the offense has implications for the sentence, separate from the formulation of the charge, concerns the characteristics of the crime. For instance, was the offense against persons? How many people were involved? Were there any injuries? Was property loss high? And so on. It is anticipated that these kinds of factors, most of which are included in the presentence report, will have a strong bearing on the judge's decision.

A second source of sentencing variation is the <u>offender</u>. It is to be anticipated that the individual who has a long and serious criminal history will receive a more severe sentence for a given offense than another individual who commits the same offense but who has no prior criminal history. Further variation may be based on extralegal factors, such as the offender's personal characteristics. For instance, the idea of individualized sentencing suggests that different sentences should be given to offenders who differ with respect to some

characteristic viewed as relevant to rehabilitation by the sentencing judge, even if they have committed comparatively similar offenses and have similar criminal histories. If, for instance, in the judgment of the sentencing official, defendant A has a high likelihood of rehabilitation and reintegration into society, while defendant B does not, then--according to the rehabilitation ideal--the sentence given to defendant A should foster this potential. The sentence given to defendant B, on the other hand, should presumably be more severe in order that society can be protected against anticipated criminal behavior.

A third possible source of variation is the judge making the sentencing decision. If two defendants who are more or less equivalent with respect to offense committed, prior criminal history, and personal characteristics are sentenced by two judges who have different philosophies of sentencing, then it is likely that they will receive different sentences. The judge who believes, for instance, that offenders should be kept off the streets and be punished in a manner consistent with the crime they have committed is likely to incarcerate the felon before him for a longer period of time than the judge who believes in rehabilitation.

A fourth potential source of variation is the probation officer who prepares the presentence report. As noted, this document provides the judge with details on the criminal history and socioeconomic background of the defendant and makes a recommendation about the sentence to be given. To the extent that

the judge is guided by the recommendation in making the sentencing decision, it could clearly be an important source of variation. However, because of the privacy and security considerations mentioned earlier, the presentence report was unattainable for this research. Consequently, it was necessary to develop substitute sources of information. The manner in which this was done is described in the next section.

B. DEVELOPMENT OF THE DATA BASE

Four primary categories of data have been identified as relevant to the sentencing decision and potentially available for analysis. However many of these data are contained in the presentence report, which, for the reason specified, was not available. Substitute sources were therefore developed. With the exception of the sentencing recommendation made by the probation officer, the sources developed are believed to equal or to exceed the quantity and quality of the data contained in the report and, therefore, they are believed to compensate adequately for its exclusion.

Data were drawn from the following sources:

- Prosecutor's Management Information System (PROMIS)
- District of Columbia Bail Agency files
- District of Columbia Superior Court files
- Biographical sketches of judges and prosecutors (constructed by INSLAW staff)

The full complement of data items that were incorporated in the study are listed in Appendix B. However, each of the

above sources and the main categories of data derived from them will be briefly discussed here.

1. PROMIS

PROMIS is an automated, case-based information system that has been in operation in the District of Columbia since 1971. Entries begin with data from the Crime Analysis Worksheet, completed by the arresting officer, and continue with extensive case processing information as the case moves from indictment to termination. The first use to which PROMIS was put was to identify the names and case and defendant numbers of those felons who were to be included in the study. These numbers provided the links by which information from the different sources was aggregated into a single, case-based analysis file. In addition, the following general categories of data were extracted from the PROMIS records of the 1,665 felons included in this study:

On the Defendant

- Biographical information (age, sex, race, etc.)
- Prior arrest record and defendant seriousness score
- Circumstances of the arrest for the current offense

On the Offense

- Crime seriousness score
- Charge(s) at conviction
- Details of offense (threats, force, weapon, injury, property damage, etc.)

On Case Processing

- Type of defense attorney

- Identification of the judge and the attorney
- Pretrial release conditions
- Type of trial
- Plea or not

On the Victim

- Relationship (if any) between victim and defendant
- Biographical characteristics (age, sex, race, etc.)
- Criminal record (if any)

2. District of Columbia Bail Agency Files

The Bail Agency mandate is to conduct an investigation into the criminal record and community background of arrestees brought before the court and, on the basis of this information, to make a bail recommendation to the court. Assuming pretrial release is granted, the agency may--and often does--impose reporting conditions on the defendant. In the process of executing this mandate, the agency develops and maintains a case file on each individual. In this sense, then, the Bail Agency develops much of the same information that is later placed in the presentence report by the probation officer, and it was in fact the unavailability of the presentence reports which led to the use of Bail Agency files as a substitute for them. Though the probation officer's report is not necessarily identical in information items to the Bail Agency report, a high correspondence is believed to exist, particularly with respect to the offender's prior conviction record. Bail Agency investigators check precisely the sources of information that are

available to the probation officer, and, though the Bail Agency is customarily under great time pressure with respect to the investigation, there is no reason to believe that, in general, the Bail Agency files are incomplete. In fact, it has been suggested to us that the probation officer often uses the bail investigation and recommendation as the source of many of the presentence report items--especially conviction record data.

Unlimited access to Bail Agency case files was granted to the researchers. From them, the following data on offenders were generated:

- Residence
- Community ties
- Marital status
- Employment and income information
- Education
- Prior criminal record
- Outstanding warrants
- Convictions (charges and sentences)

It should be noted that background information on the defendant is sometimes difficult for the Bail Agency to verify, and, in these instances, unverified items were treated as missing data.

3. District of Columbia Superior Court Files

For a variety of reasons, the sentence is not included in the District of Columbia version of PROMIS (though in other PROMIS jurisdictions inclusion of the sentence is routine). Therefore this datum was taken from Superior Court records.

4. Biographical Records

Information was developed by INSLAW staff on the following biographical items:

. Judges

Year of appointment
Graduating school
Bar membership
Age, sex, and race

. Prosecutor

Sex, race, and experience

Differences between judge and prosecutor information items reflected partly the larger number of prosecutors in the Superior Court system and partly the difficulty of identifying and developing biographical information on them.

When data from these different sources were combined into a single analysis file, the result was a base that was as comprehensive as any used to date in the analysis of sentencing decisions. More than 200 separate variables were included in the initial data file, and this has made it possible not only to examine variation in sentencing under a variety of conditions, but also to look at the combined effects of a large number of variables on the sentencing decision. The methodology used in the performance of these tasks is discussed in the next section of this chapter.

C. METHODOLOGY

Two separate methodological approaches are taken in the report. The first involves tabular analysis of the distribution

of sentences under a variety of conditions; the second involves multivariate analysis of the determinants of the sentencing decision.

In Chapter IV, for instance, the range of sentences imposed on offenders convicted of homicide, rape, robbery, and a number of other serious offenses will be presented in tabular form. These offense categories will be broken down into specific charges to display more accurately the sentencing variation that exists. In addition, felons will be grouped according to the severity of their prior criminal record, so that sentence variation within and between the groups can be assessed. A substantial number of other offense- and offender-related factors, taken from the data base outlined in the previous section of this chapter, will also be utilized. In Chapter V, this general methodological approach will be extended to an analysis of the sentencing practices of individual judges. The tabular analysis will perform two general functions. It will, first, permit an empirical description of the sentencing variation that existed in the Superior Court with respect to the cases studied. Second, it will lead to an identification of those factors that, being most strongly associated with the variation, should be included in the multivariate analysis of the sentencing decision. This analysis is conducted in Chapter VI. A multivariate technique called PROBIT is employed, and the technique is described in detail in Chapter VI and in Appendix C. For the present, it should

be noted that PROBIT is well suited to an analysis of the conceptualization of the sentencing decision that is presented above in Figure II-1. A decision such as sentencing, which appears to be influenced by a variety of factors, is difficult to investigate adequately using tabular breakdowns. These require a large number of tables--the precise number being determined by the number of factors and the categories each possesses. However, the larger the number of tables, the greater the difficulties of interpretation. PROBIT, though not without limitations, makes a complex situation such as this somewhat more manageable by permitting the simultaneous consideration of the effects on the decision of a relatively large number of variables.

D. ORGANIZATION OF THIS REPORT

Chapter III describes the sentencing environment in the District of Columbia and the basic distribution of sentences imposed in the cases under study. The remainder of the report is organized around the potential sources of variation, noted above, on which it was possible to develop information. Chapter IV focuses on the offense and the offender and analyzes the sentencing decisions in the Superior Court in terms of a variety of characteristics. Chapter V considers the sentencing practices of the judge and assesses the degree to which those judge characteristics that it was possible to develop for the study are associated with the sentences the judges imposed.

Chapters III-V are primarily directed toward the accomplishment of the first objective of the study--the description of the sentencing patterns of the court. The second objective of the study, that of developing an explanation of the sentencing decision, is addressed in Chapter VI, where the combined effects of those factors that have been shown in the previous chapters to be most strongly associated with the sentencing decision are examined.

The final chapter of the report, Chapter VII, presents a methodology for the control of the sentencing variation that is analyzed in the preceding three chapters. The policy implications of this methodology and the way in which the research findings might be implemented will also be discussed.

III. SENTENCING IN THE DISTRICT OF COLUMBIA SUPERIOR COURT

This chapter briefly reviews the statutory provisions relevant to sentencing in the District of Columbia[1] and examines the basic distribution of sentences imposed in the 1,665 cases that are the focus of this study. These cases constitute a sufficiently large number to exhibit all the major sentencing possibilities.

A. STATUTORY PROVISIONS IN THE DISTRICT OF COLUMBIA CODE

As in most other jurisdictions, the District of Columbia's sentencing provisions appear to have evolved over the years in response to changing and sometimes conflicting philosophies. At different times, punishment, deterrence, incapacitation, and rehabilitation have each epitomized the orientation of judges, legislators, and others involved in the sentencing process. The sentencing provisions that reflect these different orientations are scattered throughout the District of Columbia Code and, in part, the U.S. Code and have not undergone

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[1] This review is deliberately brief, since the primary objectives of this report relate to the empirical study of sentencing decisions in the Superior Court, rather than to the statutory or normative issues relating to sentencing. For a comprehensive analysis of these, the reader is referred to the Interim Report to the District of Columbia Law Revision Commission: Sentencing Issues and Problems, prepared by the Institute for Law and Social Research, January 1977. Chapter 4 of the Interim Report (pages 54-79) assesses the present code in the District of Columbia in some detail.

major revision for more than 30 years. As a consequence, it is difficult to derive from the statutes any overall purpose concerning sentencing, and, in many instances, it is even difficult to know whether a particular statute in the code contains all information relevant to sentencing for the particular offense under consideration. In fact, several sections of the D.C. Code often apply to the same offense, but they are not cross-referenced and are therefore difficult to find.

Misdemeanants and felons are sentenced somewhat differently under the code. Misdemeanor convictions may result in a period of incarceration for up to 12 months. Sentences of 180 days or less are determinate, meaning that there are no provisions for early release, except for "good" time (5 days are deducted for each month of good behavior, for sentences longer than 30 days). Sentences longer than 180 days are indeterminate, meaning that a minimum and maximum time are specified (parole eligibility occurs on completion of the minimum), but that the actual time served may be any time within the range bracketed by those two figures. An additional element of the indeterminate structure is that the minimum may not be more than one-third of the maximum, though it may be less. Consequently, it is possible for a misdemeanant sentenced to 180 days to serve a longer period of time than a misdemeanant sentenced to 6 months, since the parole board classifies the latter sentence as indeterminate and the former as determinate. The misdemeanant receiving a sentence of 6 months is eligible for

parole after serving 2 months. Since most adult offenders sentenced in the Superior Court are released after the first parole hearing, this means that the sentence of 6 months is actually likely to result in incarceration for 2 months. The sentence of 180 days, on the other hand, results in incarceration for 150 to 180 days, depending upon the amount of "good" time accumulated.

All felony sentences are indeterminate, and--with the exception of certain types of offenses classified by statute--the period of incarceration may range from one year to life imprisonment. Judges are responsible for establishing the maximum and minimum sentence, subject to statutory constraints, with the single proviso, as stated above, that the minimum must not exceed one-third of the maximum. As noted also, the minimum may be less than one-third of the maximum. Of course, the fact that most incarcerated felony offenders are also released at the first parole opportunity means that in most cases, even though the sentence is indeterminate, the time to be actually served can be predicted fairly accurately at the time of sentencing.

Any code that incorporates indeterminate sentencing appears in principle to endorse the goal of rehabilitation, but due to the latitude permitted judges, and due to the difficulty in interpreting the D.C. Code, judges in the District of Columbia may in fact impose sentences in accordance with any philosophy and any goal. There is nothing in the code that provides

guidance for judges concerning factors that should be taken into account in establishing the length of the sentence; therefore, the degree to which the sentencing judge considers such factors as prior record, personal characteristics of the defendant, and other matters separate from the offense for which sentence is being given is largely a personal matter.

In this sense, the environment in which Superior Court judges operate fosters sentencing variation, and it can be expected that an empirical analysis of their sentencing decisions will inevitably show substantial differences in the sentences given to apparently equivalent offenders. To a certain extent, the Superior Court judges are aware of this fact, and some steps have been taken to compensate for the lack of a coherent sentencing policy in the relevant statutes. For instance, sentencing councils have been in effect for felony sentencing for several years, and although records are not kept, it is believed that most judges have at some time participated in such councils in their determination of sentences to be given. At the sentencing councils, judges exchange presentence reports and discuss what they would do in the situations covered by the report. The councils do not mandate a particular sentence to be imposed and, in this sense, they do not necessarily reduce sentencing variation. However, they do provide an opportunity for the judges to establish in their own minds an idea of the normative sentence for a particular type of offense, and to become more familiar with

the potential reactions of colleagues to the sentences they would impose. The opinion of the judges with whom this issue was discussed, however, is that judicial participation in sentencing councils has been limited. As a consequence, the impact of the councils on sentencing variation has also been limited.

B. DISTRIBUTION OF SENTENCED FELONY CASES BY TYPE OF SENTENCE

Table III-1 depicts thi distribution of felony sentences imposed in the District of Columbia Superior Court during the study period. The classification system used in the table orders sentences in terms of severity.[2] Devising such a system is not a simple matter, for at least two reasons. First, some offenders receive dispositions based on the Federal Youth Corrections Act (FYCA), which applies to offenders under age 22 at the time of conviction,[3] or the Narcotics Addict Rehabilitation Act (NARA), which also involves individualized sentences. Second, the sentences that specify terms of incarceration are indeterminate and may be of any length within statutory provisions. They may also involve probation as well as incarceration. The following discussion identifies the classification strategy that has been adopted.

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[2]The sentence classification scheme that is portrayed in the table was developed by Mark W. Foster and Judith Lucianovic for the Interim Report on Sentencing, prepared by the Institute for Law and Social Research in January 1977.

[3]Provided the offender has not had any previous FYCA treatment.

Table III-1

Distribution of Convicted Felony Cases
by Type of Sentence

Sentence	Most Serious Convicted Charge a Felony	
	Percent	Number
Probation and suspended	35.3%	587
Fine	.9	15
FYCA A	6.1	102
FYCA B	9.3	155
FYCA C	4.0	67
NARA	1.5	25
Under 1 year minimum	8.5	142
1 yr. min. - 3 yrs. max.	7.0	117
1 yr. min. - over 3 yrs. max.	5.0	83
2 yrs. min. - 6 yrs. max.	4.6	77
2 yrs. min. - over 6 yrs. max.	2.9	49
3 yrs. min. - 9 yrs. max.	2.3	38
3-4 yrs. min. - over 9 yrs. max.	4.4	73
5 yrs. min. - 15 yrs. max.	2.7	45
5-9 yrs. min. - over 15 yrs. max.	2.8	46
10-15 yrs. min.	2.1	35
20 yrs. to life	.5	9
Total	100.0%	1,665
Summary:		
'Out' Sentence (Probation, Suspension, Fine, FYCA A)	42.3	704
Alternative Incarceration (FYCA B, FYCA C, NARA)	14.8	247
'In' Sentence:		
Less than 3 year minimum	28.1	468
3 year minimum or more	14.7	246

Source: Records of the Superior Court of the District of Columbia.

Sentences under the Federal Youth Corrections Act have been classified as FYCA A, B, and C, in accordance with the provisions of Title 18, U.S. Code, Sections 5010 and 5017 of the act, and are presented in the table in the order of their severity. An FYCA A sentence imposes probation, while FYCA B and C both involve incarceration. Under FYCA B, conditional release must occur no later than four years after conviction, and unconditional discharge no later than six years after conviction. Incarceration under FYCA C is for a term specified by the sentencing judge, but it may not exceed the statutory maximum for the convicted offense. Conditional release must occur not less than two years prior to the expiration of that term, and unconditional discharge no earlier than one year after conditional release.

Dispositions under the Narcotics Addict Rehabilitation Act involve incarceration under the control of NARA authorities. Release and discharge are determined by those authorities within the guidelines specified by the sentencing judge. In practice, the minimum sentence under NARA is at least nine months, since one month is consumed by preparation for study of the individual, two months are needed to conduct the study, and six months must be served after the study is completed. The maximum NARA sentence is ten years, regardless of the statutory maximum for the crime. NARA does not apply to offenders convicted of a violent offense, or to offenders with two or more prior felony convictions.

The classification system addresses the problem of ordering sentences with specific minimums and maximums by focusing primarily on the minimum. For example, any sentence is considered more severe than any other sentence that has a lower minimum, and less severe than any other sentence with a higher minimum, regardless of the maximums. This reflects the fact that the majority of offenders in the District of Columbia are granted parole after serving the minimum sentence. However, it is still the case that sentences with the same minimum may have different maximums and a corresponding potential for different periods of incarceration. The D.C. Code specifies that the minimum term of the indeterminate sentence may not be greater than one-third of the maximum, but it does not restrict the imposition of a maximum that is more than three times longer than the minimum. Thus, one-to-five years is a legitimate sentence, as is one-to-three years. One-to-two years, however, is prohibited. To take the potentially different maximums into account, the classification system places any sentence for which the maximum is more than three times the minimum in a more severe category than a sentence for which it is not. For instance, two-to-nine years is placed in a more severe category than two-to-six years. However, in accordance with the principle that the minimum should dominate, two-to-six is considered more severe than one-to-nine. Sentences which impose different categories of penalty (e.g., a combination of fine and probation, or probation and incarceration) are included in the more

severe category. For instance, a sentence of 1-3 years plus a $1,000 fine would be included in the 1-3 category. This strategy involves some loss of variance in the sentence distribution, but it--or something like it--is a prerequisite of a manageable classification scheme.

It can be seen from the table that more than one-third of the convicted felons received probation or suspended sentences. In addition, when those who received fines or who received probation under the Federal Youth Corrections Act are included, the proportion of convicted felons receiving "out" sentences rises to 42.3 percent.

Those receiving incarceration under the Federal Youth Corrections Act B or C, or under the Narcotics Rehabilitation Act--designated in the table summary as "alternative incarceration"--accounted for another 14.8 percent of all convicted felons. The balance of the sentences, 42.8 percent, involved terms of incarceration of varying length. In the table summary, these "in" sentences have been grouped into two categories--those with a minimum of less than three years, and those with a minimum of three years or more. The purpose of this grouping is to retain a distinction between less and more severe sentences while still presenting a clearly stated summary. Thus, 28.1 percent of all convicted felons received sentences with minimums of less than three years, and 14.7 percent received minimums of three years or more.

Almost 20 percent of the cases were sentenced under the Federal Youth Corrections Act. Roughly 35 percent of the convicted felons were age eligible for FYCA treatment, but only a little more than half of those in fact received it.

An interesting property of this table is the manner in which it illustrates quite even utilization of most of the different types of sentences, particularly with respect to sentences involving specific terms of incarceration. One obvious exception is the NARA category. This may be due to the fact that NARA commitments are available in the federal prison system only when space is available and when the defendant is thought to be a likely candidate for rehabilitation. In addition, many defendants are believed to be reluctant to seek NARA commitments because of fear of the slowness of the NARA authorities to return inmates to the community, and because of the stringent conditions of supervision that might be imposed after release.

It is somewhat difficult to determine whether the incarceration rate for convicted felons in the District of Columbia is high or low relative to other jurisdictions, since, for the most part, comparative statistics of this sort are not readily available. A limited attempt at such a comparison was reported by Patrick Oster in U.S. News and World Report.[4] Oster compared the 1974 incarceration rates for six large jurisdictions, of

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[4]Patrick R. Oster, "Revolving Door Justice: Why Criminals Go Free," U.S. News and World Report, May 10, 1976, p. 37.

which Washington, D.C., was one. The focus was on felony arrests rather than felony convictions, and Oster suggested that when incarceration rates are calculated on that basis, the District of Columbia is within the average range for most large jurisdictions. However, more recent information, developed in a cross-city analysis of PROMIS data, reveals variation between cities which is somewhat greater.[5] The tabulation below shows incarceration rates for offenders arrested for felonies and subsequently convicted of either felonies or misdemeanors.

City	Incarceration Rate
Indianapolis	81%
Los Angeles	73%
District of Columbia	61%
New Orleans	57%
Detroit	39%

The District of Columbia is again in the middle of the distribution, but considerable variation between cities is evident, and this supports the claim that sentences manifest a high degree of uncontrolled discretion. Of course, these rates reflect police and prosecutory, as well as judicial, decision making, and, because of this, some of the divergence may have its roots in these other areas.

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[5]Kathleen M. Brosi, A Cross-City Comparison of Felony Case Processing, in draft (INSLAW, 1978).

IV. THE OFFENSE AND THE OFFENDER

In this chapter, sentencing decisions are examined in terms of a number of factors relating both to the offense and to the offender. There are two main objectives: the first is to discuss the extent and nature of the variation, if any, that exists in sentences given in the Superior Court; the second is to identify those factors that--being most strongly associated with the decision--should be included in the multivariate decision-making models that are developed in Chapter VI.

As was discussed in Chapter II and is detailed in Appendix B, a large number of factors were included in the analysis that preceded the writing of this report. More than 200 separate variables were examined for their impact on the sentencing decision. Many of these exhibited little or no relationship to the decision, whether considered individually (using cross-tabular analysis) or in conjunction (using multivariate techniques such as those employed in Chapter VI in the construction of the decision-making models). Inclusion in this report of data on these low-impact variables would place an unnecessary burden on the reader and, therefore, the discussion that follows in this and subsequent chapters concentrates on those factors that do exhibit a relationship with the sentence. Information on low-impact factors can be obtained upon request from the Institute for Law and Social Research.

The chapter is divided into four parts: the first focuses on certain characteristics of the offense; the second introduces

factors relating to the offender; the third looks at the interaction between the offense and the offender; and the fourth considers the inferences that can be drawn from the analysis.

A. CHARACTERISTICS OF THE OFFENSE

In this section, sentencing decisions in the District of Columbia Superior Court are described in terms of a number of different factors related to the offenses for which the felons were convicted. Because there are more than 100 different charges in the cases examined, it would be difficult if not impossible to detect any pattern in them if the data for each were presented individually. In addition, the 1,665 cases on which the present study is based is not a large enough number to permit a meaningful breakdown into so many categories. Nevertheless, it is clearly desirable to be able to specify the distribution of sentences for the more serious and more frequent kinds of offenses. For instance, sentencing breakdowns by specific robbery charge, by assault charge, and by other similarly important charges could be highly informative. Therefore, the procedure followed is to discuss the sentencing distribution first in terms of the general characteristics of the offense, and second--for serious offenses against persons--in terms of particular charges. Finally, the maximum sentence as defined by statute is compared with the sentence actually given.

1. General Characteristics of the Offense

Analysis indicated that the following general characteristics exhibited a statistically significant and, in some instances,

strong association with the sentence:

- Target of the offense (whether persons, property, or some other)
- Whether the charge of conviction was for robbery
- The degree of violence in the offense, as measured by the occurrence of injury or death
- The possession and use of a weapon during the commission of the offense
- The number of charges brought against the defendant.

It should be noted that the impact of these characteristics is independent of any charge reduction that might have occurred as a result of plea bargaining. In other words, information that placed a case in a particular category was derived from the nature of the committed offense and not from the charge at conviction. This facilitated the identification of a potential source of variation in sentences for charges that were identical at conviction but which were based upon offenses with different characteristics. This capability is particularly important for the multivariate analysis that is reported in Chapter VI.

The sentence distribution for each category of these characteristics is exhibited in Table IV.1. Each characteristic will be discussed separately. However, the discussion of the target of the offense will be presented in considerably greater detail than the discussion of other characteristics. This is partly because the distinction between offenses against persons and other kinds of crimes is normatively and--as will be seen--empirically important, and partly to provide a methodological frame

Table IV-1

Distribution of Sentences by Selected Characteristics of the Offense

Sentence	Offense Target			Was Offense a Robbery		Injury/Death		Weapon			Number of Charges	
	Person	Property	Public Order	Yes	No	Yes	No	None	Possessed, not used	Displayed or Used	1	2 or more
Probation and suspended	27.3	41.3	41.8	25.0	39.5	31.0	36.3	39.9	30.9	23.9	38.3	25.5
Fine	.4	.8	3.2	.4	1.1	.3	1.1	1.2	.8	.0	1.2	.0
FYCA A	6.9	6.5	1.6	8.5	5.2	4.9	6.4	6.5	3.9	7.4	6.2	5.9
FYCA B	10.5	10.9	1.6	14.2	7.3	6.4	10.0	10.0	6.7	10.2	9.3	9.4
FYCA C	6.6	1.7	1.6	6.8	2.9	7.6	3.1	2.4	5.9	7.4	2.8	7.9
NARA	.3	3.1	.5	.2	2.0	.0	1.9	2.1	1.1	.0	1.5	1.5
Under 1 year minimum	6.7	8.1	16.9	5.9	9.6	7.3	8.8	9.0	10.1	4.9	9.0	6.9
1 yr. min. - 3 yrs. max.	6.5	5.9	13.2	6.8	7.1	6.4	7.2	7.8	6.7	4.6	7.7	4.9
1 yr. min. - over 3 yrs. max.	4.0	5.8	6.9	3.5	5.6	4.6	5.1	4.5	6.7	4.6	5.0	4.9
2 yrs. min. - 6 yrs. max.	3.4	6.2	4.8	3.5	5.1	2.4	5.2	5.2	2.8	4.9	4.9	3.6
2 yrs. min. - over 6 yrs. max.	2.9	3.1	2.7	2.5	3.1	4.0	2.7	2.3	3.9	3.9	2.9	3.1
3 yrs. min. - 9 yrs. max.	3.6	1.1	1.6	3.9	1.6	1.8	2.4	1.6	3.7	3.2	2.2	2.6
3-4 yrs. min. - over 9 yrs. max.	6.5	2.3	3.7	6.2	3.6	6.1	4.0	3.2	6.2	6.3	4.2	5.1
5 yrs. min. - 15 yrs. max.	4.2	1.9	.0	4.1	2.1	5.5	2.0	2.1	2.5	5.3	1.7	5.9
5-9 yrs. min. - over 15 yrs. max.	5.2	.8	.0	4.5	2.0	6.4	1.9	1.1	3.9	7.4	2.0	5.4
10-15 yrs. min.	4.1	.5	.0	3.9	1.4	3.3	1.8	1.2	2.5	4.9	.7	6.6
20 yrs. to life	1.2	.0	.0	.0	.8	2.1	.2	.1	1.4	1.1	.4	1.0
Percent of all Cases Number	48.6 (785)	39.7 (642)	11.7 (189)	29.1 (485)	70.9 (1180)	19.8 (329)	80.2 (1336)	61.6 (1025)	21.4 (356)	17.1 (284)	76.5 (1273)	23.5 (392)
Summary:												
'Out' Sentence (Probation, Suspension, Fine, FYCA A)	34.6	48.6	46.6	33.9	45.8	36.2	43.8	47.6	35.6	31.3	45.7	31.4
Alternative Incarceration (FYCA B, FYCA C, NARA)	17.4	15.7	3.7	21.2	12.2	14.0	15.0	14.5	13.7	17.6	13.6	18.8
'In' Sentence												
Less than 3 year minimum	23.5	29.1	44.5	22.2	30.5	24.7	29.0	28.8	24.7	22.9	29.5	23.4
3 year minimum or more	24.8	6.6	5.3	22.6	11.5	25.2	12.3	9.3	20.2	28.2	11.2	26.6
$CHI^2(df)$	140.0(6)***			59.7(3)***		37.5(6)***		89.1(6)***			66.0(3)***	

***SIG (α = .001)

of reference into which discussion of other factors can be placed.[1]

a. The Target of the Offense. There are three target categories--person, property, and public order[2]--and it can be seen that 48.6 percent of all convictions were for offenses against persons, and 39.7 percent and 11.7 percent were against property

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[1]This brief description of the organization and interpretation of the table is provided for readers who are unfamiliar with tabular analysis. This and subsequent tables are all organized in the following manner.

The percentage of cases that fall into a particular sentence category are presented in the columns in the tables. The total number of cases in any given column is shown by the number in parentheses just above the dotted line. The proportion of the 1,665 cases in the study represented by the column total is stated immediately above the figure in parentheses. In Table IV.1, for instance, 27.3 percent of the 785 sentences given to offenders against persons imposed either probation or a suspended sentence, 0.4 percent involved fines, 6.9 percent involved probation under FYCA A, and so on. The 785 offenses in this column are 48.6 percent of the 1,665 total. Each column in the table can be read in this way. This means that the percentages in different columns can be directly compared. For instance, the fact that 27.3 percent of the antiperson offenders were given probation, compared with 41.3 percent of the antiproperty offenders, means that probation was a much more likely outcome in the latter offense category than in the former.

The portion of the table below the dotted line contains a summary of the sentence category breakdown. The objective of the summary is to group the sentences in such a way that comparisons between the in-out decision, and the "short vs. long" sentence decision can be more easily made. The percentages in this section of the table are simply the sum of the percentages in the corresponding sentence categories. For instance, 24.8 percent of antiperson offenders are shown as receiving sentences with at least a three-year minimum. In the upper portion of the table, these cases are split up among the six sentence categories that have a minimum term of at least that length.

[2]The term "public order" is used here to encompass all offenses that were not against persons or property. Included are such activities as organized gambling, vice and drug offenses, and so on.

and public order, respectively. To the extent that antiperson offenses are considered more serious than offenses against either property or public order, it is to be anticipated that more severe sentences will be imposed on individuals convicted of such offenses. This was in fact the case, as the table illustrates. First, it can be seen that 27.3 percent of the antiperson offenders were given probation or suspension, compared with 41.3 percent and 41.8 percent, respectively, of the offenders against property and public order. Second, a scan of the various categories of sentences reveals that periods of incarceration tended to be longer for antiperson offenders than for either of the other two classes. Thus, the percentage of antiperson offenders who were given a three-year minimum or longer (24.8 percent) exceeds by a considerable margin the comparable percentages for property offenders (6.6 percent) and public order offenders (5.3 percent). To some extent, these figures reflect statutes that provide longer sentences for offenses against persons, and discretionary judicial decision-making.

The summary section of Table IV-1 reveals an interesting property of the relationship between offense target and sentence. In spite of the tendency for "out" sentences to be given at a higher rate to those whose offenses are not against persons, it does not follow that "in" sentences are imposed at a higher rate on those whose offenses are against persons. As can be seen, "in" sentences were given for offenses against public order at a higher rate (49.8 percent) than for offenses against

persons (48.3 percent). This is because alternative incarceration was used more frequently for antiperson offenders than for public order offenders (17.4 percent compared with 3.7 percent). To a certain extent, these differences reflect the FYCA age eligibility of a high proportion of offenders against persons. However, since probation, fine, and suspension are viable alternatives for the public order offender, the differences may also be due to a judicial decision that short "in" terms (44.5 percent of the public order offenders received minimums of less than three years) are equivalent to alternative incarceration for those not eligible for FYCA or NARA treatment.

One final point may be made about this section of Table IV-1. If the alternative incarceration and the shorter "in" terms are considered together, then offenders against property and public order were treated very similarly. "Out" sentence rates for these two categories, for instance, were 48.6 percent and 46.6 percent, respectively, and the longer "in" sentence rates were 6.6 percent and 5.3 percent, respectively. This suggests that the important distinction to be made on the basis of this breakdown is between offenses against persons, on the one hand, and a combination of property and public order offenses on the other.

Discussion of the remaining characteristics is linked to general conclusions about the association between them and the sentence given. Information supporting these conclusions is, of course, contained in Table IV-1.

b. Robbery. Violent street crimes have been the subject of considerable public concern in recent years, and robbery is perhaps the most commonly feared crime. Consequently, it is frequently presumed that judges are particularly sensitive to this type of offense and are likely to be severe in their sentencing practices with respect to it. This analysis supports that assumption. Convictions for robbery are much more likely to result in incarceration (66 percent) than are other types of convictions (approximately 55 percent for offenders against property and public order). A comparison of specific robbery charges with other offenses against persons is presented in Section A.2 of this chapter.

c. Injury or Death. It is to be expected that the occurrence of injury or death will be associated with more severe sentences. This expectation was supported by the data to approximately the same degree as the robbery-nonrobbery breakdown.

d. Weapon Possession and Use. Conviction for an offense that did not involve a weapon is much more likely to be associated with an "out" sentence than a conviction that did (47.6 percent compared with 35.6 percent). In addition, use of the weapon is strongly associated with longer sentences.

e. Number of Charges. The more charges there are, the more severe the sentence is likely to be. In the single-charge category, 45.7 percent of the offenders were given "out" sentences, in contrast with 31.4 percent for those with two or

more charges. In addition, 26.6 percent of all individuals with two or more charges were given "in" sentences with a minimum of at leas. three years, compared with 11.2 percent of the individuals with only one charge.

f. Summary of the Effect of Offense-based Characteristics. This discussion suggests that the nature of the offense is a highly important factor in the determination of the sentence, and that the asssociation between the characteristics of the offense and the severity of the sentence is in the expected direction. That is to say, if the offense was against a person and involved violence, injury, and multiple charges, then the sentence given was much more likely to be severe than otherwise. However, in spite of this tendency, substantial variations still exist. For instance, for offenses involving injury or death, every sentence category, except NARA commitments, contains some cases. Thus, even though more severe sentences were associated with the occurrence of injury or death, it is by no means true that all convictions for such offenses lead to severe sentences. In fact, 50 percent of these convictions resulted in "out" sentences or alternative incarceration. Similar conclusions can be drawn from each of the categories shown in Table IV-1. Of course, included within the general categories of offense characteristics used in this table are considerably different kinds of events. For instance, an offense against a person(s) may be homicide, rape, assault, and so on, and the sentencing decision may differ for each of these.

Discussion of the more common and serious charge types now follows.

2. Specific Charges

Table IV-2 presents data on the sentences given in the Superior Court to individuals convicted of five general classes of serious offenses: homicide, rape, assault, robbery, and felony burglary. The decision to employ these categories was based on a conception of their seriousness and of public awareness and sensitivity to judicial decisions concerning them. Within each of the categories are subclassifications that identify specific charge types, and for which sentencing data are provided. As an indicator of the relationship of the sentence actually given to that which is statutorily possible, the maximum sentence for each of the charges examined is identified in the table.

a. Homicide. The first three columns of the table present the breakdown for homicides, showing felony murder and murder I together, murder II as a separate category, and manslaughter as a third category. Because there were relatively few cases involving these charges and because statutory provisions prescribe certain kinds of sentences for these offenses, a relatively high degree of uniformity in sentences given is to be expected. With respect to felony murder and murder I, this clearly was the case. Seventy-five percent of the individuals convicted in this category received the mandatory term, 20 years-to-life, and the other 25 percent were incarcerated under the

Table IV-2

Distrubution of Sentence for Serious Offenses Against Persons

Sentence	Homicide			Rape			Assault			Robbery			Burglary	
	Felony Murder and Murder I	Murder II	Manslaughter	Armed Rape	Forcible Rape	Assault with Intent to Rape	Assault on a Police Officer	Assault with a Dangerous Weapon	Armed Assault	Armed Robbery	Robbery	Attempted Robbery	Burglary I	Burglary II
Probation and suspended	.0	.0	24.4	.0	.0	20.0	50.0	48.2	16.7	11.9	29.0	37.3	12.9	31.6
Fine	.0	.0	.0	.0	.0	.0	.0	.9	.0	.0	.0	1.8	.0	.0
FYCA A	.0	.0	6.7	10.0	12.5	.0	8.3	2.7	3.3	8.3	7.2	10.9	19.4	6.3
FYCA B	.0	.0	2.2	.0	.0	30.0	.0	4.5	13.3	11.9	14.5	17.3	6.5	16.8
FYCA C	25.0	12.0	6.7	.0	31.3	10.0	.0	.9	10.0	11.3	6.3	.9	6.5	1.6
NARA	.0	.0	.0	.0	.0	.0	.0	.9	.0	.6	.0	.0	.0	4.7
Under 1 year minimum	.0	4.0	8.9	.0	12.5	.0	4.2	10.7	6.7	1.8	7.2	10.0	.0	6.3
1 yr. min. - 3 yrs. max.	.0	4.0	6.7	.0	.0	.0	16.7	6.2	10.0	2.4	2.4	21.8*	.0	4.2
1 yr. min. - over 3 yrs. max.	.0	8.0	.0	.0	.0	10.0	16.6	6.2	.0	6.5	2.9	.0	9.7	3.7
2 yrs. min. - 6 years max.	.0	.0	2.2	.0	.0	20.0	.0	5.4	3.3	.6	7.7	.0	3.2	10.0
2 yrs. min. - over 6 yrs. max.	.0	8.0	6.7	.0	.0	.0	.0	3.6	3.3	3.0	3.4	.0	.0	4.7
3 yrs. min. - 9 yrs. max.	.0	.0	2.2	20.0	.0	.0	.0	4.5	3.3	4.2	5.8	.0	.0	1.6
3-4 yrs. min. - over 9 yrs. max.	.0	8.0	13.3	.0	12.5	10.0	4.2*	5.4*	3.3	4.8	10.6	.0	3.2	4.2
5 yrs. min. - 15 yrs. max.	.0	4.0	20.0*	.0	12.5	.0*	.0	.0	3.3	8.3	2.9*	.0	12.9	4.2*
5-9 yrs. min. - over 15 yrs. max.	.0	32.0	.0	30.0	18.8	.0	.0	.0	13.3	13.1	.0	.0	16.1	.0
10-15 yrs. min.	.0	20.0*	.0	40.0*	.0*	.0	.0	.0	10.0*	11.3*	.0	.0	9.7*	.0
20 yrs. to life	75.0*	.0	.0	.0	.0	.0	.0	.0	.0	.0	.0	.0	.0	.0
Percent of all Cases Number	14.6 (12)	30.5 (25)	54.9 (45)	27.8 (10)	44.4 (16)	27.8 (10)	14.5 (24)	67.5 (112)	18.1 (30)	34.6 (168)	42.7 (207)	22.7 (110)	14.0 (31)	86.0 (190)
Summary:														
'Out' Sentence (Probation, Suspension, Fine, FYCA A)	.0	.0	31.1	10.0	12.5	20.0	58.3	51.8	20.0	20.2	36.2	50.0	32.3	37.9
Alternative Incarceration (FYCA B, FYCA C, NARA)	25.0	12.0	8.9	.0	31.3	40.0	.0	6.3	23.3	23.8	20.8	18.2	13.0	23.1
'In' Sentence:														
Less than 3 year minimum	.0	24.0	24.5	.0	12.5	30.0	37.5	32.1	23.5	14.3	23.6	31.8	12.9	28.9
3 year minimum or more	75.0	64.0	35.5	90.0	43.8	10.0	4.2	9.9	33.2	41.7	19.3	.0	41.9	10.0
$CHI^2(df)$	††			††			††			81.2(6)***			22.9(3)***	

*Indicates the maximum sentence allowable for the particular charge.
††Too many cells with expected frequency less than five for valid use of CHI^2.
**SIG (α = .001)

most serious provisions of the Federal Youth Corrections Act. For murder II convictions, the spread of sentences is greater; individuals are found in sentence categories ranging from less than a 1-year minimum up to 15-years minimum. The manslaughter range is greater yet. First, there are conspicuous bulges at both the most serious and least serious ends of the scale--20 percent received the maximum sentence of 5-to-15 years and 24 percent were given probation or a suspended sentence. Second, most of the statutorily permissible categories were utilized. In other words, sentence variation was substantial, even though the number of cases (45) was low.

b. Rape. Rape is subdivided into armed rape, forcible rape, and assault with intent to rape. Armed rape sentences were naturally more severe than sentences for either of the other charges, and forcible rape was punished more severely than assault with intent to rape. However, the low number of cases of each type makes general conclusions about variation within a particular charge type difficult to draw. It can be observed, nevertheless, that--with the possible exception of the statutory maximum for armed rape--no particular sentence category contains a concentration of cases.

c. Assault. Assault convictions are also divided into three categories--assault on a police officer (APO), assault with a dangerous weapon (ADW), and armed assault, which includes assault with intent while armed, mayhem while armed, and assault with intent to kill. One figure in Table IV-2 is

rather surprising: 58.3 percent of the APO convictions resulted in "out" sentences. Many observers of the court system have commented that the charge of assault on a police officer often reflects a situation in which blame may be shared between the officer and the defendant. The fact that those convicted of this offense received "out" sentences at such a high rate may reflect this contention, or perhaps a degree of skepticism on the part of the judges. In addition, offenses that would be misdemeanors if a police officer were not involved are normally treated as felonies because of police involvement.

It is also of interest that 51.8 percent of all individuals convicted of assault with a dangerous weapon were not incarcerated. It has been hypothesized that a large proportion of such cases involve defendants and victims who are either known or related to each other, and that as a consequence such cases are treated more as family disputes than as serious crimes against individuals.[3]

Again, sentence variation is high. For armed assault convictions, all but 3 of the 16 possible categories were utilized. For ADW, all categories were used.

d. Robbery. Sentences for robbery convictions are divided in the table into armed robbery, robbery, and attempted robbery,

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[3]In 1973, for instance, 75 percent of the arrests brought to the D.C. Superior Court on charges of simple or aggravated assault involved family members, friends, or acquaintances. See Kristen M. Williams, The Role of the Victim in the Prosecution of Violent Crimes, PROMIS Research Publication no. 12 (1978, forthcoming), Table 6. Similar findings were reported by the Vera Institute of Justice in Felony Arrests: Their Prosecution and Disposition in New York City's Courts (New York, 1977).

reflecting the declining seriousness of the offense. Armed robbery sentences are distributed across the full range, up to and including the maximum sentence, but incarceration of some kind is more likely than not. For instance, 56 percent of all offenders convicted of armed robbery received incarceration for specific terms, and an additional 23.8 percent received incarceration under FYCA or NARA provisions. It can also be seen that when incarceration is imposed, it is somewhat more likely be for a long than a short term.

Unarmed robbery convictions have an incarceration rate of 63.8 percent, which--though higher than the average incarceration rate for felony convictions (57 percent)--is still somewhat lower than that for armed robbery (79.8 percent).

Attempted robbery, the last subclassification of robbery convictions, is naturally associated with less severe sentences. In fact, 50 percent of all sentences for attempted robbery convictions did not involve incarceration. Nevertheless, all but one of the statutorily permissible sentence categories were used.

e. Burglary. The last offense considered in the table, felony burglary, is divided into burglary I and burglary II, the difference between these being that burglary I involves unlawful entry of a residential-type building and burglary II does not. The former is clearly a more serious crime than the latter in terms of its impact upon citizens and this difference is reflected in the sentencing results. Of the convictions for

burglary I, 54.8 percent resulted in "in" sentences, compared with 38.9 percent of convictions for burglary II. In addition, a much higher proportion of all the offenders receiving "in" sentences for burglary I received sentences that involved a minimum of three years or more. To some extent, of course, this reflects the fact that the statutes permit a 10-year minimum for burglary I, compared with a 5-year minimum for burglary II. For both charges, sentencing variation exists, though it is greater for burglary II than burglary I.

One final point of interest about the data for burglary and robbery convictions is that a fairly large proportion of young offenders are convicted of these crimes. The findings of another INSLAW study,[4] that defendants arrested for crimes of robbery and burglary are younger than the average arrestee, are substantiated by the data included in this table. Over half of those convicted for some type of robbery were FYCA age eligible (249 out of 485 convicted) and of those 249, 57 percent were given Youth Act sentences. Forty-three percent of those convicted of a felony burglary were similarly age eligible (96 out of 221), and 56 percent were given FYCA

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[4]An INSLAW analysis of the characteristics of persons arrested for robbery or burglary in the District of Columbia between November 1972 and February 1973 found their median age to be 22.6 years and 23.9 years, respectively, compared with 26.5 years for persons arrested for other felonies and serious misdemeanors in the same period. Fifty-nine percent of the robbery arrestees and 51 percent of the burglary arrestees were in the 19-to-24 age group, compared with 42 percent of the other arrestees. See Kristen M. Williams, Robbery and Burglary: A Study of the Characteristics of the Persons Arrested and the Handling of Their Cases in Court, PROMIS Research Publication no. 6 (1978, forthcoming), Exhibit 3.5.

sentences. Consequently, it would not be appropriate to claim that judicial use of FYCA provisions in robbery and burglary cases is necessarily inconsistent with their use in all felony cases--those convicted of these offenses simply tended to be younger.

3. Sentence Imposed by the Statutory Maximum For the Convicted Charge

In Table IV-3, the data are organized by the statutory maximum for the convicted charge. Two categories--20 years and 30 years--contain a low number of cases due to the fact that maximums above 15 years tend to be identified in the statutes as "life." Other categories, however, contain at least 200 cases, indicating that the cases considered in the study covered the full range of statutorily permissible sentences.

Perhaps the most noticeable aspect of the table is that--with the exception of the 20-year maximum, which has only one case--sentences ranging from probation up to the maximum were actually given in each category of maximum. Thus, even though it is true that a higher proportion of offenders were incarcerated as the maximum increased (e.g., 42.5 percent for offenses with a maximum of three years or less, compared with 82.8 percent for offenses with a maximum of life), variation was substantial. Also, it is interesting to note that conviction for an offense that carried a relatively long maximum did not necessarily result in a severe sentence. More than 50 percent of all convictions for offenses with maximums of 10 years or less

Table IV-3

Distribution of Sentences by the Statutory Maximum
For the Convicted Charge

Sentence	Maximum Sentence for the Convicted Charge						
	3 yrs, or less	5 yrs.	10 yrs.	15 yrs.	20 yrs.	30 yrs.	Life
Probation or suspended	45.7	41.7	48.6	29.5	100.0	14.3	9.7
Fine	2.2	1.4	1.5	.0	.0	.0	.0
FYCA A	8.5	7.9	2.5	6.7	.0	14.3	7.6
FYCA B	9.4	7.9	5.3	14.6	.0	4.8	9.0
FYCA C	.9	.9	1.7	4.4	.0	4.8	12.2
NARA	2.2	1.4	1.5	2.0	.0	.0	.4
Under 1 year minimum	9.0	13.4	11.4	6.9	.0	.0	2.9
1 yr. min. - 3 yrs. max.	21.0	13.0	6.7	3.6	.0	.0	2.9
1 yr. min. - over 3 yrs. max.	.0	12.5	5.9	3.1	.0	14.3	4.7
2 yrs. min. - 6 yrs. max.	.0	.0	5.3	8.4	.0	4.8	.7
2 yrs. min. - over 6 yrs. max.	.0	.0	3.4	4.2	.0	.0	3.2
3 yrs. min. - 9 yrs. max.	.0	.0	2.3	3.6	.0	.0	3.6
3-4 yrs. min. - over 9 yrs. max.	.0	.0	4.0	8.0	.0	4.8	5.8
5 yrs. min. - 15 yrs. max.	.0	.0	.0	5.1	.0	19.1	6.5
5-9 yrs. min. - over 15 yrs. max.	.0	.0	.0	.0	.0	14.3	15.5
10-15 yrs. min.	.0	.0	.0	.0	.0	4.8	12.2
20 yrs. to life	.0	.0	.0	.0	.0	.0	3.2
Percent of all Cases Number	13.4 (223)	13.0 (216)	28.5 (475)	27.1 (451)	.06 (1)	1.3 (21)	16.7 (278)
Summary:							
'Out' Sentence (Probation, Suspension, Fine, FYCA A)	56.4	51.0	52.6	36.2	100.0	28.6	17.3
Alternative Incarceration (FYCA B, FYCA C, NARA)	12.5	10.2	8.5	21.0	.0	9.6	21.6
'In' Sentence :							
Less than 3 year minimum	30.0	38.9	32.7	26.2	.0	19.1	14.4
3 year minimum or more	.0	.0	6.3	16.7	.0	43.0	46.8
$CHI^2(df)$	438(15)***						

Note: "20 yrs." column left out of CHI^2 calculation.
*** SIG (α = .001)

resulted in probation, fine, or suspended sentence. If the maximum was 15 years, more than a third of the offenders received "out" sentences, and the figure only dropped to 28.6 percent, even when the maximum possible was 30 years. In addition, the proportion of offenders sentenced to terms of incarceration that approached the maximum for the convicted offense was relatively small for all of the maximum sentence categories. Interestingly, the proportion was higher when the maximum was low. For instance, in the 3- and 5-year categories, the figures are 21.0 percent and 12.5 percent, respectively, compared with 4.0 percent, 5.1 percent, 4.8 percent, and 3.2 percent in the 10, 15, 30, and life categories. This indicates that the probability of the sentence being at or near the statutory maximum is low under all circumstances, but particularly low if the maximum is severe.

4. Summary

This section has considered the distribution of sentences for 1,665 convicted felons in the D.C. Superior Court. The data have been analyzed in terms of a variety of characteristics of the offense for which the offender was convicted, and the nature of the association between the offense characteristics and the sentence given has been considered. For the most part, it has been found that the sentence and the offense characteristics are associated in expected ways. That is, conviction for more serious offenses has tended to result in more severe sentences. The degree of this association naturally

differs from characteristic to characteristic and from charge to charge, but the general trend is clear. However, it is also clear that the nature of the offense and the manner in which it was committed do not fully explain the range of sentences given. The only instance in which a wide variety of sentences did not exist for more or less comparable individuals was convictions for murder I and felony murder, and that is, of course, directly attributable to statutory provisions. In all other instances that were examined, a wide range of sentences existed. In an examination of other elements that might further account for this range, the next section introduces the criminal record and personal characteristics of the offender and considers the relationship between them and the sentence distribution.

B. THE CONVICTED FELON

This section focuses on the convicted felon and considers the way in which the characteristics and behavior of the felon are associated with the sentencing decision. In order of introduction, the variables examined are as follows: prior criminal record, including the number of previous arrests, the number and type of convictions, the target of the most recent offense, and the sentence for the last conviction; the interaction between the felon and the judicial system, including the existence at the time of arrest of warrants unrelated to the current offense, the Bail Agency recommendation, the bail release decision, and the kind of plea entered; and finally,

personal characteristics of the defendant, such as age, sex, race, and living arrangements. As in the Section A, two questions are posed: First, what is the extent of the sentencing variation that exists within each of the categories of these factors? Second, do the factors themselves exhibit an association with the sentencing decision?

1. Sentence Distribution by Prior Criminal Activity

Both arrests and convictions are considered in this discussion of previous criminal involvement. In general, it will be shown that the larger the number of prior arrests and convictions, the more severe the sentence is likely to be. It will also be shown, however, that this tendency exists side by side with a substantial amount of sentencing variation. The analysis begins with an examination of prior arrests, moves to convictions, and concludes by considering both factors in light of the offense for which the felon was convicted.

a. Prior Arrest Record. In Table IV-4, convicted felons are organized into three groups: those with no known previous arrests; those who had been arrested but never convicted; and those with at least one previous conviction. The last two groups are further classified according to the number of previous arrests on their record.[5]

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[5]Because uncertainties always exist with respect to the prior arrest record of defendants, it was decided for the purposes of this study to include as a prior arrest only those incidents for which a specific date of arrest or conviction could be verified. This meant, for instance, that statements by arresting officers that the offender had a prior arrest record (as reported on the Crime Analysis Worksheet) were not accepted unless supporting information was provided. In addition, (cont.)

Table IV-4

Sentence Distribution by Prior Arrest Record

Sentence	No Known Arrests	Arrested but not Convicted			Arrested, Convicted at Least Once		
		1-3	4-9	10+	1-3	4-9	10+
Probation	42.5	42.1	32.5	29.6	34.0	28.2	17.9
Fine	1.4	1.1	.8	.0	.5	.5	.7
FYCA A	12.8	9.1	4.9	.0	2.0	--	--
FYCA B	12.8	14.2	11.4	6.8	7.3	4.9	1.4
FYCA C	4.9	9.7	7.3	2.3	1.0	2.9	.7
NARA	.2	.6	.8	2.3	2.2	1.5	4.3
Under 1 year minimum	7.5	4.5	11.4	7.1	9.8	9.2	11.4
1 yr. min. - 3 yrs. max.	4.4	6.3	9.8	4.6	7.6	9.2	14.3
1 yr. min. - over 3 yrs. mas.	1.8	1.1	7.3	6.8	7.1	6.8	10.7
2 yrs. min. - 6 yrs. max.	1.4	2.3	4.1	9.1	6.5	6.3	11.4
2 yrs. min. - over 6 yrs. max.	1.4	2.8	.8	6.8	4.3	3.9	5.0
3 yrs. min. - 9 yrs. max.	1.1	1.7	2.4	2.3	2.7	4.9	1.4
3-4 yrs. min. - over 9 yrs. max.	2.3	.6	.0	2.3	5.2	8.3	12.9
5 yrs. min. - 15 yrs. max.	1.8	1.7	3.3	4.6	2.7	4.4	2.9
5-9 yrs. min. - over 15 yrs. max.	1.2	1.7	3.3	9.1	3.0	5.8	3.6
10-15 yrs. min.	1.9	.6	.0	4.6	2.4	2.9	1.4
20 yrs. to life	.9	.0	.0	2.3	.5	.5	
Percent of all cases Number	35.1 (572)	10.8 (176)	7.6 (123)	2.7 (44)	22.6 (368)	12.6 (206)	8.6 (140)
Summary:							
'Out' Sentence (Probation, Suspension, Fine, FYCA A)	56.6	52.3	38.2	29.6	36.5	28.7	18.6
Alternative Incarceration (FYCA B, BYCA C, NARA)	17.9	24.5	19.5	11.4	10.5	9.3	6.4
'In' Sentence Less than 3 years	16.5	17.0	33.4	33.4	35.3	35.4	52.8
3 years or more	9.2	6.3	9.0	25.2	16.5	26.8	22.2
CHI^2(df)		52.2(9)**			24.5(6)***		

**SIG (α = .01)
***SIG (α = .001)

From the table, it can be seen that 35.1 percent of the convicted felons had no arrest prior to the current offense. More than half of these individuals (56.6 percent) were given "out" sentences. The remainder are distributed across every possible category of sentence that involved incarceration.

Those arrested but not convicted were given "out" sentences at lower rates when the number of arrests was higher. For the 1-3, 4-9, and 10 or more arrest categories, the figures are 52.3 percent, 38.2 percent, and 29.6 percent, respectively. Further evidence of this trend is exhibited in the incarceration figures presented in the lower half of the summary table, particularly when the two categories involving larger numbers of previous arrests are considered. For instance, 25.2 percent of individuals with 10 or more arrests received sentences with minimums of three years or more, compared with 9.0 percent of those with 4-to-9 arrests.

The last three columns of Table IV-4 organize the sentences of those felons with at least one prior conviction according to the number of times the felon had been arrested. Again, probation or a suspended sentence was imposed at a uniformly declining rate--from 36.5 percent down to 18.6 percent--as the number of arrests increased. Interestingly, those with 10 or

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arrests for such relatively unimportant offenses as traffic violations and drunk-and-disorderly incidents were excluded. Consequently, it is possible, and even likely, that some of the 572 individuals for whom no known arrest existed had in fact been involved with the law on previous occasions.

more previous arrests but no convictions received more severe sentences (58.6 percent incarcerated) than those with 1-3 prior arrests and at least one conviction (51.8 percent incarcerated). This supports very strongly the idea that arrest record was being taken into account in the sentencing decision, independent of the conviction record. However, the fact that the sentences for those with no prior convictions were consistently less severe than the sentences for those with the same number of arrests but at least one prior conviction suggests that conviction record also has an independent effect. This idea is further investigated in the following discussion.

One final point about Table IV-4 concerns sentencing variation. Classifying the felons by prior arrest record did not fully account for the range of sentences that were given, even though it is true that sentences tended to be more severe as the number of arrests increased.

b. Prior Conviction Record. Table IV-5 portrays the relationship between the sentence given and a number of variables relating to prior conviction. The first of these is the number of prior convictions of the sentenced felon.[6] Three categories are used: no known prior conviction; one prior conviction; and two or more prior convictions. From the table, it can be seen that 55.4 percent of the convicted felons had no known prior convictions, 22.3 percent had one prior conviction,

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[6]Convictions for minor offenses (traffic violations, being drunk and disorderly, and the like) were excluded.

Table IV-5

Distribution of Sentences by Prior Conviction Record

Sentence	Number of Prior Convictions			Offense Class of Most Recent Conviction		Target of Most Recent Offense			Sentence for Last Conviction	
	None Known	1	2 or more	Misdemeanor	Felony	Person	Property	Public Order	Out	In
Probation and suspended	40.3	33.4	24.3	34.5	23.9	19.4	30.6	34.6	35.6	25.2
Fine	1.2	.3	.8	.9	.3	.5	.0	1.4	1.2	.0
FYCA A	10.3	1.9	.0	1.5	.5	1.0	1.3	.5	1.8	.0
FYCA B	12.5	9.2	1.6	6.4	4.8	4.1	7.3	4.6	8.1	2.0
FYCA C	6.0	1.6	1.6	2.1	1.3	1.5	2.5	.5	3.0	.0
NARA	.7	1.1	4.0	4.7	1.0	1.5	2.9	3.7	1.5	4.6
Under 1 year minimum	7.5	10.3	9.4	9.9	9.6	8.2	11.8	8.3	9.3	11.3
1 yr. min. - 3 yrs. max.	5.4	8.4	9.7	6.4	10.8	11.2	8.0	7.4	5.1	10.3
1 yr. min. - over 3 yrs. max.	2.8	5.4	10.0	7.9	7.5	8.2	7.0	8.8	6.6	9.3
2 yrs. min. - 6 yrs. max.	2.4	5.1	9.7	7.0	7.8	8.2	8.0	6.4	6.9	8.6
2 yrs. min. - over 6 yrs. max.	1.8	3.2	5.4	3.5	5.0	3.6	4.8	3.7	3.3	5.0
3 yrs. min. - 9 yrs. max.	1.4	3.0	3.8	3.8	2.8	4.1	2.5	3.7	2.7	3.0
3-4 yrs. min. - over 9 yrs. max.	1.6	5.9	9.7	3.5	11.3	10.7	5.4	7.4	6.9	6.0
5 yrs. min. - 15 yrs. max.	2.0	3.8	3.5	2.9	4.5	4.1	3.5	4.2	2.1	5.3
5-9 yrs. min. - over 15 yrs. max.	1.8	4.0	3.5	2.3	5.0	6.6	3.2	2.3	3.6	4.0
10-15 yrs. min.	1.5	3.0	2.7	2.3	3.5	6.6	1.0	2.3	2.1	4.6
20 yrs. to life	.7	.5	.3	.3	.5	.5	.3	.5	.3	.7
Percent of all Cases Number	55.4 (923)	22.3 (371)	22.3 (371)	46.2 (342)	53.8 (398)	27.0 (196)	43.2 (314)	29.9 (217)	52.6 (334)	47.4 (301)
Summary:										
'Out' Sentence (Probation, Suspension, FYCA A)	51.8	35.6	25.1	36.9	24.7	20.9	31.9	36.5	38.6	25.2
Alternative Incarceration (FYCA B, FYCA C, NARA)	19.2	11.9	7.2	13.2	7.1	7.1	12.7	8.8	12.6	6.6
'In' Sentence:										
Less than 3 year minimum	19.9	32.4	44.2	34.7	40.7	39.4	39.6	34.6	31.2	44.5
3 year minimum or more	9.0	20.2	23.5	15.1	27.6	32.6	15.9	20.4	17.7	23.6
$CHI^2(df)$	182.6(6)***			30.7(3)***		25.4(6)***			24.8(3)***	

***SIG (α = .001)

and 22.3 percent had two or more prior convictions. The table summary shows a strong association between the number of prior convictions and whether the sentence involved incarceration. "Out" sentences were given to 51.8 percent of the individuals with no prior convictions, but to only 25.1 percent of those with two or more prior convictions. Alternative incarceration reflects a similar pattern, moving from most likely (19.2 percent) to least likely (7.2 percent) as the number of prior convictions changes from none to two or more. This obviously strong association is confirmed by the tendency of judges to sentence those with two or more convictions to terms with minimums of three years or more at a rate (23.5 percent) that is more than twice that of those with no prior convictions (9.0 percent).

The second variable taken into account is whether the most recent prior conviction was for a misdemeanor or a felony. It would be consistent with the previous findings to expect those convicted previously of misdemeanors to be sentenced less severely than those previously convicted of felonies, and this was in fact the case. The former received "out" sentences at a substantially higher rate than the atter (36.9 percent compared with 24.7 percent, respectively). Similarly, alternative incarceration under the Federal Youth Corrections Act or NARA was given at a much higher rate to prior misdemeanants than to prior felons.

The third variable in the table classifies the prior offense on the basis of the target of the offense: persons, property, or public order. In the sense that offenses against persons are considered more serious than offenses against either property or public order, it is to be expected that, if this variable is being taken into account in the sentencing decision, those individuals with prior convictions for such offenses would tend to receive more severe sentences than those without. This was the case, as can be seen by the fact that 72 percent of those with prior convictions in the antiperson category received "in" sentences, compared with 55.5 percent and 55 percent, respectively, for those with prior convictions against property or public order. This finding continues the developing notion of the importance of prior record in the sentencing decision.

The last variable taken into account in Table IV-5 focuses on whether the sentence given for the last conviction was an "out" sentence or an "in" sentence. In the now familiar pattern, it can be seen that those who were sentenced severely for the prior conviction (that is, those who received an "in" sentence) were also more likely to receive a severe sentence for the current conviction: 68.1 percent of all those previously incarcerated were again given such a sentence, compared with only 48.9 percent for those who had previously received either probation or suspension.

c. Prior Criminal Record, Controlling for Current Offense Type. In general, it has been shown that each of the conviction record factors considered in Table IV-5 is associated with the sentence in a manner similar to that demonstrated for the number of previous arrests. The worse the prior record, the more severe the sentence for the current offense. It is also the case that considerable sentencing variation exists even when arrest and conviction records are taken into account. In other words, these variables--though strongly associated with the sentencing decision--are not in any sense a full explanation of the decision. This is only to be expected since other factors, separate from the criminal record, are also associated with the decision. One of these, as was demonstrated in the first section of this chapter, is the current offense. Now, in order to clarify further the nature of the interaction between prior record and sentence, the data just presented in Tables IV-4 and IV-5 will be organized according to the current offense type. To some extent this will show whether the more severe sentences given to those with more extensive criminal records were due tc the commission of more serious offenses.

For the purposes of this analysis, the current offense is classified into one of three types: robbery; other offenses against persons; and nonpersonal offenses. The arrest record data are presented in Table IV-6, and the conviction record data in Table IV-7. For reasons of space, both tables present

Table IV-6

Distribution of Sentences for Robberies, Other Personal Offenses, and Nonpersonal Offenses, by Prior Arrest Record

Current Sentence	CONVICTED OFFENSE AND NUMBER OF PREVIOUS ARRESTS											
	Robbery				Other Personal				Non-Personal			
	0	1-3	4-9	10+	0	1-3	4-9	10+	0	1-3	4-9	10+
'Out'	47.9	33.3	18.1	11.4	45.9	36.5	22.8	16.7	68.8	48.0	42.2	26.4
Alternative Incarceration	30.7	18.5	16.9	4.6	12.0	12.2	12.1	.0	11.4	14.6	11.7	10.9
Less than 3 year minimum	10.8	22.2	28.9	34.1	19.6	18.7	24.2	33.3	15.8	30.6	36.1	49.1
3 year minimum or more	10.8	25.9	36.1	50.0	22.6	32.7	40.9	50.0	4.0	6.9	10.0	13.6
Percent of all Cases Number	39.2 (186)	34.1 (162)	17.5 (83)	9.3 (44)	39.6 (133)	31.9 (107)	19.6 (66)	8.9 (30)	30.9 (253)	33.6 (275)	22.0 (180)	13.5 (110)
CHI^2(df)	85.0(9)***				25.0(9)***				78.0(9)***			

	CONVICTED OFFENSE AND NUMBER OF PREVIOUS ARRESTS OF FELONS WITH AT LEAST ONE PRIOR CONVICTION								
	0	1-3	4+	0	1-3	4+	0	1-3	4+
'Out'	27.2	16.9	14.7	28.6	19.4	9.5	43.1	37.8	22.4
Alternative Incarceration	11.7	11.9	.0	4.8	8.3	.0	12.4	8.1	10.6
Less than 3 year minimum	26.2	27.1	38.2	25.4	16.7	42.9	35.6	38.7	51.8
3 year minimum or more	35.0	44.1	47.1	41.3	55.6	47.6	8.9	15.3	15.3
Percent of all Cases Number	52.6 (103)	30.1 (59)	17.3 (34)	52.5 (63)	30.0 (36)	17.5 (21)	50.8 (202)	27.9 (111)	21.4 (85)
CHI^2(df)	16.2(6)*			14.8(6)*			18.0(6)**		

*SIG (α = .05)
**SIG (α = .01)

Table IV-7

Distribution of Sentences for Robberies, Other Offenses Against Persons, and Nonpersonal Offenses, by Prior Conviction Record

Current Sentence	Current Offense, Robbery			Current Offense, Nonrobbery Offense Against Persons			Current Offense, Nonpersonal Offense		
	NUMBER OF PRIOR CONVICTIONS								
	0	1	2+	0	1	2+	0	1	2+
'Out'	43.0	23.7	18.5	43.3	21.4	22.2	62.1	48.1	28.4
Alternative Incarceration	30.1	14.0	3.3	14.3	8.6	1.9	14.3	11.8	10.2
Less than 3 year minimum	14.0	22.8	33.7	18.9	27.1	24.1	20.4	33.7	44.4
3 year minimum or more	12.9	39.5	44.6	23.5	42.9	51.9	3.3	6.4	16.9
Percent of Cases Number	57.5 (279)	23.5 (114)	19.0 (92)	63.6 (217)	20.5 (70)	15.8 (54)	50.9 (427)	22.3 (187)	26.8 (225)
CHI^2(df)	98 (6)***			32.9(6)***			100.4(6)***		
	PREVIOUS OFFENSE CLASS								
	Misdemeanor		Felony	Misdemeanor		Felony	Misdemeanor		Felony
'Out'	27.8		14.3	24.5		20.3	44.4		31.6
Alternative Incarceration	15.5		5.4	6.1		5.4	13.8		8.5
Less than 3 year minimum	25.8		29.5	34.7		20.3	33.2		44.3
3 year minimum or more	30.9		50.9	34.7		54.1	8.7		15.6
Percent of Cases Number	46.4 (97)		53.6 (112)	39.8 (49)		60.2 (74)	48.0 (196)		52.0 (212)
CHI^2(df)	15.1(3)**			5.0(3)			14.2(3)**		
	PREVIOUS SENTENCE								
	Out		In	Out		In	Out		In
'Out'	30.1		14.6	29.2		15.9	46.6		32.6
Alternative Incarceration	15.1		2.4	9.2		2.3	12.5		9.7
Less than 3 year minimum	21.5		37.8	24.6		27.3	32.4		43.4
3 year minimum or more	33.3		45.1	36.9		54.6	8.5		14.3
Percent of Cases Number	53.1 (93)		46.9 (82)	59.6 (65)		40.4 (44)	50.1 (176)		49.9 (175)
CHI^2(df)	17.7(3)***			††			10.3(3)*		
	TARGET OF PREVIOUS OFFENSE								
	Person	Property	Other	Person	Property	Other	Person	Property	Other
'Out'	15.9	25.5	18.8	16.1	29.7	23.3	23.6	35.5	45.3
Alternative Incarceration	4.8	14.9	8.3	5.4	5.4	6.7	10.4	13.1	9.4
Less than 3 year minimum	27.0	31.9	20.8	33.9	13.5	26.7	44.2	40.4	35.3
3 year minimum or more	52.4	27.7	52.1	44.6	51.4	43.3	16.9	10.3	10.1
Percent of Cases Number	30.7 (63)	45.9 (94)	23.4 (48)	45.5 (56)	30.1 (37)	24.4 (30)	19.3 (77)	45.9 (183)	34.8 (139)
CHI^2(df)	14.8(6)*			5.9(6)			8.4(6)		

*SIG (α = .05)
**SIG (α = .01)
***SIG (α = .001)
††Too many cells with expected frequency less than five for valid us of CHI^2

summaries of the sentences rather than specific breakdowns. However, this does not affect the general conclusions. Interpretation of the two tables leads to similar findings--namely, that the association between the felon's prior record and the sentence given remains strong. This can be seen clearly from the fact that in each table and for each variable, the sentence given is more severe when the prior record is bad, even for felons who have been convicted of similar current offenses. Some figures from Table IV-7 will illustrate this point. With respect to robberies, for instance, 43 percent of those with no prior convictions received "out" sentences, compared with 18.5 percent of those with two or more previous convictions. Of those incarcerated, 44.6 percent of those with two or more prior convictions received sentences with minimums of three years or longer, and only 12.9 percent of those with no prior conviction record received similar sentences. The data for those convicted of other offense types exhibit similar patterns. That is, individuals with no prior conviction record were more likely to be given "out" sentences than those with one or more prior convictions, and, even when incarcerated, were likely to receive shorter terms.

Table IV-7 also shows that the class of offense for which the prior conviction was handed down, the target of the offense, and the sentence given for the prior conviction were all related to the current sentencing decision. Again, these relationships persist even when the data are organized by offense

type. For instance, when considering the class of the previous offense, it is found that those for whom robbery was the current offense were much more likely to be given "out" sentences if they had committed a prior misdemeanor (27.8 percent) than if they had committed a prior felony (14.3 percent). This is also true, though not to the same degree, when the other two types of offense are considered. In a similar manner, an examination of the sentence given for the prior conviction shows that a nonsevere sentence for past offenses was associated with a less severe sentence for the current offense. Those convicted of robbery in 1974 who had previously served a term of incarceration were again sentenced to long incarceration (three-year minimum or more) at a higher rate than those who had previously been given "out" sentences (45.1 percent compared with 33.3 percent). A comparable relationship holds for nonrobbery offenses (54.6 percent compared with 36.9 percent) and for other kinds of offenses (14.3 percent compared with 8.5 percent).

When the target of the prior offense is considered, the association between the variables is not quite so clear. With respect to robbery and other offenses against persons, it can be seen that "out" sentences are much more likely to be given to those who had previously committed offenses against property than to those who had committed offenses against persons or other kinds of offenses. For instance, 25.5 percent of those currently convicted for robbery who had had a prior conviction for an offense against property were given "out"

sentences, compared with 15.9 percent of those who had previously been convicted for an antiperson offense, and 18.8 percent of those who had been convicted of some other kind of offense. While the figures for those currently convicted for nonrobbery offenses against persons are not identical in terms of percentages, the same relationships are exhibited. That is, the "out" sentence rate is highest for those previously convicted of antiproperty offenses, next highest for those previously convicted of other kinds of offenses, and least high for those convicted of antiperson offenses.

These patterns change, however, when those currently convicted of offenses that were not against persons are considered. In this situation, when the prior conviction was for an offense similar to the current conviction, the "out" sentence rate (45.3 percent) was higher than the "out" sentence rate for either property (35.5 percent) or person (28.6 percent).

The findings with respect to these four prior conviction record variables suggest that these variables have an impact on the sentencing decision that is independent of the nature of the current offense, and that the impact is essentially similar for all of the variables. That is, the more serious the prior conviction record, the more likely the current sentence is to be severe. True, the data with respect to the target of the prior offense were not consistent. However, it may still be observed that if the sentences given to those who were convicted of offenses against persons are compared

with the sentences given to those who were not (i.e., anti-property and anti-public order combined), then the association between the target of the previous offense and the current sentence would be uniform for all classes of current offense. In each instance, those who had previously been convicted for an offense against persons were much more likely to be incarcerated for the current conviction than those who had previously been convicted of offenses that were not against persons. In addition, the incarceration sentences given to those convicted of prior offenses against persons were much more likely to involve a three-year minimum or longer than the sentences given to individuals in the other class.

Similar interpretation may be made of Table IV-6, and similar conclusions would be drawn. The net effect of the analysis then is to confirm the independent nature of the association between prior record and sentence, and to illustrate that the association is largely independent of the current conviction for which the sentence was imposed.

2. The Distribution of Sentences by Outstanding Warrants, Pretrial Release, and Plea

Four variables have been chosen from the original data base for inclusion in Table IV-8. Other variables that exhibited little or no association included such items as the amount of delay between arrest and disposition; the reasons given by the Bail Agency for not recommending release, whether the defendant was arrested at the scene of the crime, and the

Table IV-8

Sentence Distribution by Warrants, Bail Agency Recommendation, Release Type, and Plea

Sentence	Any Warrants Outstanding		Bail Agency Recommendation		Release Type			Plea	
	Yes	No	No Release	Other	Personal Recognizance	3rd Party etc.	Cash/ Surety	Not Guilty	Guilty
Probation and suspended	27.8	37.2	28.6	38.4	45.8	30.9	29.2	27.8	37.3
Fine	.5	.7	.4	.9	1.1	1.1	.3	.8	.9
FYCA A	2.7	7.4	2.5	8.4	10.2	9.5	1.9	4.2	6.7
FYCA B	12.2	9.3	10.4	9.9	9.5	13.3	7.5	8.3	9.6
FYCA C	4.3	4.2	3.3	4.8	3.0	2.8	4.6	5.3	3.7
NARA	3.2	.8	2.3	1.0	.2	1.8	2.5	.6	1.7
Under 1 year minimum	6.0	8.9	8.9	8.0	9.4	9.5	7.1	6.1	9.2
1 yr. min. - 3 yrs. max.	8.4	6.4	10.0	5.3	6.0	6.7	7.1	5.3	7.5
1 yr. min. - over 3 yrs. max.	7.3	4.5	7.7	3.8	3.4	3.9	6.6	5.0	5.0
2 yrs. min. - 6 yrs. max.	7.0	4.1	6.9	3.6	2.8	5.3	6.3	4.4	4.7
2 yrs. min. - over 6 yrs. max.	1.9	3.0	2.7	2.7	1.9	3.2	3.6	3.1	2.9
3 yrs. min. - 9 yrs. max.	2.4	2.2	1.2	2.6	1.7	1.8	3.1	5.6	1.4
3-4 yrs. min. - over 9 yrs. max.	6.2	4.3	5.4	4.5	2.8	2.5	7.5	6.4	3.8
5 yrs. min. - 15 yrs. max.	3.0	2.6	3.7	2.0	.6	2.8	6.2	4.7	2.2
5-9 yrs. min. - over 15 yrs. max.	4.1	2.4	3.3	2.4	.8	2.5	4.4	5.6	2.0
10-15 yrs. min.	2.7	1.5	2.3	1.4	.4	2.8	3.1	4.7	1.4
20 yrs. to life	.3	.4	.4	.3	.4	.0	1.0	2.2	.1
Percent of all Cases Number	25.3 (370)	74.7 (1091)	36.3 (520)	63.7 (913)	31.8 (529)	17.1 (285)	35.4 (589)	21.6 (360)	78.4 (1305)
Summary:									
'Out' Sentence (Probation, Suspension, FYCA A)	31.0	45.3	31.5	47.7	57.1	41.5	31.4	32.8	44.9
Alternative Incarceration (FYCA B, FYCA C, NARA)	19.7	14.3	16.0	15.7	12.7	17.9	14.6	14.2	15.0
'In' Sentence									
Less than 3 year minimum	30.6	26.9	36.2	23.4	23.5	28.6	30.7	23.9	29.3
3 year minimum or more	18.7	13.4	16.3	13.2	6.7	12.4	25.3	29.2	10.9
CHI^2(df)	23.1(3)***		43.1(3)***		128.7(6)***			76.4(3)***	

***SIG (α = .001)

existence of prior appearance problems. The variables retained for the table are: the existence of warrants at the time of arrest; the recommendation to the court by the Bail Agency; the type of release granted by the court; and whether there was a jury trial as a consequence of a not guilty plea by the defendant.

The first section of the table examines whether any warrants were outstanding against the defendant at the time of arrest for the current offense. In 25.3 percent of all the cases, such warrants did exist, and it can be seen that 31.0 percent of those with outstanding warrants were given "out" sentences, and 45.3 percent of those without warrants received similar dispositions. Also, longer incarceration sentences were more likely for the former group than for the latter--19.7 percent compared with 14.3 percent. These differences are not as large as others that have been observed, but they are in the expected direction.

The recommendation of the Bail Agency is the next variable examined in the table. For the purposes of the table, all recommendations to release have been grouped together. Again, it is clearly the case that those individuals for whom the Bail Agency did not recommend release were given more severe sentences than those who obtained any kind of release recommendation. The table summary shows that 47.7 percent of those individuals in the "other" category were given "out"

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sentences compared with 31.5 percent of those in the "no release" category. It should be kept in mind that the recommendation by the Bail Agency that is classified here as "no release" is really a failure to recommend a particular release type. In this situation, the court customarily imposes some sort of cash or surety bond at an amount ultimately determined by the judge, and as noted above, the defendant may or may not be able to post the bond.

The type of bail release granted by the court is divided into three categories for the purposes of this table, though there are, in fact, a larger number of categories under which release may actually be given. Analysis of these other categories, however, indicated that they are not individually significant and that they could, therefore, safely be merged into the ones shown here. The personal recognizance column includes those individuals who were given bail with only minimal conditions, such as reporting to the Bail Agency on a systematic basis, not leaving the area, and so forth. The second category of release type, third-party custody or other, covers the situation in which an individual other than the defendant guaranteed appearance in court, and the third column, cash or surety bond, covers those situations in which a specific amount had to be posted by the defendant or bondsman before release could be obtained. It should be noted that the establishment of a cash or surety bond does not necessarily result in pretrial release,

since not all defendants are able to post the necessary amount or engage a bondsman. However, it was not possible to identify from the data those individuals who were unable to post bond and who therefore were subject to some form of pretrial detention.

The data presented for the release-type variable indicate that the more stringent the release conditions the more likely the ultimate sentence is to be severe. Of the individuals released under personal recognizance, 45.8 percent were given probation or suspended sentences compared with 30.9 percent and 29.2 percent, respectively, for the other categories. When other "out" sentences are added to the probation or suspended sentence categories, the differences among the three types become even more marked, as can be seen from the summary of the table. Fifty-seven percent of the defendants released under personal recognizance were ultimately given "out" sentences, compared with 41.5 percent of those who received third-party or other bail release, and 31.4 percent of those who were subject to cash or surety bond.

A commonly held belief is that individuals who plead not guilty to a charge are more likely to be given severe sentences upon conviction than those who plead guilty prior to trial. The data from the Superior Court presented for the fourth variable in this table are consistent with this idea. Of those who entered a not guilty plea, 53.1 percent were ultimately

sentenced to incarceration, compared with only 40.2 percent of those who pled guilty. The difference is highlighted in the summary of the table: 29.3 percent of all those who pled not guilty ultimately received sentences with a three-year minimum or longer, compared with 10.9 percent of those individuals who pled guilty. Further testing of this variable is, of course, necessary to ascertain whether those individuals entering guilty pleas were being convicted of less serious offenses than those going to trial. This is done in the multivariate analysis conducted in Chapter VI.

3. Distribution of Sentences by Personal Characteristics of the Defendant

Data were collected for this study on a substantial number of personal characteristics of the defendants. These included such items as age, sex, race, marital status, income level, employment history, and the relationship, if any, between the defendant and the victim. A complete list of the variables can be derived from Appendix B.

A large number of the personal characteristics variables were eliminated prior to this stage of the analysis, for a variety of reasons. The sex and race of defendants, for example, were not included because of low variance, and other variables, such as income level and employment, tended to be unreliable because they reflected self-reporting by the defendant. Of the variables that remained, the four included

Table IV-9

Sentence Distribution by Characteristics of the Offender

Sentence	Age				Living With			Was Address Verified		Victim Known or Related	
	Under 22	22-30	31-45	Over 45	Parents	Spouse/ Friends	Alone	No	Yes	Yes	No
Probation and suspended	24.5	38.2	44.8	49.5	29.5	46.0	37.0	33.1	35.3	34.3	33.3
Fine	.4	.9	.8	3.9	.5	.7	2.1	.3	.8	1.0	.4
FYCA A	17.7	.4	.0	.0.0	9.4	1.7	1.4	2.0	7.3	6.2	7.0
FYCA B	25.9	1.6	.0	.0	14.3	3.2	3.5	8.2	10.4	6.2	11.0
FYCA C	11.4	.5	.0	.0	5.9	1.5	1.4	4.1	4.2	3.1	5.2
NARA	.4	2.0	2.8	1.0	2.1	.5	.7	1.7	1.5	.7	1.0
Under 1 year minimum	3.4	9.8	13.3	14.6	7.4	9.2	11.2	7.5	8.3	10.4	6.8
1 yr. min. - 3 yrs. max.	3.8	9.1	8.1	6.8	5.9	8.4	6.3	11.3	5.8	5.9	6.0
1 yr. min. - over 3 yrs. max.	1.3	8.1	4.8	1.9	4.2	5.7	7.0	7.5	4.7	4.8	5.0
2 yrs. min. - 6 yrs. max.	1.3	6.4	6.4	4.8	4.9	4.2	7.0	6.1	4.5	5.5	4.7
2 yrs. min. - over 6 yrs. max.	.9	3.9	3.2	5.8	2.6	2.5	3.5	2.7	2.7	5.5	2.7
3 yrs. min. - 9 yrs. max.	1.6	3.1	1.2	1.9	1.8	3.5	2.1	.3	2.7	1.0	3.4
3-4 yrs. min. - over 9 yrs. max.	2.4	4.3	7.7	7.8	4.0	5.7	8.4	4.1	5.0	5.9	4.5
5 yrs. min. - 15 yrs. max.	1.6	3.8	2.8	.0	2.6	1.7	4.2	4.8	2.1	2.0	3.2
5-9 yrs. min. - over 15 yrs. max.	2.0	3.9	1.6	1.0	2.5	2.7	4.2	3.1	2.7	3.8	3.4
10-15 yrs. min.	1.3	3.0	1.6	1.0	2.1	1.7	.0	2.7	1.6	1.7	2.1
20 yrs. to life	.2	.8	.8	.0	.1	1.0	.0	.3	.3	1.7	.4
Percent of all Cases Number	33.1 (552)	45.8 (762)	14.9 (248)	6.2 (103)	61.5 (874)	28.4 (404)	10.1 (143)	20.0 (293)	80.0 (1170)	26.2 (289)	73.8 (815)
Summary:											
'Out' Sentence (Probation, Suspension, FYCA A)	42.6	39.5	45.6	53.4	39.4	48.4	40.5	35.5	43.4	41.5	40.7
Alternative Incarceration (FYCA B, FYCA C, NARA)	37.7	4.1	2.8	1.0	22.3	5.2	5.6	14.0	16.1	10.0	17.2
'In' Sentence (Specific minimum and maximum)	19.8	56.2	51.5	45.6	38.1	46.3	53.9	50.4	40.4	48.2	42.2
$CHI^2(df)$	402.4(6)***				76.7(4)***			9.5(2)**		9.1(2)*	

*SIG (α = .05)
**SIG (α = .01)
***SIG (α = .001)

in Table IV-9 were considered reliable and more strongly associated with the sentencing decision than any others.

Defendants have been grouped according to the categories of age shown in the table. All those in the "under 22" category are, in principle, eligible for FYCA treatment, and those in all other categories are not. It is, therefore, to be expected that FYCA sentences will be heavily represented in the lowest age category, and, as can be seen from the table, this is in fact the case. A few individuals in the 22-to-30 category were also sentenced under FYCA. This is presumably due to the fact that the Young Adult Offenders Act extends FYCA eligibility to age 26 under some circumstances.[7]

A relatively clear picture of the association between the age of the defendant and the sentence given can be derived from the summary of the table. Defendants in the 22-to-30 age group were substantially more likely to be incarcerated than defendants in the under 22 age group, and slightly more likely to be incarcerated than individuals in the two older groups. However, if the alternative incarceration figures are added to the specific-term incarceration sentences, then these differences are reduced. Of all defendants in the under 22 age group, 57.5 percent received incarceration, compared with 60.3 percent in the 22-to-30 age range. Consequently, at this stage of the analysis, age appears to be of only small significance, except to the extent that it identifies FYCA eligibility.

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[7] 18 U.S. Code § 4209.

The second variable in the table concerns the living arrangements of the defendant. The variable is divided into three categories: those living with parents; those living with spouse or friends; and those living alone. There was a moderate tendency for those living alone to receive incarceration (59.5 percent) at a higher rate than those living with spouse or friends (51.5 percent) or parents (60.4 percent). This distribution may reflect the notion that the felon who has strong community ties or responsibilities to parents or spouse is more likely to be rehabilitated than the felon living alone, and, therefore, is more suited to a sentence that leaves the individual in the community.

This idea is supported to some extent by the information presented in the next two columns of the table, which focus upon the question of address verification by the Bail Agency. On the Bail Agency report that is sent to the court, the Bail Agency investigator indicates whether it was possible to verify the address and living arrangements provided by the defendant at the time of the bail interview. It can be seen from the table that those defendants who did supply ultimately verified addresses were incarcerated at a lower rate (56.5 percent) than those whose address could not be verified (64.4 percent). Again, this suggests that stability in the community and established community ties are a factor in the sentencing decisions of the judges.

There is a logical connection between these findings and those in the previous section relating to Bail Agency recommendations and release decision. Stability in the community is an important bail criterion, and both sets of variables reflect it. Consequently, it is to be anticipated that at least one of the sets will prove to be of little value when they are considered together in the multivariate models to be developed in Chapter VI.

Previous research has indicated that familiarity between the offender and victim reduces the probability that the offender will be prosecuted to the full extent of the law.[8] Once convicted, however, as shown by the data in Table IV-9, the sentences imposed do not appear to be influenced by the relationship between the victim and the offender. There were only very slight differences between the proportion of defendants receiving "out" sentences when the victim was known or related (41.5 percent) compared with when the victim was not known (40.7 percent). It is true that alternative incarceration was more likely when the victim was not known, as can be seen from the table summary, but the overall incarceration figures obviously do not justify a conclusion that knowledge of the victim is or is not a factor of much relevance to the sentencing decision.

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[8] See, for example, Vera Institute of Justice, Felony Arrests: Their Prosecution and Disposition in New York City's Courts (New York, 1977) and Kristen M. Williams, The Role of the Victim in the Prosecution of Violent Crimes, PROMIS Research Publication no. 12 (1978, forthcoming).

C. SUMMARY

In this chapter, the associations between a variety of factors and the sentencing decision have been examined. It has been demonstrated that the prior criminal record of the convicted felon is strongly associated with the sentence, in the anticipated direction. That is, the worse the record, in terms of number and type of incidents, the more severe the sentence. This relationship existed for those who had been arrested but never previously convicted, as well as for those with convictions, although it was weaker when the number of previous arrests was low.

Other offender-related factors also proved to be associated with the sentence, though to a lesser degree than prior record, and also in different ways. For instance, whether defendants had outstanding warrants, were released on personal recognizance, or pled not guilty were more relevant for the sentencing decision than their personal characteristics.

Characteristics of the offense proved to be of substantial relevance. The statutorily permissible maximum sentence was strongly associated with the sentence actually given, as was the general nature of the offense committed. When the prior records of felons committing similar types of offenses were examined, it was found that the record was still strongly associated with the sentence, thus demonstrating that the effect was not due to the commission of more serious offenses by those with worse records.

The implication of these findings is that the majority of the variables introduced in this chapter should be included in the multivariate analysis on which the models of the sentencing decision will be based. It is probable that simultaneous examination of their effects will indicate that some of the associations developed in this chapter are spurious. Consequently, the final model is likely to consist of fewer elements than have so far been considered.

Finally, it may be observed that the question concerning sentencing variation has been answered in the affirmative. Regardless of the way in which the cases were classified, there was wide variation in the sentences given. In other words, even though--for instance--a prior conviction record is associated with more severe sentences, it is still true that those with similar prior records who commit similar offenses could get a sentence ranging from probation to the maximum permissible. The same claim can be made for all factors considered in this chapter.

In order to inquire further into the nature and causes of this variation, the characteristics and sentencing decisions of the individual judges will be examined next.

V. THE JUDGES

There are a total of 44 judges in the Superior Court, all of whom are, in principle, eligible for assignment to felony cases. Thirty-eight of the 44 judges were involved in sentencing convicted felons during the study period, and they are the focal point of this chapter.

Data illustrating the relationship between judges and the sentencing decision are presented in two ways. First, in Table V-1, the proportion of cases in each of the sentence categories is organized according to the following characteristics of the judge involved in the sentencing: age, race, sex, and experience. Next, Tables V-2, V-3, and V-4 consider the individual sentencing practices of judges and the differences that exist among them.[1]

A. CHARACTERISTICS OF THE SENTENCING JUDGES

Table V-1 organizes the sentence distribution by judge age, sex, race, and experience, thereby offering a basis for considering the impact of these variables on the sentencing decision. For instance, does it make a difference if the judge is older rather than younger? White rather than nonwhite?

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[1] It was intended at the outset of the study to incorporate into the analysis characteristics of prosecutors and defense attorneys as well as those of judges. However, these data proved difficult to obtain, and ultimately the information available was limited to the prosecutor's sex, race, and experience and whether the sentenced felon was represented by the Public Defender. The data for these variables, however, were examined, and it was determined that there was little relationship between them and the sentencing decision. Consequently, the information has not been included in the analysis.

Table V-1

Sentence Distribution by Characteristics of the Judge

Sentence	Judge Age				Judge Race		Judge Sex		Judge Experience		
	Under 45	46-50	51-55	56 or over	White	Non-white	Female	Male	3 yrs. or less	4-6	7+
Probation or suspended	37.9	31.6	29.7	41.1	31.5	42.4	38.4	34.9	39.1	32.9	35.3
Fine	.3	.5	1.4	1.3	1.1	.5	.5	1.0	.8	1.1	.5
FYCA A	2.8	7.1	6.2	8.0	6.7	5.1	4.9	6.3	3.9	7.3	5.6
FYCA B	12.6	7.1	9.7	8.0	10.6	6.9	6.0	9.7	8.0	8.5	13.0
FYCA C	5.7	2.2	5.1	3.2	4.4	3.4	2.2	4.3	3.3	4.0	5.1
NARA	2.1	1.4	.9	1.7	1.7	1.1	1.1	1.6	1.8	.6	3.3
Under 1 year minimum	12.1	9.3	6.9	6.5	10.3	5.1	8.1	8.6	5.7	8.6	11.3
1 yr. min. - 3 yrs. max.	2.8	8.7	8.1	8.2	7.5	6.2	4.3	7.4	5.9	7.8	6.4
1 yr. min. - over 3 yrs. max.	5.2	4.4	7.8	2.7	5.5	4.1	7.0	4.7	3.1	6.2	4.9
2 yrs. min. - 6 yrs. max.	2.1	4.6	6.4	5.1	4.7	4.6	6.5	4.4	5.9	5.5	1.5
2 yrs. min. - over 6 yrs. max.	4.6	3.0	3.0	1.5	2.6	3.5	2.2	3.0	2.3	3.8	2.3
3 yrs. min. - 9 yrs. max.	1.0	2.5	3.7	1.9	2.4	2.1	3.2	2.2	2.8	2.0	2.3
3-4 yrs. min. - over 9 yrs. max.	5.4	4.4	4.8	3.2	3.5	6.2	4.9	4.3	5.7	4.4	3.3
5 yrs. min. - 15 yrs. max.	1.8	4.4	1.4	3.4	2.1	3.9	5.4	2.4	2.1	2.9	2.1
5-9 yrs. min. - over 15 yrs. max.	1.6	4.4	2.5	2.7	2.5	3.4	2.2	2.8	5.7	2.1	1.5
10-15 yrs. min.	2.1	3.3	2.3	1.0	2.4	1.6	1.6	2.2	2.8	2.1	1.5
20 yrs. to life	.0	1.4	.2	.6	.7	.2	1.6	.4	1.3	.5	.0
Percent of all cases Number	23.3 (388)	22.0 (367)	26.1 (435)	28.5 (475)	65.9 (1097)	34.1 (568)	11.1 (185)	88.9 (1480)	24.3 (389)	51.3 (822)	24.4 (391)
Summary:											
'Out' Sentence (Probation, Suspension, Fine, FYCA A)	41.0	39.2	37.3	50.4	39.3	48.0	43.8	42.2	43.8	41.3	41.4
Alternative Incarceration (FYCA B, FYCA C, NARA)	20.4	10.7	15.7	12.9	16.7	11.4	9.3	15.6	13.1	13.1	21.4
'In' Sentence:											
Less than 3 year minimum	26.8	30.0	32.2	24.0	30.6	23.5	28.1	28.1	22.9	31.9	26.4
3 year minimum or more	11.9	20.4	14.9	12.8	13.6	17.4	18.9	14.3	20.4	14.0	10.7
CHI^2(df)	40.2(9)***				28.3(3)***		6.0(3)		30.1(6)***		

*** SIG (α=.001)

New to the bench or experienced?

The first variable, judge age, is categorized into four groups--judges under 45, judges between 46 and 50, judges between 51 and 55, and judges 56 or over. The table summary indicates that judges in the three youngest age categories gave "out" sentences at comparable rates. There is a slight tendency for the "out" sentence rate within these categories to be lower for the older judges, but the differences are small. For judges in the oldest age category, however, the tendency is sharply reversed: 50.4 percent of the sentencing decisions involved probation, suspended sentence, fine, or FYCA A--approximately a 10 percent increase over the average of the other three categories. When the alternative incarceration sentences are examined, it can be seen that judges in the youngest age group used this option at the highest rate and that use by the other three age groups was mixed. However, "in" sentences were most frequently handed down by judges in the 46-to-50 age group. As a consequence of this mixed picture, it is difficult to ascertain any systematic trend in the association between judge age and the sentencing decision. There is a slight tendency for the youngest age group and the oldest age group to be comparable, as for the two middle age groups, but little exists in the table to justify a conclusion that the age of the judge is an important or even relevant factor for the sentence imposed.

The race of the judge is examined next, and the table summary provides a somewhat mixed picture. Nonwhite judges gave "out" sentences at a somewhat higher rate than white judges (48.0 percent compared with 39.3 percent). Nevertheless, because FYCA commitments are more extensively imposed by the latter than by the former (15.0 percent compared with 10.3 percent), the difference in rates of incarceration for specific terms is not so great. White judges gave "in" sentences to 44.2 percent of the felons they sentenced, whereas nonwhite judges gave similar sentences at a rate of 40.9 percent. In contrast, however, "in" sentences given by nonwhite judges tended to be longer than those given by whites. For instance, 17.4 percent of all "in" sentences imposed by nonwhite judges had minimums of three years or more, compared with 13.6 percent of those imposed by white judges. Thus, the impression given by the "out" sentence distributions, i.e., that nonwhite judges are more lenient than white judges, is contradicted when the incarceration patterns are considered. This lack of consistency in the direction of the association raises serious questions about the meaning of the differences displayed in the table.

The sex of the judge appears to have little association with the kind of decision made. Female judges gave "out" sentences at a 43.8 percent rate, compared with the 42.2 percent rate of the male judges. Alternative incarceration was used more by male judges than by female judges, but the difference is slight, as is the distinction between the kind of

incarceration term given. Again, therefore, it must be concluded that little systematic difference in sentencing patterns between sexes can be established. It should also be noted that there are few female judges in the court, and therefore, the number of cases heard by them is small relative to those heard by their male colleagues.

Judge experience on the bench is divided into three categories: three years or less, four-to-six years, and seven or more years. There were, in fact, judges who had served one year or less on the bench, and others who were in their fifteenth year. However, the larger number of categories of experience yielded no information that is not contained in the subclassifications used in this table. The data, in fact, show few differences between the more- and less-experienced judges. "Out" sentence rates were all in the low 40s, and the only difference of note in the other sentence groups is that judges with seven or more years on the bench were more likely to use alternative incarceration than those with less experience (21.4 percent compared with 13.1 percent in each of the other two experience categories). Consequently, the by now familiar pattern continues, and it must be concluded that judge experience has a minor influence on the sentence given.

One further general observation that is noteworthy concerns the spread of sentences across the categories of the variables. Each judge used a wide variety of sentences.

That is to say, regardless of the age, race, sex, or experience of the judge, the individual sentence categories were employed at rates that are similar. Putting it another way, the variation in sentencing does not appear to be a product of the judge characteristics that were examined here.

B. SENTENCING DECISIONS AND CASE LOAD CHARACTERISTICS

The finding that judge age, race, sex, and experience exhibit little association with the sentencing decision does not necessarily mean that different judges will give a similar sentence in a similar situation, though it is, of course, consistent with that conclusion. It does suggest that the factors considered in Table V-1 are not responsible for whatever sentencing variation exists. The question of interest, of course, is whether other judge characteristics might be responsible. Unfortunately, this issue cannot be fully addressed in this study because of the lack of additional information on the judges. What can be done, however, is to consider the degree to which the individual sentencing practices of the judges differed. This question is addressed in Table V-2, which presents information on the decisions of each judge who sentenced 20 or more felons. There were 28 such judges, and between them they imposed sentence in 1,608 of the 1,665 cases considered in this study. It should be observed before discussion of the table begins that the order in which information is presented bears no resemblance either to an alphabetical listing of judges or to a listing by judge

Table V-2

Incarceration Rates and Case Load Mixture for Judges Responsible for Twenty or More Felony Sentences

Incarceration Rates	Percent of Total Incarcerations	Cumulative Percent of Total Incarcerations	Percentage of Cases That Were Robberies	Percentage of Cases That Were Against Persons, Includes Robberies	Percentage of Cases With Statutory Maximum of 15 yrs or more	Percentage of Defendants With Serious Criminal History
87.0*	2.1	2.1	13.0	73.9	73.9 *	60.9
78.1*	2.5	4.6	28.1	87.5	81.3 *	56.2
74.4*	2.9	7.5	48.7	84.6	66.7 *	53.8
73.6	6.4	13.9	43.7	69.0	56.3	65.5
72.3	3.4	17.3	29.8	48.9	46.8	55.3
66.7	8.4	25.7	30.2	43.7	42.9	57.9
66.7	1.8	27.5	22.2	40.7	37.0	48.1
66.2	5.3	32.8	32.5	43.8	53.8	50.0
65.8*	2.5	35.3	47.4	76.3	68.4 *	71.0
63.8	4.4	39.7	30.4	49.3	36.2	65.2
60.6	2.0	41.7	51.5	66.7	42.4	45.4
60.3	4.1	45.8	22.1	39.7	41.2	55.9
60.0	3.3	49.1	16.4	34.6	43.6	58.2
56.7	10.6	59.7	31.6	49.7	36.9	57.7
56.2	5.2	64.9	16.9	39.3	44.9	66.3
55.6	5.0	64.9	24.1	40.7	38.9	46.3
54.0	4.7	74.6	33.3	74.7	64.4	54.0
50.0	2.8	77.4	16.1	23.2	35.7	48.2
50.0	2.1	79.5	31.0	47.6	35.7	61.9
50.0	1.7	81.2	29.4	47.1	70.6	55.9
49.3	3.8	85.0	28.6	39.0	32.5	59.7
45.7†	1.6	86.6	20.0	48.6	28.6 †	57.1
44.7	2.1	88.7	27.7	38.3	51.1	51.1
42.0	2.1	90.8	36.0	48.0	42.0	54.0
37.1†	1.3	92.1	14.3	34.3	22.9 †	62.9
36.7	1.1	93.2	40.0	70.0	40.0	56.7
33.3†	1.0	94.2	23.3	26.7	26.7 †	76.7
29.0†	.9	95.1	25.8	25.8	22.6 †	61.3

Note: All figures in the table are based on cases in which the judges imposed sentence, not on all the cases they heard. The dotted line divides the judges into two approximately equal groups. The 13 judges above it are responsible for 49.1 percent of all felony incarcerations; the 15 below it are responsible for 46.0 percent of felony incarcerations. The remaining 4.9 percent were imposed by judges who sentenced less than 20 cases.

*Identifies the four judges in the upper group with the highest percentage of cases involving statutory maximums of 15 years or more.

†Identifies the four judges in the lower group with the lowest percentage of cases involving statutory maximums of 15 years or more.

identification number. The data have in fact been ranked by incarceration rate for all cases heard by each judge, from highest (87.0 percent) to lowest (29.0 percent). The table contains seven columns. The first three of these address incarceration rates of the judges; the fourth, fifth, and sixth columns contain information on the kinds of offenses for which the judges handed down sentence; the last column contains a measure of the seriousness of the defendant's criminal history. A brief discussion of each of these now follow.

1. Incarceration Rates

The first column in the table expresses the number of incarceration sentences given by each judge as a percentage of the total number of felony sentencing decisions by that judge. Incarcerations as defined here include alternative "in" sentences (FYCA B, FYCA C, and NARA) and indeterminate sentences involving specific minimums and maximums. Thus, the judge at the top of the list had an incarceration rate of 87 percent, the second judge had an incarceration rate of 78.1 percent, and so on down to the bottom of the list, where the last judge had an incarceration rate of 29.0 percent. The second and third columns of the table focus on the number of individuals incarcerated by the judge as a percentage of the felony incarcerations by all judges. The second column presents these data by judge, and the third column expresses them cumulatively. Thus, the 28 judges for whom data are presented accounted for 95.1 percent of all incarcerations

that resulted from the 1974 cases. On the average, each judge was responsible for 3.4 percent of total incarcerations; the largest percentage for any judge was 10.6 percent and the smallest was .9 percent. Though there is considerable difference between these outer limits, there is no unusual concentration of incarcerations in the sentencing decisions of a few judges.

2. Offense Characteristics of Judge Case Load

If different judges had different kinds of case loads during the study period, then different incarceration rates are to be expected. This was--and is--the situation in Superior Court, where the more serious felony cases are assigned by the Chief Judge to a limited number of judges. In order to control for this effect, three characteristics of the offense are presented in the table. The fourth column expresses the number of sentences imposed by each judge for robberies as a percentage of all sentences imposed by that judge, and the fifth column expresses sentences involving offenses against persons as a similar percentage. Consequently, the fifth column includes robberies as well as other antiperson offenses. This was done because some of the judges had very few cases involving offenses against persons that were not robberies, and therefore, if column five had considered all antiperson offenses except robberies, there would have been a tendency for the percentages expressed to be misleading.

The sixth column contains the percentage of felons sentenced by each judge for offenses with maximums of 15 years or more. The choice of this breakdown is somewhat arbitrary, though it does separate the offenses into more- and less-serious types. In addition, roughly half (44.6 percent) of the convictions had maximums of 15 years or more, which provides a convenient break point.

3. The Defendant Score

In PROMIS, a score is calculated for each defendant that expresses numerically an estimate of the seriousness of that defendant's criminal history. Included in the basis for the estimate are the prior arrest record of the defendant, the nature of previous offenses, and the existence of prior problems in dealings with the judicial system. For the purpose of this table, defendants were divided into two groups--those for which the defendant score indicated little or no prior criminal history, and those for whom a more serious history existed. Column seven of the table contains the percentage of convicted defendants with more serious criminal histories. Again, this could be a factor explaining differences in the incarceration rates of judges.

4. Analysis of the Tables

It was noted earlier that the overall incarceration rate for convicted felons was 57.7 percent (see Table III-1). An interesting aspect of Table V-2 is that the judge who was responsible for the largest proportion of all incarcerations

(10.6 percent) was also the judge whose individual incarceration rate (56.7 percent) was closest to the courtwide average. Moreover, as can be seen from the cumulative percentage column, those judges with higher incarceration rates than this judge accounted for approximately half of all incarcerations. In several senses, then, this judge can be considered the midpoint of the system with respect to these data. This provides a convenient break point for further analysis of the table.[2]

There are 13 judges above the midpoint, and 15 judges below (including the judge with the highest proportion of total incarcerations). As stated, the 13 accounted for 49.1 percent of all incarcerations. Their average incarceration rate was 68.9 percent, which contrasts sharply with the average rate for the other 15 judges, which was 46.0 percent. Of course, case load differences between the top and the bottom half of the list could be responsible for the incarceration rate differential. The figures will help to clarify this issue. The top 13 judges sentenced 43.4 percent of all offenders convicted in the study period and accounted for 49.1 percent of all incarcerations. The same judges were responsible for 47.8 percent of the sentences for robbery and

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[2]Though convenient, the breaking point is arbitrary. The judges could just as easily have been divided into three or more groups, thus increasing the variance in the sentencing severity variable that is being created. However, as can be verified by any reader who chooses to make such breakdowns from the data provided in the table, doing so would not change the substance of the conclusions that are drawn. Further illustration of this point is made during the discussion of Table VI-2 in the next chapter.

47.6 percent of the sentences for offenses against persons. In this sense, then, since they accounted for almost half of the Superior Court case load, they did not differ markedly from the other group of judges. However, there are some differences when their serious cases are expressed as proportions of their total case load, as is done in Table V-3. For instance, on the average, robberies represented 33.3 percent of the sentencing case load of the top 13, and all antiperson offenses represented 58.4 percent. Offenses with maximums of 15 years or more represented 53.1 percent. These figures differ somewhat from those of the lower 15 judges (27.4 percent, 43.0 percent, and 37.2 percent, respectively) and could clearly account for some of the difference in incarceration rate, since, as has been demonstrated in Chapter IV, the more serious offenses are associated with more severe sentences. An estimate of the extent to which the offense type "explains" incarceration rate differences can be made by comparing the ratio of the averages for the two groups. This can be done by calculating the following statistic:

$$\text{Comparison Ratio} = \frac{\text{Average for Top 13 Judges}}{\text{Average for Lower 15 Judges}}$$

$$\text{Incarceration Ratio} = \frac{68.9}{46.0} = 1.5$$

$$\text{Robbery Ratio} = \frac{33.3}{27.4} = 1.2$$

$$\text{Offenses Against Persons Ratio} = \frac{58.4}{43.0} = 1.4$$

$$\text{Statutory Maximum Greater Than 15 Years Ratio} = \frac{53.1}{37.2} = 1.4$$

Table V-3

Average Incarceration Rates and Case Load Mixtures for the Upper and Lower Groups of Judges

	13 Judges with Highest Incarceration Rates	15 Judges with Lowest Incarceration Rates
Incarceration Rate	68.9	46.0
Percent of Sentences That Were for Robberies	33.3	27.4
Percent of Sentences That Were for Antiperson Offenses	58.4	43.0
Percent of Sentences for Offenses with Maximums of 15 years or more	53.1	37.2
Percent of Offenders with Serious Criminal History	57.2	58.0

These ratios may be interpreted in the following manner. The upper 13 judges incarcerated at a rate that is, on average, 1.5 times greater than that of the lower 15 judges. Clearly then, variation in sentencing exists between the two groups. However, this variation may be due to the fact that the upper 13 judges heard more-serious cases at a rate that was also 1.5 times greater than that of the lower 15 judges. If so, the variation would be considered by most to be justified. In fact, the other ratios indicate that the upper 13 judges sentenced for robberies, offenses against persons, and offenses with statutory maximums of 15 years or longer at rates that were 1.2, 1.4, and 1.4 times greater--respectively--than those judges of the other group. What this means is that the case load of the judges with the highest incarceration rates was, on the average, different from--that is, more serious than--that of the lower 15 judges, but that the difference in case load was not as great as the difference in incarceration rate. Consequently, not all of the difference in incarceration rates can be explained by the fact that the judges imposing the most severe sentences also handled the most serious cases. It should be noted, however, that the ratios are not dramatically different from one another, and that the measures of offense seriousness are not as refined as they could be if the case load of each individual judge was larger. For instance, it would be advantageous in this kind of analysis to look at particular charge types, but the fact that the average number

of offenders sentenced by each judge is 57 means that no judge handles enough charges of any one kind for such an approach to be useful.

A further potential source of variation between the two groups is the offender who is sentenced. If the top 15 judges tended to hear more cases involving felons with serious criminal histories than the bottom 15 judges, then they could be expected to give more serious sentences because of this fact, other things being equal. On the average, however, 57.2 percent and 58.0 percent of the sentences given by the upper and lower groups, respectively, involved defendants with serious criminal records. This indicates that the kind of defendant sentenced tends to be the same from group to group and, therefore, the variation in incarceration rate is not likely to have been produced by differences in the criminal history of the defendant.

This analysis of average incarceration rates, case load mix, offense characteristics, and defendant type for the two groups of judges suggests that some--but not all--of the variation between the more severe and less severe sentencing decisions is due to differences in offense mix. In other words, the upper group handled more serious cases than the lower group, on the average. However, analysis of averages can be misleading, since distortion is introduced by extremes. In Table V-2, for instance, there are four judges in the upper 13 whose offense mix is substantially more serious than that

of the remainder of the group. For each of these four judges, the proportion of defendants sentenced for offenses with maximums of 15 years or more was 66.7 percent or greater. Similarly, in the lower group of 15 judges, there were four whose offense mix was substantially less serious than that of the remainder of the group. For these four, 28.6 percent, or less, of their case load involved offenses with statutory maximums of 15 years or more. When the effect of these two somewhat extreme groups is excluded, the picture is quite different. Table V-4 presents data comparing the remaining 9 judges from the upper group and the remaining 11 judges from the lower group.

The table indicates that the incarceration rates of the two groups still differ substantially, though not as much as they did when all judges were included. However, the offense seriousness rates are much more comparable. Both groups imposed sentence for offenses against persons and for offenses with statutory maximums of 15 years or more at equivalent rates. Robbery cases were more frequent for the upper group than for the lower group, but, as is indicated by the comparison ratio, the difference is not as great as the difference between incarceration ratios. Consequently, it may be concluded that, when the eight judges who were at the extremes of the court in terms of offense seriousness are excluded from the analysis, substantial variation still exists between the group that is more severe in its sentencing practices and the group that is less severe. However, this variation is not

Table V-4

Average Incarceration Rates and Case Load Mixtures for the Upper and Lower Groups, Excluding Judges With the Least Representative Case Loads*

	9 Judges from the Top 13	11 Judges from the Bottom 15	Comparison Ratio
Incarceration Rate	65.6	49.6	1.32
Percent of Sentences That Were for Robberies	31.0	26.1	1.18
Percent of Sentences That Were for Antiperson Offenses	48.5	47.1	1.0
Percent of Sentences for Offenses with Maximums of 15 years or more	44.4	44.8	1.0
Percent of Offenders with Serious Criminal History	55.7	55.6	1.0

* The eight judges excluded from this table were identified in Table V-2.

accounted for by differences in the offense mix of the two groups. In addition, the variation is not accounted for by differences in defendant type, since--as was found even when all judges were included--there are no differences between the two groups with respect to this factor.

The information contained in Tables V-2, V-3, and V-4 has perhaps raised more questions than it has answered. It is clear that sentencing practices differ widely from judge to judge. The variation in incarceration rates is considerable and cannot be fully accounted for by differences in the type of case load handled by each of the judges. It is difficult to be definitive about this conclusion, however, because of the problems involved in analyzing the case load for an individual judge, when that judge has sentenced only 40 or 50 felons. If these cases were organized by the kinds of characteristics employed in previous chapters in this report, it would be virtually impossible to detect any meaningful pattern, because there are so few cases in any given category. For instance, if the sentencing decisions of the judges for the 168 armed robbery convictions were examined, there would be an <u>average</u> of about seven cases per judge. Naturally, some judges would have more than seven, and some would have less. However, it would be virtually impossible to identify any reliable trend. In order to address this problem and to investigate further the relationship between the sentence and the offense-, offender-, and judge-related factors examined in Chapter IV and in this

chapter, a multivariate model of the sentencing decision is constructed in the next chapter. The model incorporates those variables that, on the basis of the analysis to date, have been shown to be associated with the sentencing decision.

VI. A MODEL OF THE SENTENCING DECISION

The preceding two chapters of this study have been primarily descriptive. In them, the associations between a relatively large number of factors and the sentencing decision have been examined. It has been shown that certain characteristics of the offense, elements in the felon's prior criminal record, and some personal characteristics of the felon have been individually and in varying degrees of strength associated with the sentencing decision. It was also concluded that different judges follow different sentencing practices, though these differences were not accounted for by the judge characteristics that were examined.

In this chapter, the simultaneous effects of these various factors will be considered. This will be accomplished through the use of PROBIT, a technique specifically designed for multivariate analysis of ordinal dependent variables. PROBIT will be discussed in more detail shortly. Its utilization here will facilitate an answer to two important questions, and will assist in the development of a model of the sentencing decision in the Superior Court.

The first question concerns the relative effect of the factors that have been shown to be associated with the sentence. In Chapter IV, for instance, it was demonstrated that the prior arrest record and the prior conviction record of the felon were associated with the sentence, and that the effects of those two

factors were to some extent independent of each other. Specifically, it was shown that even if the previously arrested felon had not been convicted, the existence of the arrest record was associated with a sentence that was more severe than that given to the felon with no prior record. However, it was not possible in Chapter IV to state with assurance which of the two types of record had the greater connection to the sentencing decision. Similarly, little or nothing is known, on the basis of what has been done thus far in this report, about the relative effect of criminal record when compared with the kind of offense for which the felon was convicted. Both appear to be important, but which is more important? These kinds of questions--about these and other factors--will be addressed in this chapter.

The second question that will be addressed relates to the combined effect of the associated variables. For example, offense type, seriousness of criminal history, and the kind of plea entered were all individually associated with the kind of sentence given. If the offense was serious or if the criminal history was long, or if a plea of not guilty was entered, the sentence imposed was likely to be more severe than under the opposite conditions. However, this sheds little light on the way in which these three factors work together. For instance, was the defendant who committed a serious offense, and had a long criminal record, and who pled not guilty likely to receive a more severe sentence than the defendant who had similar offense and criminal

history characteristics but who pled guilty? The analysis discussed in earlier chapters suggested a limited answer to this particular question, by showing that the kind of plea entered was associated with the sentence imposed for similar offenses (see Table IV-8). A complete answer, however, depends not only on the basic association between plea and sentence, but also--and more importantly--on the interaction of all the associated factors. If it is the case that the plea is itself associated with some or all of the other factors, then the plea may make no difference to sentence severity when those other factors and the plea are simultaneously taken into account.

These examples are intended to illustrate a general point. Many factors appear to influence the sentencing decision. Some of them may, in combination, have a greater impact than any of them alone. Conversely, some that appear to be influential when considered alone may turn out to have no unique effect when they are simultaneously considered with other factors. It is clearly important to sort out which is which, since failure to do so will almost certainly result in a misleading interpretation of the sentencing decision.

All of the factors that were investigated in Chapters IV and V were tested for inclusion in the sentencing model. However, the findings reported in this chapter are limited to those variables that, on the basis of the analysis, proved

to be statistically most relevant.[1] They are listed in Table VI-1. The order of presentation has no implications for the relative importance of the variables. This issue will be addressed in the analysis sections of this chapter. Note, however, that of all factors examined in this study, this set is most strongly associated with the sentencing decision, and, in the combinations detailed below, represents the best "explanation" of the decision that could be developed. Each of the variables has been discussed previously, but it will be helpful to clarify their role in the model. First, the explanation of the sentencing decision may be represented by the following statement:[2]

Sentence Imposed = f (Statutory Maximum Sentence, Whether the Conviction was for an Offense Against Persons, the Number of Charges, the Incarceration Rate of the Judge, the Release Type, the Nature of the Plea, the Number of Prior Convictions, the Number of Prior Arrests, and the Age of the Felon at Sentencing)

In less formal terms, this means that the decision is a function of the cumulative effects of the independent variables contained in the right-hand side of the equation. Further, it means that the sentence given to each felon may be predicted, with an as yet undetermined degree of success, from a knowledge

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[1] A variable was excluded from the model if, on the basis of PROBIT analysis in conjunction with the other factors, it made a unique contribution of less than one-half of one percent to the predictive success of the equation.

[2] See Appendix C for expanded discussion of this topic.

Table VI-1

Factors Reported from the PROBIT Analysis of the Sentencing Decision

Name	Categories
Statutory maximum of offense of conviction	(1) 3 yrs or less (2) 5 years (3) 10 years (4) 15 years (5) 20 years or more
Was conviction for an anti-person offense	(0) No (1) Yes
Number of charges	(0) One (1) two or more
Judge Incarceration Rate	Number of Incarcerations Divided by Total Sentences Imposed
Release Type	(0) Conditional Release (1) Personal Recognizance
Plea	(0) Not Guilty (1) Guilty
Number of previous convictions	(0) None (1) One (2) Two or more
Number of prior arrests	(0) None (1) 1 to 3 (2) 4 to 9 (3) 10 or more
Age	(1) under 22 (2) 22-30 (3) 31-45 (4) 46+

of the values of the variables for each felon and an understanding of the relative impact each variable has on the decision.

It seems clear that some of the variables in the statement are really "standing in" for other factors on which data were not available. The incarceration rate of the judge, for instance, which was shown in Chapter V to be only partially dependent on objective characteristics of the judge's case load, may be plausibly considered as a measure--albeit indirect and incomplete--of the sentencing philosophy of the judge. The release type variable, as was noted earlier, is more usefully viewed in this context as a measure of the community ties and stability of the offender (information that is in the presentence report) rather than an unrelated statement about pretrial release conditions. Even the statutory maximum sentence for the convicted offense can be interpreted as a measure of offense severity.

Thus, the statement of the model seeks to capture the effect of the following types of influence:

- Severity of the Offense (measured by the Statutory Maximum Sentence, Whether the Offense was Against Persons and the Number of Charges)
- The Prior Record of the Offender (measured by the Conviction and Arrest Records)
- The Philosophy of the Sentencing Judge (measured by the Judge's Incarceration Rate)
- The Community Ties of the Offender (measured by the Release Type)

. The Effect of a Guilty Plea

. The Effect of the Offender's Age

The remainder of the chapter is organized into three sections. The first presents a flow model of the sentencing decision; the second identifies the main determinants of the decision to incarcerate or not (hereinafter called the "in/out" decision); and the third examines the length of "in" sentences.

A. A FLOW MODEL OF THE SENTENCING DECISION

It was suggested in the work on sentencing guidelines by Leslie Wilkins and others that the sentencing decision could fruitfully be conceptualized as a two-stage process.[3] The first stage is a decision by the judge to give an "in" or an "out" sentence. If the decision is to incarcerate, then the next stage is to determine the length of the incarceration. This approach is followed in this chapter, with some adjustments to reflect the particular situation that exists in the District of Columbia Superior Court. For instance, the first stage of the decision process involves three possibilities, rather than two: an "out" sentence (probation, suspended sentence, fine, or FYCA A); alternative incarceration (FYCA B, FYCA C, or NARA); and incarceration for a term with a specific minimum and maximum.

The second stage of the decision process, at which point length of incarceration is determined, can in principle result

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[3] Leslie Wilkins, et al., Sentencing Guidelines: Structuring Judicial Discretion (Washington, D.C.: Law Enforcement Assistance Administration, 1976).

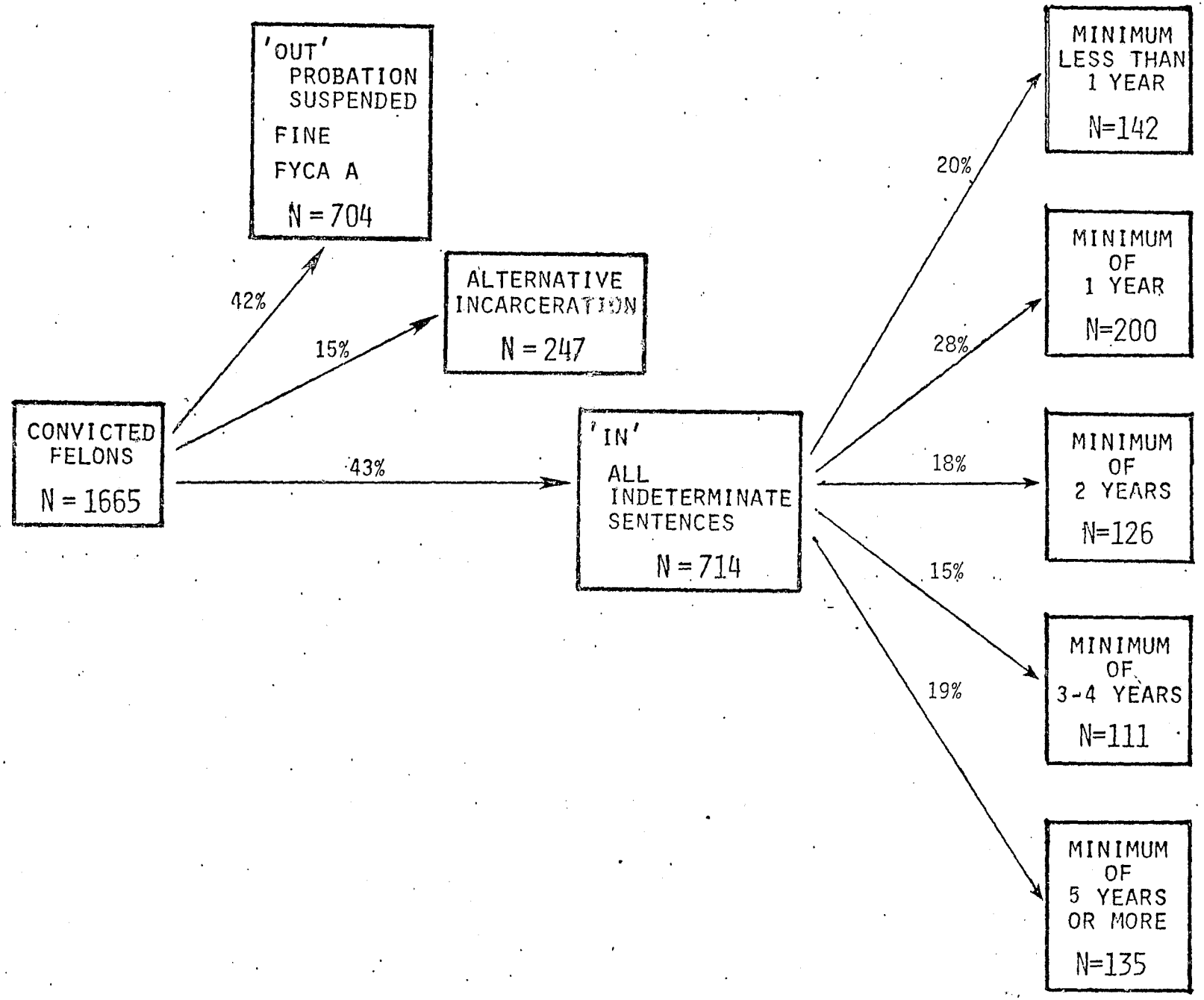
in any statutorily permissible sentence. Because of the predominating influence of the minimum term in the District of Columbia, the "in" decision will be classified by the number of years in the minimum, up to five years. There will thus be five categories of the "in" decision in this second stage, corresponding to minimums of less than one year, one year, two years, three or four years, and five years or more.

Figure VI-1 depicts the two stages of the decision process and identifies the number of cases for which each type of decision was made. Thus, there were 1,665 convicted felons, 704 of whom received "out" sentences, 247 of whom received alternative incarceration sentences, and 714 of whom received "in" sentences. The proportion of cases that follows each of the paths is expressed by the figure on the arrow leading from one box to another. These percentages were discussed in Chapter III. "Out" sentences were given in 42 percent of the cases, alternative incarceration in 15 percent, and "in" sentences in 43 percent. The second stage of the sentencing decision process specifies five options, each of which represents a particular kind of mimimum. Consequently, 20 percent of the sentences involving incarceration have minimums of less than one year, 28 percent have minimums of exactly one year, 18 percent have minimums of two years, and so on.

In the two sections that follow, each stage of the decision will be analyzed. First, a statement will be made about those factors that are most relevant to the in/out decision;

FIGURE VI-1

A FLOW MODEL OF THE SENTENCING DECISION



second, the length of the minimum will be considered. In both sections, the most important factors will be identified and a quantitative assessment of the effect of those factors will be presented.

B. ANALYSIS OF THE IN/OUT DECISION

Although the first stage of the sentencing decision is being referred to as the in/out decision, it actually entails a choice among three options, as was specified in Figure VI-1. Two predictive models, the second being a more parsimonious version of the first, were estimated. The statistics produced by the PROBIT analysis of the models are presented in Table VI-2. For the nontechnical reader, a brief comment on the interpretation of the statistics will provide a frame of reference for the discussion of the table that follows.

1. A Comment on PROBIT

As was stated earlier, PROBIT assesses the impact of a set of factors (identified here as independent variables) on a dependent variable (the in/out decision, in this instance). Two kinds of statistics are produced. First, the individual importance of each of the factors is numerically expressed by the maximum likelihood estimates (MLEs) and the standardized coefficients (Bs); second, summary statistics are developed for the complete set of variables. The former are listed in the table to the right of each of the factors; the latter are listed at the bottom of the table.

The MLEs and standardized coefficients are alike in that both are estimates of the unique impact of a factor on the sentencing decision. They differ in that standardized coefficients can be compared in order to ascertain the relative importance of factors, but MLEs cannot. Because the question of relative importance is of primary interest in this study, emphasis will be placed on the standardized coefficients.

Another way to express the idea of unique impact is to say that the standardized coefficient provides an estimate of the association of the factor with a particular kind of sentence when all other things are equal. For instance, if different sentences are given to defendants who are alike in all respects but the kind of plea entered, then the plea may be said to have a unique effect. In this situation, the standardized coefficient would not be zero. How far it deviated from zero would depend on the degree of difference in sentences imposed on those who pled guilty and those who did not. The greater this difference, then the larger the standardized coefficient. This argument can be generalized to the factors included in the table, and consequently, it may be claimed that all the factors have a unique impact on the sentencing decision. Of course, the magnitude of this impact varies from factor to factor. For instance, in Model I, the coefficient for the effect of the number of prior convictions is .22, and the coefficient representing the impact of the number of charges against the felon is .04. This means that the former is a much more important

determinant than the latter. In fact, they are at opposite extremes in terms of importance, since number of prior convictions has the largest standardized coefficient, while the number of charges has the smallest.

In general, all the coefficients can be interpreted in this way. The larger the coefficient, the more important the factor to which it applies. Thus, the factors have been listed in declining order of importance. If two coefficients are equal, then the variables are of approximately equal importance, and the order in which they are presented is determined by the statistical significance of the coefficient. Significance is indicated by the asterisks alongside each coefficient. Two asterisks indicate a very high level of significance; a single asterisk indicates a lower but nevertheless acceptable level of significance. In general, the greater the statistical significance, the more confident one can be about the findings.

The most important question addressed by the statistics at the bottom of Table VI-2 is the extent to which the analysis results in a correct interpretation of the in/out decision. This question is answered by the statistics specifying the percentage of decisions which, on the basis of the coefficients presented in the table, could have been correctly predicted. For Model I, this figure is 61.2, which means that an application of the coefficients in the table to the cases that formed the basis for this study would have correctly predicted the judges' decisions 61.2 percent of the time.

This discussion of the PROBIT technique has been deliberately brief, and has, in fact, ignored some of the statistics presented in Tables VI-2 and VI-3. Additional information, with references, is presented in Appendix C. It is hoped that this short presentation has provided a framework for the following discussion.

2. Discussion of Table VI-2

Statistics for two separate models of the first stage of the sentencing decision are presented in Table VI-2. Model I incorporates all the variables from Table VI-1; Model II consists of the four most important independent variables from Model I (prior conviction record, prior arrest record, judge incarceration rate, and statutory maximum sentence).

The reason for the presentation of two models is as follows. Model I is the most successful predictor of the in/out decision (61.2 percent correct); Model II, a simpler version of I, provides a basis for comparison of the effect of the four most important variables with that of the five least important. Each of the models will be briefly discussed.

a. Model I. The independent variables in the Model I column of the table are listed in declining order of importance, as determined by the standardized coefficients (Bs). As was stated previously, the nine variables included in the model are those that produced the most successful predictions of the in/out decision. This means that if the weights in the model had been applied to the 1,665 cases before sentence

Table VI-2

PROBIT Analysis of the In/Out Decision

Independent Variables	Model I		Model II	
	Maximum Likelihood Estimate	Standardized Coefficient (Estimated)	Maximum Likelihood Estimate	Standardized Coefficient (Estimate)
Number of Prior Convictions	.32	.22**	.35	.24**
Number of Prior Arrests	.23	.20**	.24	.20**
Judge Incarceration Rate	.002	.19**	.002	.20**
Statutory Maximum Sentence	.14	.15**	.20	.22**
Release Type	.32	.12**		
Anti-person Offense	.25	.11**		
Pled	.22	.08*		
Age of Felon	.07	.05		
Number of Charges	.11	.04		
-2 X LLR (CHI^2)	391.5**(9df)		347.3**(4df)	
Estimated R^2	.29		.27	
Percent Predicted Correctly	61.2		60.0	
Improvement Over Prediction Based on Chance	27.9		26.7	
Improvement Over Prediction of Most Frequent Category	18.2		17.0	

*Significant at .05 level or better
**Significant at .01 level or better

was imposed and a prediction of the sentence had been made based on the application of those weights, then 61.2 percent of the time the model would have correctly predicted the sentence given by the judge. Compared with the prediction that could have been made if the cases were distributed randomly--that is, one-third in each of the three sentence categories---this figure leads to an improvement in prediction success of 27.9 percent. Of course, if the distribution of the cases across each of the three paths was known, then it would be possible to predict that all cases were given the sentence represented by the most frequent category--in this instance, incarceration at a rate of 43 percent--and therefore the improvement made by the model compared with this prediction is 18.3 percent.

One of the significant aspects of this model is the fact that--with the exception of the age of the felon and the judge incarceration rate--all of the variables are legal in nature. That is, they reflect either the criminal record of the defendant or offense-based characteristics. In fact, since the model is predicting the possibility of alternative incarceration as well as an "out" sentence and an "in" sentence, age is also legal in nature in at least one sense--the Federal Youth Corrections Act, upon which most of the alternative incarceration sentences are based, specifies that age is a criterion for the decision. The model suggests that the prior criminal record of the felon is slightly more important than the judge

incarceration rate, which in turn is somewhat more important than the statutory maximum sentence. Other variables make successively smaller contributions.

Of particular interest is the clear importance of the number of previous arrests.[4] Although the number of prior convictions is also included in the model, and although conviction record is slightly more important than arrest record, it is still the case that prior arrest record appears to be more important than the statutory maximum sentence, the target of the offense (antiperson or not), and the number of charges. It should be pointed out, however, that the effects of these offense variables are to some extent dispersed due to the fact that there are several of them. Caution in interpretation is therefore in order.

In Chapter V, judges were divided into two groups on the basis of their incarceration rates, and this division was used as the basis for the "judge incarceration rate" included in the analysis in that chapter. In the PROBIT analysis, however, the actual judge incarceration rate was employed, thus providing a more complete picture of judge effect. In addition, in order

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[4] In considering the impact of arrest record on the sentence, it should be noted that prior arrests are properly considered in determining sentence (along with any other available information on the defendant's life-style, conduct, mental attitudes, and moral propensities), even if no conviction resulted from them. Williams v. Oklahoma, 358 U.S. 576 (1959); Williams v. New York, 336 U.S. 241 (1949); United States v. Sheppard, 462 F. 2d 279 (D.C. Cir.), cert. denied, 409 U.S. 985 (1972); United States v. Sweig, 454 F.2d 181 (2nd Cir. 1972); 18 U.S. Code §3577. A judge may not, of course, properly rely on misinformation, United States v. Tucker, 405 U.S. 443 (1972).

to test further the extent to which differences in incarceration rates between judges could be accounted for by differences in their case-load mixture and defendant type, a PROBIT analysis of the incarceration rate was conducted, using the eight nonjudge variables listed in Table VI-2. The results confirmed the conclusions drawn in Chapter V. When judges were divided into high and low groups, it was possible to predict correctly only 56 percent of the time whether a judge belonged in the high group or the low group. This is only a 6 percent improvement over chance, and virtually no improvement over a prediction of the most frequent category. When the judges were divided into four groups, prediction success was 12 percent better than chance, but again very little better than predicting the most frequent category.

This PROBIT analysis of the incarceration rate confirmed that the sentence given is, to some extent, dependent on who gives it. It also lends weight to the idea that the incarceration rate measures, loosely, the sentencing philosophy of the judge. The size and the significance of the standardized judge rate coefficient in Table VI-2 provides further support for the claim that the judge has a unique impact on the sentencing decision. If an offender is sentenced by one of the judges in the group with a relatively high incarceration rate, then that offender is more likely to be incarcerated than another offender who committed a similar offense, had a comparable record, was of the same age, entered the same kind of plea, and who was

sentenced by a judge from the group with a relatively low incarceration rate. In other words, some sentencing variation exists that appears to be due solely to differences between judges.

b. Model II. In the interest of parsimony, Model I was reduced to the four most important variables and reestimated. The purpose in doing this was to assess the importance of those four variables, relative to the nine that were included in Model I, and to see whether a simpler model could be used without much loss of predictive success.

The statistics for Model II indicate that prior conviction record, statutory maximum sentence, prior arrest record, and judge incarceration rate--in that order of importance--can be used to predict successfully 60 percent of the in/out decisions. This is only 1.2 percent less successful than the larger model and indicates that the five excluded variables made a minimal contribution to the overall equation. There is a change in the relative magnitude of the standardized coefficients for the four variables. Prior conviction record is still the most important variable, but the statutory maximum sentence is slightly more important than either the number of prior arrests or the judge incarceration rate. This change supports the observation made in the discussion of Model I that the impact of offense characteristics was dispersed across several variables. Now it is more concentrated, and as a consequence the statutory maximum sentence increases in predictive power.

3. Summary

The in/out decision appears to be most heavily influenced by the prior criminal record of the offender, the statutory maximum for the offense, and the philosophy of the judge imposing the sentence. Less important, but still making a contribution, are the offense type, the release type, the age of the felon, the type of plea that is entered, and the number of charges in the case. No other variables were of consequence. The model successfully predicts slightly more than 61 percent of the decisions. Expressing it another way, it is wrong 39 percent of the time. This implies that a good deal of the variation in the decision is due to factors other than those considered here.

C. ANALYSIS OF THE SENTENCE LENGTH

Table VI-3 presents information similar to that just discussed, but the decision being investigated is the second stage of the sentencing process. Frequencies for the five categories of the decision were presented in Table VI-2. Two models were again estimated. In the sense that it is more difficult to predict decisions across five categories than it is across three, it is to be expected that the overall success of the model will be less than that of the model developed for the in/out decision. This expectation is confirmed by the fact that only 40.8 percent of the length-of-sentence decisions were predicted correctly by Model III. Nevertheless, the improvement over a prediction based on chance is above 20.8 percent, and the improvement over a

Table VI-3

PROBIT Analysis of Sentence Length

	PROBIT Estimates			
	Model III		Model IV	
Independent Variables	Maximum Likelihood Estimate	Standardized Coefficient (Estimated)	Maximum Likelihood Estimate	Standardized Coefficient (Estimated)
Statutory Maximum Sentence	.54	.51**	.61	.56**
Number of Previous Convictions	.15	.10*		
Release Type	.53	.17**	.63	.20**
Judge Incarceration Rate	-.001	-.08*		
Number of Charges	.37	.12*		
Type of Plea	.41	.14**	.43	.14**
Injury or Death	.36	.12*		
$-2 \times LLR(CHI^2)$	346.3**(7df)		320.3**(3df)	
Estimated R^2	.43		.44	
Percent Predicted Correctly	40.8		39.1	
Improvement Over Prediction Based on Chance	20.8		19.1	
Improvement Over Prediction of Most Frequent Category	12.8		11.1	

*Significant at .05 level or better
**Significant at .01 level or better

prediction based on the most frequent category (a sentence with a one-year minimum) is 12.8 percent.

Table VI-3 has several striking features. First, the statutory maximum sentence is the most important predictive factor, by a considerable margin. The standardized coefficients of .51 in Model III and .56 in Model IV dominate the equations. In addition, other variables that were important for the prediction of the in/out decision have little relevance here. The prior conviction record, which was ranked first in Models I and II, is sixth in Model III. Prior arrest record had a standardized coefficient of .01, which does not even merit inclusion in the table.

A further surprising element is the reduction in size and reversal in sign of the coefficient for the judge incarceration rate. This factor was strongly and positively associated with the in/out decision--that is, incarceration was more likely if the judge was from the group with the highest incarceration rate, even if other factors were equivalent. However, it is negatively and weakly associated with the decision about length of sentence. This means that the group of judges who are more likely to give "in" sentences are nevertheless likely to give shorter "in" sentences than the other group. This finding was verified by examining the proportion of "in" sentences for each judge group that had minimums of three years or longer. The 13 judges with the higher average incarceration rate gave such sentences 32.8 percent of the time, compared with 36.3 percent for

the other group. This difference is small, but it is independent of the influence of other factors, as is demonstrated by the fact that the coefficient in the PROBIT table is significant, and is only slightly less important than the felon's number of previous convictions.

Two other variables, of lesser importance in the in/out analysis, have taken over the positions held by prior criminal record and judge incarceration rate in Models I and II. These are the pretrial release type and the type of plea entered. Though the coefficients for these factors do not compare in size with that of the statutory maximum sentence, they nevertheless make a significant contribution to the predictive success of the model. It was observed earlier that the release type is considered a substitute measure for the felon's community and home ties, and the relationship in the table suggests that a felon with such ties is likely to be given a shorter term of incarceration. The relationship of the type of plea can be interpreted as an indication that--for a given conviction charge--shorter sentences are likely to be given to those who plead guilty. Judge Harold H. Greene, Chief Judge of the Superior Court at the time of the study, has advised that this is Court policy:

> The Court in general follows the ABA guidelines which recommend that sentencing consideration be given to those who plead guilty. If the judges follow that standard, . . . individuals who plead guilty are likely to be given sentencing consideration because of the plea.[5]

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[5]Communication to INSLAW, December 29, 1977.

In complementary INSLAW research, it was demonstrated, in fact, that such consideration is more likely to take place for robberies than for any other felony offense.[6] That finding is consistent with the one presented here. Almost one-third of the cases considered in Models III and IV were robberies,[7] and, consequently, it is to be expected that their impact on the overall equation would be great.

When the three most prominent variables are considered separately from the others (Model IV), the resulting prediction success rate suffers only a slight drop (from 40.8 percent to 39.1 percent). The estimated R^2 actually increases. In other words, the contribution of prior criminal record, judge incarceration rate, number of charges, and the incidence of injury or death amounts to 1.7 percent of the prediction success of Model III.

D. SUMMARY

Two general conclusions may be drawn from the analysis presented in this chapter. First, of all the variables included in the study, those that proved to be most important for the prediction and explanation of the sentencing decision are primarily legal in nature. Second, though the models develop a prediction success rate that is considerably better

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[6]William M. Rhodes, Plea Bargaining: Who Gains? Who Loses? PROMIS Research Publication no. 14 (INSLAW, 1978, forthcoming).

[7]Forty-five percent (218 cases) of all robbery convictions resulted in incarceration. These 218 cases constitute 32 percent of all incarcerations in this analysis.

than chance, and is also better than predictions based on frequency distributions, a large proportion of the variation in the sentencing decision is still unexplained. Consequently, while it is fair to say that in the Superior Court of the District of Columbia the kind of variation that exists derives in part from legally based factors, and may, in this sense, be classified as warranted variation, all of the characteristics of the offense, the felon, and the judge do not predict the decision completely successfully. This is equivalent to the statement that factors other than those considered in this study account for the unexplained variation.

Since the data base with respect to the offense is relatively comprehensive, and since information has been developed on the prior record and the personal characteristics of the defendant (see Appendix B), it seems likely that unmeasured differences between judges and between probation officers making recommendations to judges account for some and perhaps most of the variation not explained by these models. In Chapter V, factors such as the age, sex, race, and experience of the judge seemed to be of little relevance to the decision, and this was substantiated by the analysis in this chapter. However, it was also observed that judge incarceration rates and decisions about sentence length vary in ways that are not due to different case loads or different types of defendant. This suggests that other judge characteristics--such as sentencing philosophy--would have greater explanatory value than those on

which information was available. Of course, it is also probable that the unmeasured defendant-based characteristics mentioned in the conceptual framework in Chapter II would account for some of the unexplained variation.

There is some evidence that the judges themselves see sentencing philosophy as an important factor in variation. In a recent interview, one Superior Court judge said: " ...everyone has his own sentencing philosophy and every judge is an individual judge. I don't know what the other judges are doing."[8] It is not clear, of course, that this particular--or any other--judge would change the sentencing decisions he or she makes if what other judges are doing--or had done--was known, but it suggests a perceived need for more and better information on sentencing than has generally been available in the past. The next chapter focuses on this need and suggests a method by which information on sentencing could be communicated to the judges.

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[8]David Pike and Thomas Crosby, "Judging the Judges," The Washington Star, January 19, 1978.

VII. CONCLUSION AND POLICY IMPLICATIONS

One of the primary objectives of this report has been to provide an empirically based assessment of past sentencing practices in the Superior Court of the District of Columbia. Achievement of this objective has been approached by the examination of the individual relationship between a comprehensive set of factors and the sentence, and the incorporation of those factors into a model of the sentencing decision. A secondary objective is to consider how the information provided by this assessment can be utilized by judges in making sentencing decisions in the future. Before discussing the way in which this might be accomplished, a brief review of the general findings of the report is presented.

A. REVIEW OF STUDY FINDINGS

The analysis has demonstrated that the nature of the offense for which the felon is convicted and the prior criminal record of the defendant strongly affect the sentencing decision. The latter was the most important determinant for the in/out decision, while the former--represented by statutory maximum sentence for the convicted charge--was most important for the decision about sentence length. It is believed that the statutory maximum influenced the decision in two separate but related ways. First, the existence of a maximum clearly constrains the range of sentences that can be given for a particular charge. As a consequence, it is inevitable that it will be statistically

associated with the sentence distribution. Second, however, it is also believed that the variable as constructed in this study provides a measure of the seriousness of the offense that is perhaps superior to the other offense characteristics that were included. With respect to the prior criminal record of the felon, the number of previous arrests and convictions were both strongly associated with the first stage of the sentencing process. That is, the larger the number of prior convictions or arrests, the greater the likelihood of a sentence involving incarceration. However, when decisions about the length of incarceration were examined, prior conviction record declined in importance, relative to the statutory maximum sentence for the convicted charge, and prior arrest record became insignificant.

Precisely the opposite happened to the release type and the type of plea. These variables were a good deal less important than prior record and judge incarceration rate when the in/out decision was analyzed, but they were more important influences on the length of incarceration.

It was also demonstrated, in Chapters V and VI, that considerable sentencing variation existed between judges, and that a good deal of this variation could not be attributed to differences in the type of case load or the type of defendant with which the judges were confronted. For instance, when the judges who sentenced 20 or more felons were divided into two groups on the basis of their incarceration rates, it was

found that, on the average, the group with the higher incarceration rates gave "in" sentences 68.9 percent of the time, and the group with lower incarceration rates did so 46.0 percent of the time. Interestingly, it was noted that the group of judges with the highest average incarceration rate tended nevertheless to give shorter "in" sentences than the other group. Again, this tendency was largely independent of the kind of offense for which sentencing was taking place, and of the kind of defendant on whom sentencing was being imposed.

In summary, then, the fact that the seriousness of the offense and the prior conviction record of the defendant were most important in determining the sentencing decision implies that the kind of variation that existed is in part justifiable. That is to say, it is reasonable, both from a legal and a philosophical point of view, to think in terms of more severe sentences being given to defendants committing more serious offenses and having a more serious history of criminality. Nevertheless, further variation existed that was not accounted for by these factors. This was demonstrated by the comparison of the sentencing practices of the judges, and by the limited degree to which the models of decision making were able to predict the kind of sentences imposed. If all the variation in sentences were due to the variables included in the study, then the prediction success rate of the models would have been much higher. That it is not, indicates that

offenders with similar backgrounds, convicted of similar offenses, do not necessarily receive similar sentences. This sort of variation--generally considered unwarranted--has prompted most of the current criticisms of the sentencing process in the United States. It is also the kind of variation that the sentencing guidelines approach, which was discussed in Chapters I and II, seeks to minimize. The following section considers how the findings of this report might be used to implement a guidelines policy.

B. A SUGGESTED GUIDELINES APPROACH

One way in which control of the kind of variation just identified can be established is by specifying within a given court system a set of norms based on the prior sentencing practices of that court. In a sense, previous decisions represent the collective judgment of the judges in the court. In most courts, this experience is largely hidden. However, a guidelines approach could bring it to light. For instance, if it were possible to identify for a judge in a sentencing situation the nature of past sentences given by other judges in the same court to offenders with similar offense characteristics and similar criminal histories, then the judge could make a decision that was consistent with those past sentences.[1] An example of the kind of data that could be provided to the

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[1] In the District of Columbia Superior Court, the mechanism for doing this is in part already in existence. For each case PROMIS produces data on a large number of factors that are relevant to future sentencing decisions, and it is possible to develop the remainder of the information that is (cont.)

judge at the time of sentencing is presented in Figure VII-1. This is a proposed format for the expression of an historical sentencing profile; it includes information on the age, sex, number of prior convictions, type of prior conviction, and charge record for the current offense, as well as data on sentences imposed on felons convicted of this kind of offense and with this kind of prior criminal history over a predetermined period of time prior to the imposition of current sentence. More, or less, information could be provided than is contained in this format. In addition, if the period of time over which the sentencing history of the court is maintained is long enough, then a highly reliable profile could be developed. For instance, in the sentencing profile on this chart, the defendant sample size is 168. These cases represent the armed robbery convictions handed down during the period of this study. Few other charge types had this many convictions. Most, in fact, had very few. Consequently, one year would not be a long enough period of time to develop a meaningful profile for the majority of the sentencing decisions judges have to make. This does not deny the utility of the approach, but it does require careful examination of the volume of cases of

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needed. Other jurisdictions that already use PROMIS, or a similar system, would also be able to implement a guidelines approach with little difficulty, though time might be needed to establish an appropriate data base. Nonautomated jurisdictions could establish guidelines through one-time projects to analyze past sentencing practices. Review could then be conducted as and when necessary.

FIGURE VII-1

A PROTOTYPE SENTENCING PROFILE

DEFENDANT CHARACTERISTICS

NAME	AGE	SEX	#CONV	FELONY	MISD
DOE, JOHN	26	M	2	1	1

CASE DISPOSITION CHARACTERISTICS

LEAD GUILTY CHARGE	OTHER GUILTY CHARGES	DISPOSITION TYPE
ARMD ROBBERY	ADW	PLEA

HISTORICAL SENTENCING PROFILE

DEFENDANT SAMPLE SIZE: 168

INCARCERATION	56%
PROBATION, SUSPENDED	20%
FINE	0%
ALTERNATIVE INCARCERATION	24%

INCARCERATION DISTRIBUTION

	MIN SENT	MAX SENT
LOW	1 YEAR	3 YEARS
MOST FREQUENT	5 YEARS	15 YEARS
HIGH	15 YEARS	LIFE

NOTE: DUE TO SMALL SAMPLE SIZE, OTHER GUILTY CHARGES HAVE BEEN IGNORED.

particular types for which sentencing decisions are made, and of the appropriate length of time over which data would have to be collected in order to provide an adequate sample.

The document displayed in Figure VII-2 contains three kinds of information. At the top of the form, defendant characteristics are listed. These are followed by case disposition characteristics and the historical sentencing profile. The profile would be based on a sample of cases for which the current defendant and case disposition characteristics were comparable to those for this case.

The information to be included in the form would be specified by the judiciary or the appropriate legislative body. The analysis conducted in this report suggests that the most salient information is the previous criminal record of the defendant and the seriousness of the offense of conviction. However, other information could be included, if desired. Thus, for illustrative purposes, the age and sex of the defendant have been included in the prototype form, along with other guilty charges and the kind of plea entered.

As noted, the actual profile presented in the figure is drawn from the sentence distribution for armed robbery convictions during the study period. There were 168 such cases. Incarceration resulted in 56 percent of these cases, probation or suspended sentence in 20 percent, and alternative incarceration in 24 percent. Consequently, the judge who is--for instance--considering probation for an armed robbery case would immediately

know that sentence is relatively rare for this kind of offense. The profile implies then that mitigating circumstances should exist if probation is to be given. Otherwise, the sentence would be at odds with the general trend of past decision making by other judges. If a sentence involving some degree of incarceration is decided upon, then the judge could examine the incarceration distribution figures on the right-hand side of the sentencing profile. These inform the judge that the least severe "in" sentence given in the past was 1-to-3 years, and that the most severe was 15 years-to-life (the statutory maximum for this type of conviction). The sentence given most frequently was 5-to-15 years. The judge examining this profile would therefore know the frequency with which "in" sentences have been given, the upper and lower limits of those sentences, and the most frequently imposed sentence. Additional information could be provided, if desired. It would be possible, for instance, to specify the proportion of cases that were given the lowest, highest, or most frequent sentence. More detailed breakdowns of the length of sentence could also be presented. Whatever was included, the general accomplishment of the profile would be to offer the judge a framework within which the sentencing decision for the current case could be placed.

One shortcoming of this kind of approach needs to be stated. In general, it might be argued that the more precise the profile, the better the guideline it provides. For instance, in the illustration being used in Figure VII-1, it

would be useful to know whether the prior conviction record of the defendant involved an offense of violence, since this would be relevant for the statutory provisions that apply to the case. However, each time an additional piece of information is included, the profile tends to be based on fewer cases than otherwise. This can result in distorted statistics. Consequently, it is necessary to build into the design of the procedure for producing the profile safeguards against the presentation of misleading data. How this might work is illustrated by the note at the bottom of the figure, which advises that the other guilty charges have been ignored because the profile based on them would have been too small to be useful.

It is anticipated that the guidelines document for which Figure VII-1 is a model could be automatically produced as soon as conviction information was available. The document would be prepared and included in the case file, or in a file maintained by the probation officer responsible for making recommendations to the judge. The document should be placed before the judge at the time the probation officer's presentence report is delivered. The judge would then have available both a complete statement of the investigation into the background of the defendant and a profile of the way similar defendants were sentenced in the past.

This approach could reduce variation in at least two ways. First, the existence of a well-specified range of prior sentences would tend to channel the sentencing ideas of the judge

who is looking for guidance. In this sense, the instrument would perform a function similar to the sentencing council approach discussed in Chapter II. Second, for the judge who has a clear idea of the sentence he or she anticipates imposing, the instrument would identify the degree to which that sentence corresponds to or deviates from the historical norm for the court as a whole. In both instances, variation in the overall sentencing practices of the court is likely to diminish. Sentencing variation, of course, is not reduced by the mere existence of the instrument, since judges may not feel the need to incorporate the information provided by it into their sentencing decisions. However, the possibility of voluntary reduction is enhanced. Failing this, judicial discretion in sentencing might very well be eliminated by legislative actions.

Two final points should be made. The guidelines approach that has been outlined summarizes past sentencing practices in the court and formalizes those practices into a strategy for guiding the future decision making of judges. Obviously, this approach will not work unless judges feel the need for such guidance. In addition, this institutionalization of past practice occurs whether that practice was good or bad. In other words, a dominant but undesirable or incorrect sentencing pattern could be given apparent approval simply by the demonstration that it had "always been done in the past."

This is not what the guidelines approach is intended to accomplish, but it is what can result if the guidelines are applied mindlessly.

One way to address these two issues is to establish historical sentencing profiles for major offense types and to expose them to judicial consideration prior to implementation of the guidelines procedure. On the basis of this consideration, a courtwide judicial policy with respect to the guidelines could be implemented. If the sentencing patterns for any given type of offense were considered undesirable or misleading by the judges involved in the review, then the guidelines for that offense could be adjusted accordingly. The effect of doing this would be to designate a set of guidelines with which judges could be comfortable; to make clear to the public that the judiciary has adopted a rational and consistent basis for sentencing; and thereby to respond to and satisfy the mounting expressions of discontent with the sentencing process.

APPENDIX A

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APPENDIX B

VARIABLES USED IN ANALYSIS

Source File Variable #		Data Source: PROMIS
V1	M1-020	Sex
V2	-025	Race
V3	-030	Date of Birth
V4	-075	State of Birth
V5	-095	State of Home Residence
V6	-115	Quadrant (Home), if D.C. resident
V7	M2-020	Case Number
V8	-038	Crime Seriousness Score
V9	-039	Defendant Seriousness Score
V10	-055	Offense Quadrant
V11	-060	Offense Date
V12	-065	Offense Time
V13	-080	Arrest Quadrant (NW, NE, SW, SE)
V14	-090	Arrest State
V15	-100	Arrest Date
V16	-115	Stolen Property
V17	-120	Property/Evidence Recovered
V18	-130	Number of Codefendants
V19	-305	Defense Attorney Type
V20	-337	Last Action Judge
V21	-340	Number of Charges
V22	-375	Release Type
V23	-380	Cash Bond
V24	-397	Final Action Reason
V25	-400	Final Action Date
V26	-410	Final Disposition
V27	-415	Weapon Possessed
V28	-420	Injury/Death?
V29	-425	Minor Injuries, number of victims
V30	-430	Treated, number of victims
V31	-435	Hospitalized, number of victims
V32	-440	Killed, number of victims
V33	-445	Threats Made?
V34	-450	Physical Force, number of victims
V35	-455	Display of Weapons, number threatened
V36	-475	Theft or Damage?
V37	-490	Dollar Value of Property Damaged or Destroyed
V38	-495	Scene of Offense, arrested at or near
V39	-500	Local Resident?
V40	-520	Relationship to Victim
V41	-530	Exculpatory Evidence
V42	-535	Provocation by Victim
V43	-540	Participation by Victim

Source File Variable #		Data Source: PROMIS (Cont'd.)
V44	M2-545	Victim Other Than Individual
V45	-560	Defendant Arrested in Last Five Years?
V46	-565	Alias Ever Used?
V47	-570	Previous Arrests, number
V48	-575	Crimes Against Persons, number
V49	-580	Most Recent Arrest, year
V50	-585	Second Recent Arrest, year
V51	-590	Third Recent Arrest, year
V52	M4-065	Court Charge Code, charge 1:
V53	-070	Final Action Date
V54	-075	Final Action Reason
V55	-085	Final Prosecutor
V56	-090	Final Judge
V57	M4-065	Court Charge Code, charge 2:
V58	-070	Final Action Date
V59	-075	Final Action Reason
V60	-085	Final Prosecutor
V61	-090	Final Judge
V62	M4-065	Court Charge Code, charge 3:
V63	-070	Final Action Date
V64	-075	Final Action Reason
V65	-085	Final Prosecutor
V66	-090	Final Judge
V67	M4-065	Court Charge Code, charge 4:
V68	-070	Final Action Date
V69	-075	Final Action Reason
V70	-085	Final Prosecutor
V71	-090	Final Judge
V72	M4-065	Court Charge Code, charge 5:
V73	-070	Final Action Date
V74	-075	Final Action Reason
V75	-085	Final Prosecutor
V76	-090	Final Judge
V77	M4-065	Court Charge Code, charge 6:
V78	-070	Final Action Date
V79	-075	Final Action Reason
V80	-085	Final Prosecutor
V81	-090	Final Judge
V82	M6-025	Witness-Victim Type, #1
V83	-025	Witness-Victim Type, #2
V84	-025	Witness-Victim Type, #3
V85	-025	Witness-Victim Type, #4
V86	-025	Witness-Victim Type, #5
V87	-025	Witness-Victim Type, #6
V88	M6-160	Victim Has an Arrest Record?
V89	M6-130	Victim Sex
V90	M6-135	Victim Age
V91	M6-125	Victim Resident of D.C., length of time

Source File Variable #	Data Sources: Biographical Records
V92	Year Last Action Judge Appointed
V92A	Last Action Judge Georgetown University Graduate?
V92B	Last Action Judge Member of Local Bar?
V92C	Year of Birth of Last Action Judge
V92D	Last Action Judge a D.C. Resident?
V92E	Race of Last Action Judge
V92F	Sex of Last Action Judge
V93	Sex of Final Prosecutor
V93A	Race of Final Prosecutor
V94-V104	Data Recorded in Variables V92 through V92F and in V93 and V93A were recorded for each of a maximum of six charges

Data Source: D.C. Superior Court Records

V105	Most Serious Convicted Charge
V106	Minimum Sentence (Yrs., mos., or days)
V107	Maximum Sentence (Yrs., mos., or days)
V108	Sentence Category
V109	Minimum Sentence (Days)
V110	Maximum Sentence (Days)

Data Source: D.C. Bail Agency

Defendant Data:

V111	Length of Residence
V112	Living With
V113	Address Verified
V114	Formerly Lived With
V115	Former Address Verified
V116	Marital Status
V117	Time in D.C.
V118	Other D.C. Ties
V119	Other Ties Verified
V120	Employed
V121	Income
V122	Employment Information Verified
V123	Length of Employment
V124	Type of Employment
V125	Prior Employment Verified
V126	Length of Prior Employment
V127	Type of Prior Employment
V128	Reason Left Job
V129	Support, if unemployed
V130	Education, in years
V131	Record of Court Appearance

Source File Variable #	Data Source: D.C. Bail Agency (Cont'd.)
V132	Outstanding Warrants
V133	Number of Prior Convictions
V134	Bail Agency Record
V135	Reason for No Release Recommendation
V136	Student
V137	Year Most Recent Conviction
V138	Year 2nd Most Recent Conviction
V139	Year 3rd Most Recent Conviction
V140	Minimum Sentence--Most Recent Conviction
V141	Minimum Sentence--2nd Most Recent Conviction
V142	Minimum Sentence--3rd Most Recent Conviction
V143	Maximum Sentence--Most Recent Conviction
V144	Maximum Sentence--2nd Most Recent Conviction
V145	Maximum Sentence--3rd Most Recent Conviction
V146	Charge Code--Most Recent Conviction
V147	Charge Code--2nd Most Recent Conviction
V148	Charge Code--3rd Most Recent Conviction
V149	FYCA--Most Recent Conviction
V150	FYCA--2nd Most Recent Conviction
V151	FYCA--3rd Most Recent Conviction
V152	Date Paroled--Most Recent Conviction
V153	Date Paroled--2nd Most Recent Conviction
V154	Date Paroled--3rd Most Recent Conviction
V155	Length of Incarceration--Most Recent Conviction
V156	Length of Incarceration--2nd Most Recent Conviction
V157	Length of Incarceration--3rd Most Recent Conviction
V158	Suspension Type--Most Recent Conviction
V159	Suspension Type--2nd Most Recent Conviction
V160	Suspension Type--3rd Most Recent Conviction
V161	Probation--Most Recent Conviction
V162	Probation--2nd Most Recent Conviction
V163	Probation--3rd Most Recent Conviction
V164	Conditional Release--Cat. I
V165	Conditional Release--Cat. II
V166	Conditional Release--Cat. III
V167	Conditional Release--Cat. V
V168	Other
V169	Basis for No Release Recommendation
V170	Work Release--Most Recent Conviction
V171	Work Release--2nd Most Recent Conviction
1172	Work Release--3rd Most Recent Conviction
V173	Date to Halfway House--Most Recent Conviction
V174	Date to Halfway House--2nd Most Recent Conviction
V175	Date to Halfway House--3rd Most Recent Conviction

APPENDIX C

PROBIT ANALYSIS

The technique used to analyze the two stages of the decision process is the Probit estimator. This technique, originally developed by biometricians,[1] has been incorporated recently into social science inquiry[2] and is suitable as an estimator of an ordinal-level variable of the kind being investigated here.

A formal expression of the kind of model to which Probit can be applied is as follows:

$$y = b_0 + b_1x_1 + b_2x_2 + \ldots + b_kx_k + e$$

In this model, y represents the decision being investigated, while the x_i represent the characteristics believed to affect that decision. The coefficients b_1-b_k are the weights to be applied to x_1-x_k respectively in the assessment of the relative impact of each of the variables. The intercept of the model is represented by b_0, while e stands for the effects of

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[1] See, especially, D.J. Finney, PROBIT Analysis (Cambridge: Cambridge University Press, 1947).

[2] For the mathematical and programming bases of PROBIT, see R. McKelvey and W. Zavoina, "A Statistical Model for the Analysis of Ordinal-Level Dependent Variables," Journal of Mathematical Sociology 4(1975), pp. 103-120; and "An IBM Fortran IV Program to Perform N-Chotomous Multivariate Probit Analysis," Behavioral Science 16 (March 1971), pp. 186-87. See also J. Aldrich and C.F. Cnudde, "Probing the Bounds of Conventional Wisdom: A Comparison of Regression, Probit and Discriminant Analysis," American Journal of Political Science 3 (August 1975), pp. 571-608. For applications, see T. Dungworth, "Discretion in the Juvenile Justice System: The Impact of Case Characteristics on Pre-Hearing Detention," New Research in Criminology (Sage Publications, forthcoming, 1977).

unspecified or excluded variables, as well as error due to measurement.

This is the characteristic linear model, in which the unique effects of each of the variables are assumed to be additive. The formal statement made above corresponds to the following expression, in which the mathematical symbols are replaced by the variables being employed in this study:

Sentencing Decision = f(Offense Factors, Offender Characteristics, Judge Characteristics)

In other words, it is hypothesized that the decision is determined by elements in the three sources of variance or disparity that were identified in Chapter II of this report, and that were investigated in Chapters IV-VI. Naturally, there are a number of variables within each of the three general categories. Probit assumes that there exists an underlying linear association between the dependent variable and the independent variables, and that this underlying model satisfies regression assumptions. Estimates are produced by the method of maximum likelihood. That is, those estimates that are more likely to have produced the observed data are selected by the estimating procedure.

Although Probit does not correspond precisely to regression in the development of coefficients and statistics, several properties are analogous. First, it is possible to measure the overall fit of the model by the calculation of

an estimated R^2. This can be interpreted, normally, in much the same way as a comparable regression goodness of fit measure. Second, the maximum likelihood estimates (MLEs, hereafter) can be standardized in a manner analogous to the calculation of beta weights in regression through the estimation of the variance of the underlying linear variable.[3] It is therefore possible to draw conclusions about the relative importance of the set of independent variables included in the model.

A final desirable property of the Probit program is that it calculates the proportion of cases predicted correctly by the model. This permits a clear and valuable interpretation, since it thereby becomes possible to state precisely how well the model would have done in predicting the decisions under study, had the weights developed by the model been applied to each of the cases prior to sentencing. This implies that, to the extent that sentencing practices and case types have remained stable, the weights could also be applied to future sentencing decisions with comparable success rates.

[3] McKelvey and Zavoina, "A Statistical Model for the Analysis of Ordinal-Level Dependent Variables," p. 120.

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