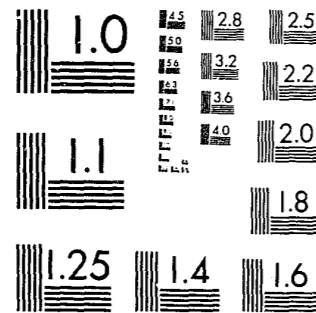


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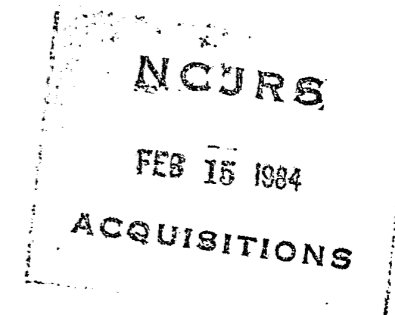
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MEASURING THE SEVERITY OF CRIMINAL PENALTIES:

Provisional Results



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MEASURING THE SEVERITY OF CRIMINAL PENALTIES:

Provisional Results

The Need for Severity Scales

The historically, simplistic assumption that the work of prosecutors and defense counsel can be described by their conviction or acquittal rates has little validity in the context of managing offices, allocating resources to do the work, or evaluating the quality of prosecution and defense services. First, the rates are inadequate as indicators of both the multiplicity of the functions carried out by the offices and of the universe of dispositions generated daily. Secondly, they do not indicate the quality of the dispositions obtained with respect to whether they are acceptable, minimally acceptable or unacceptable. And finally, they do not provide managers or evaluators with the knowledge of alternative dispositions that could have been achieved more efficiently, and with at least equal effectiveness. This report addresses these issues and presents a practical approach for developing measurement techniques to quantify them. It describes the development of a scale that reflects the severity of sanctions and shows how this severity scale is the first step required for the design and development of a system of weighted dispositions.

Simple conviction rates mask the effort expended to obtain them. There are basically three dispositional routes that can be utilized in the adjudication of criminal cases to obtain convictions -- trials, pleas of guilty or nonadjudicated dispositions such as deferred prosecution, diversion, treatment programs, mediation, etc. Each of these routes requires different allocations of manpower and resources because of the nature of the work involved to achieve them. Trials, of course, are the most time consuming and costly. Pleas usually occur earlier in the adjudication process and therefore, they are less costly. The time spent on non-adjudicated dispositions varies according to their structure and procedures. For example, deferred prosecution may impose little work on the system if it is conducted without formal supervision or controls; on the other hand, the operation of a diversion program by a prosecutor may result in large expenditures for non attorney

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manpower. Thus, the way cases are disposed of is of critical importance to the manpower needs of both the prosecutor and the public defender since it carries with it the issues of efficiency and economy. Simple conviction or acquittal rates beg the question of whether the most efficient and economical ways of disposing of cases are being utilized.

They also beg the question of whether the dispositions that are obtained are equitable and acceptable to the agency head. This is because they stand independent of the level of sanction sought and obtained by the defense and prosecution. To be sure, it is the court that imposes the sanctions; but it is the expected level of sanction that moves both the prosecutor and defense counsel to choose one dispositional route over another and to evaluate the results of their efforts with respect to its acceptability and worth.

In reality, dispositions are sought that relate the seriousness of the crime and the criminal history of the defendant to an appropriate sanction. Because of this interaction, for each case, there should exist a band of dispositions and sanctions acceptable to prosecution and defense. Concomitantly, outside these bands, there should be a set of unacceptable sanctions that are either too punitive for the defendant or too lenient for society. The major research question this concept raises is whether such bands can be specified given the characteristics of the crime, the criminal and the legal/evidentiary strength of the case.

Not unlike the sentencing guidelines concept, such research would anticipate the development of sets of sanctions based on the characteristics of the criminal case. Where this concept differs from sentencing guidelines is that it would attempt to equate sanctions according to similar or equivalent levels of severity and then specify by the characteristics of the criminal case which set of sanctions are equivalent, and hence available, for imposition. If the suspension of a drivers license for 90 days is comparable in severity to a fine of \$1,000 or participation in a treatment program for 1 year and making restitution, the selection of any one of these three sanctions would be appropriate if it fit the characteristics of the criminal case.

Obviously, if the defendant did not have a driver's license, its suspension would be precluded. On the other hand if the defendant was an alcohol abuser, a treatment program might be more desirable than imposing a fine.

The advantages of this type of approach to establishing guidelines for dispositions are: (1) it offers choices to decisionmakers among sanctions that are basically equal in severity; (2) it reflects the full range of dispositional modes; and (3) it provides a base for evaluating and monitoring the prosecution or defense systems for their ability to obtain at least minimally acceptable dispositions.

If sanctions can be classified by their level of severity, the identification of a set of equivalent sanctions will permit the prosecutor or public defender to choose that which is most economical or efficient knowing all the while that the intrinsic quality of equity is not being violated. For example, one set of case characteristics may indicate that choices can be made from a set of sanctions that includes conditional discharge, mediation, or a fine of \$10. The selection of conditional discharge would be least demanding on the adjudication system; mediation would require the use of other resources and programs and the payment of a \$10 fine would close the case immediately. Seeking one of these sanctions over another permits a rational use of system effort and yet tailors the sanction to the circumstances of the criminal case.

What is needed, first, is to develop a "severity of sanction" ladder to cover the full range of sanctions. Unlike other attempts in scaling criminal sanctions, the ladder should not be derived from rating the severity of single-ordered sanctions and length of time (for example, jail for one year, or probation for three years). Rather, the scale should encompass the full range of sanctions including all reasonable combinations. (In fact, 157 sanctions were used in this research project).

If an independent estimate of the rank ordering of sanctions according to severity can be obtained, then it will be possible to use these weights in other studies as the first step in developing weighted

dispositions and establishing the boundaries for acceptable dispositions. In this respect, sets of sanctions could be formed that are characterized by equivalent degrees of severity, and the old adage of let the punishment fit the crime could be translated into workable and evaluatable models.

But before this utopian era is entered, it is first necessary to determine whether there is an ordering to sanctions by their degree of severity and to what extent, individuals, be they prosecutors, defense counsel, judges or inmates agree with this ordering. Once this is accomplished, then it is necessary to determine the extent to which severity changes when considered by itself or in relationship to offenses or criminal records. A penalty may be thought of as severe when it is considered by itself; but when it is compared to a particular crime, it may not seem harsh at all. In the end, therefore, it will be necessary to separate out and measure the effects of the seriousness of the crime, the criminal history of the defendant and the legal/evidentiary strength of the case on the severity of sanctions deemed acceptable by criminal justice practitioners (and perhaps the public). The fact that some scales already exist in other areas provides us with a tool to proceed on with this task.

Scaling Criminal Case Characteristics

The complexity of the issues addressed by criminological research are such that the need for scales is never ending. The multiplicity of variables involved with crimes, criminals and penalties make it difficult to deal with every variable as a separate entity. Historically, Sellin and Wolfgang (1964) were the first to address this general issue by developing an offense seriousness scale. With this scale, they gave criminological researchers a tool for synthesizing the nature of the offense into a single index number. Recent extensions of that work by Robert Figlio (1980) in connection with the National Survey of Crime have extended the utility of such seriousness indexes beyond the case level.

Don Gottfredson (1961) in developing a base expectancy (BE) score attempted to characterize the criminal by a single index. Although originally developed to measure the likelihood of correctional recidivism, BE has found other applications as an indicator of the seriousness of the criminal history of the individual (Jacoby, 1972). However, because the BE scale relies on socio-economic data as well as criminal activity, it has limited utility to law enforcement personnel and prosecutors who generally have little access to this information until well into the adjudication process.

To overcome this limitation, Turner and Ratledge (1980) developed an alternative technique for measuring criminality which uses only that information generally available on the defendant's arrest record. This scale takes into account not only the number of arrests and convictions but also the characteristics of the events which appear on a criminal history. Derived from the analysis of over 6,700 responses, it offers a simpler and more easily obtainable means for computing the criminality of the defendant.

Previous research on the process of adjudication, indicates that there are legal/evidentiary factors that need to be considered and for which scales should be developed. The work of Jacoby, Mellon, Ratledge and Turner (1980) in examining the decisionmaking processes of the prosecutor found that the evidentiarily weaker a case, the less likely was it to be: (1) accepted for prosecution; (2) disposed of by a trial (a plea was more preferable); and (3) receive a sentence involving incarceration. Seven primary variables and a total of 15 of interest were isolated as significantly affecting the various dispositional decisions. They focused on the type of arrest and identification made, the possession of evidence, constitutional questions and corroboration of law enforcement witnesses or civilian witnesses. Still, the existence of these findings has not led to support for the development of scales in this area and the need remains.

More extensive work has been done in the area of scaling penalties. The Hamilton and Rotkin study (1976) examined the severity of penalties in connection with a study on death penalties and the Temple-Drexel study (Sebba, 1978) compared the severity ratings given by two sets of students for consistency

in rank ordering them and for differences in the assignment of weights. While consistency was generally indicated, the weights varied considerably between the groups.

Sebba (1978) has explored this area thoroughly; guided by the strong belief that "it is difficult ... to conduct a comprehensive analysis of sentencing practice without reducing the various forms of judicial disposal to a single scale ... For substantive considerations the dimension on which the scale should be based should be a measure of severity, for most research in this area is concerned not merely with the question of whether offenders receive different sentences under varying circumstances, but also with whether they receive sentences which differ in their severity." (Sebba, 1978:249)

Although the Temple-Drexel study was important, it had methodological limitations some of which included: (1) the fact that the penalties tested appeared on the questionnaire in sequential order; (2) the sociodemographic variables of the college students affected the responses; and (3) the need for criminal justice practitioners to evaluate the severity of the penalties was indicated. (Sebba, 1978: 262).

In addition to the findings of these studies and other attempts at scaling, also indicated is the need for developing scales that rate responses to combinations of penalties. In this instance, it is necessary to determine what the impact is in combining fines with probation and imprisonment, or fines with restitution, for example. We do not know whether the effects are additive or interactive in nature. It is also not clear that the views of students as to the relative severity of the penalty are valid for those of the prosecutor, defense counsel, judges, or indeed, the criminal himself. The responses of criminal justice practitioners clearly need to be obtained. Thus the methodological approach adopted here is specifically designed to overcome some of the problems encountered in previous research and to build on the knowledge and experience of other related attempts at developing scales.

Methodology

The penalties used in this study were largely dictated by those which could be found in actual cases. Categories were established however, for the amount of money, fines and time served, where these were used. Four levels of fines were included ranging from \$10, \$100, \$1,000 and \$10,000. Time was divided into categories for days, months and years. These included: 30, 60 and 90 days; 6 months; 1, 2, 2-5, 3, 5, 5-10, 10, 10-20, 20, 99 years; and then life, life plus 99 years, and death. These particular levels were selected because it was anticipated that in the final regression models they would yield enough points to allow for interpolation on a time dimension scale.

The penalties included in the test were: conditional discharge, mediation, fine, unsupervised probation, restitution, treatment program, suspension of drivers license, probation, jail and penitentiary, life, and death. From this basic list, 157 combinations were created that were both reasonable and practical. (Some combinations such as death and a \$10 fine were obviously not acceptable). Single order penalties and two way combinations were tested. Within the latter set, the period of time or the amount of fine was also varied in combination. For example, a set of penalties could include a fine of \$100 and a treatment program for 30 days, 60 days, 90 days, and 1 year. Similarly, a penalty set would include restitution and suspension of drivers license for 30 days, 60 days, 90 days, and 1 year. By taking this approach, it would be possible to determine whether or not the sentences were generally additive or were seen as being primarily interactive.

The sentences were then prepared into sets of 24 which were drawn randomly from the universe of 157 and which were presented randomly on a single piece of paper (see Figure 1). The instructions given to the prosecutors who were evaluating the set were to rate the sentences on a scale of 0 to 10 and that the use of duplicate ratings (the same number assigned to more than one penalty) was permissible.

Figure 1

Example of Sentences Presented for Evaluation

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NATIONAL SENTENCING EXPERIMENT

SENTENCE	SCORE
2003 JAIL 30 DAYS FINE \$10,000	()
1180 PENITENTIARY LIFE	()
2402 TREATMENT PROGRAM 30 DAYS & SUSPENSION OF DIRVERS LICENSE 6 MONTHS	()
1909 FINE \$100 & PROBATION 4 YEARS	()
2600 PROBATION 1 YEAR & JAIL 30 DAYS	()
0600 SUSPENSION OF DRIVERS LICENSE 30 DAYS	()
2600 PROBATION 1 YEAR & JAIL 30 DAYS	()
2010 JAIL 90 DAYS FINE \$1,000	()
2001 JAIL 30 DAYS(SUSPENDED) FINE \$100	()
1120 PENITENTIARY 5 YEARS	()
0100 FINE \$10	()
2209 RESTITUTION & SUSPENSION OF DRIVERS LICENSE 1 YEAR	()
2215 RESTITUTION & PROBATION 4 YEARS	()
2301 MEDIATION & TREATMENT PROGRAM 90 DAYS	()
2201 RESTITUTION & MEDIATION	()
2007 JAIL 60 DAYS(SUSPENDED) FINE \$10,000	()
2403 TREATMENT PROGRAM 30 DAYS & SUSPENSION OF DRIVERS LICENSE 1 YEAR	()
2408 TREATMENT PROGRAM 6 MONTHS & SUSPENSION OF DRIVERS LICENSE 30 DAYS	()
2010 JAIL 90 DAYS(SUSPENDED) FINE \$1,000	()
2219 RESTITUTION & JAIL 6 MONTHS	()
2205 RESTITUTION & TREATMENT PROGRAM 1 YEAR	()
2201 RESTITUTION & MEDIATION	()
0130 FINE \$10,000	()
2213 RESTITUTION & PROBATION 1 YEAR	()
2006 JAIL 60 DAYS FINE \$1,000	()
1714 FINE \$1,000 & SUSPENSION OF DRIVERS LICENSE 1 YEAR	()
2209 RESTITUTION & SUSPENSION OF DRIVERS LICENSE 1 YEAR	()
1806 FINE \$1,000 & UNSUPERVISED PROBATION 6 MONTHS	()
1906 FINE \$1,000 & PROBATION 2 YEARS	()
2003 JAIL 30 DAYS FINE \$10,000	()

AFTER EACH SENTENCE LISTED ABOVE, ENTER YOUR
OPINION OF THE SEVERITY FROM 0 TO 10.

EXAMPLE: FINE \$100 AND DEATH (5)

The scaling range of 0-10 was selected based on past experience that indicated this to be sufficient to avoid truncation effects at the ends of the scale and, at the same time, to give sufficient latitude for discriminating between the various types of sentences. (We also did not use a 1,000 point scale since our past experience showed that our results were better with even as low as a 5 point scale when working with practitioners in the field).

Generally, the procedure was for each attorney to complete three of the sheets, totaling 72 different sentences. (Because each sheet contained penalties selected with replacement, duplicates did occur at times). It took less than 2 minutes to complete each sheet. Thus it was possible to obtain a large number of responses with relatively little effort on the part of the responders.

The responses were coded for each sentence type. A minimum of 60 responses was required for each particular sentence. This resulted in 2 sanctions excluded from the analysis presented here. From these, cumulative distributions were developed. The preliminary score assigned was the median of the distribution. Using Tukey's Exploratory Data Analysis (1977), calculations were performed to obtain the lower hinge (25%) and the upper hinge (75%). The trimean and the arithmetic mean were also calculated.

As of January, 1982 the tests were conducted on sentences were analyzed.

Results

Table 1 presents the initial results which are reported here without editing. In the subsequent analytical phase that will develop a scaling mechanism, some of the penalties that exhibit large differences between the lower and upper hinges (H spread) may be eliminated because of their ambiguity.

Table 1 is in ascending order by median. This permits an easy grasp of the hierarchy of penalties by order of their severity. An examination of the single-ordered sanctions (ignoring for the moment the combinations) shows some interesting results. (See Table 2). A \$10 fine, mediation and conditional discharge all show the lowest (here negative) levels of severity. These

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PRELIMINARY ANALYSIS OF SENTENCING SCALE.

	LHNGE	MEDIAN	WHNGE	TRMEN	MEAN	MEAN	OUTLIR	SPSPED
0100 FINE \$10	-0.32	-0.23	0.30	-0.20	0.37	0.37	0.00	0.81
0400 MEDIATION	-0.61	-0.23	0.34	-0.19	0.45	0.39	0.02	0.88
0200 CONDITIONAL DISCHARGE	-0.52	-0.04	0.61	0.00	0.59	0.59	0.00	1.11
0512 PROBATION 4 YEARS & JAIL 6 MONTHS	-0.00	-0.00	-0.00	1.26	1.39	1.99	0.00	0.90
0810 UNSUPERVISED PROBATION 6 MONTHS	-0.50	0.00	0.56	0.01	0.55	0.55	0.00	1.16
0820 UNSUPERVISED PROBATION 1 YEAR	-0.50	0.00	0.67	0.04	0.67	0.67	0.00	1.17
0800 UNSUPERVISED PROBATION 30 DAYS	-0.47	0.06	0.61	0.07	0.71	0.57	0.02	1.18
0500 TREATMENT PROGRAM 30 DAYS	-0.43	0.17	0.36	0.19	0.88	0.38	0.00	1.28
1201 RESTITUTION & MEDIATION	-0.36	0.27	0.89	0.27	0.87	0.87	0.00	1.24
0110 FINE \$100	-0.29	0.29	0.78	0.27	0.81	0.81	0.00	1.22
0300 RESTITUTION	-0.33	0.33	0.97	0.32	1.07	0.93	0.03	1.30
1501 FINE \$100 & UNSUPERVISED PROBATION 90 DAYS	-0.29	0.34	0.92	0.33	0.91	0.91	0.00	1.21
1502 FINE \$100 & CONDITIONAL DISCHARGE	-0.14	0.44	0.96	0.43	1.00	1.00	0.00	1.10
2201 MEDIATION & TREATMENT PROGRAM 90 DAYS	-0.38	0.44	0.92	0.43	1.33	0.86	0.08	1.00
2101 JAIL 30 DAYS(SUSPENDED) FINE \$100	-0.19	0.45	1.13	0.46	1.10	1.10	0.00	1.31
0510 TREATMENT PROGRAM 90 DAYS	-0.32	0.47	1.42	0.51	1.21	1.09	0.02	1.73
1911 FINE \$100 & UNSUPERVISED PROBATION 1 YEAR	-0.11	0.47	1.02	0.46	1.17	1.03	0.03	1.10
2300 MEDIATION & TREATMENT PROGRAM 30 DAYS	0.02	0.54	1.12	0.55	1.09	1.09	0.00	1.10
1600 SUSPENSION OF DRIVERS LICENSE 30 DAYS	0.18	0.54	0.91	0.54	1.13	1.03	0.03	0.79
0800 PROBATION 1 YEAR	-0.11	0.56	1.56	0.59	1.32	1.15	0.03	1.48
0200 RESTITUTION & CONDITIONAL DISCHARGE	0.04	0.58	1.26	0.61	1.29	1.13	0.03	1.22
2212 RESTITUTION & UNSUPERVISED PROBATION 1 YEAR	-0.01	0.59	1.35	0.63	1.29	1.21	0.01	1.25
1501 FINE \$100 & MEDIATION	0.10	0.60	1.20	0.63	1.19	1.19	0.00	1.10
1905 FINE \$100 & UNSUPERVISED PROBATION 6 MONTHS	0.05	0.61	1.30	0.64	1.24	1.18	0.01	1.23
2302 MEDIATION & TREATMENT PROGRAM 6 MONTHS	-0.38	0.64	1.52	0.68	1.32	1.32	0.00	1.60
0520 TREATMENT PROGRAM 6 MONTHS	0.07	0.65	1.46	0.71	1.30	1.30	0.00	1.38
2303 MEDIATION & TREATMENT PROGRAM 1 YEAR	0.15	0.67	1.52	0.75	1.43	1.35	0.02	1.58
2211 RESTITUTION & UNSUPERVISED PROBATION 6 MONTHS	0.11	0.73	1.83	0.80	1.42	1.42	0.00	1.52
2202 RESTITUTION & TREATMENT PROGRAM 30 DAYS	0.06	0.74	1.49	0.76	1.39	1.27	0.02	1.43
1905 FINE \$100 & TREATMENT 90 DAYS	0.17	0.74	1.61	0.81	1.44	1.44	0.00	1.44
0530 TREATMENT PROGRAM 1 YEAR	0.19	0.75	1.52	0.80	1.53	1.33	0.03	1.35
1401 FINE \$100 & RESTITUTION	0.14	0.75	1.51	0.79	1.38	1.38	0.00	1.37
2203 RESTITUTION & TREATMENT PROGRAM 90 DAYS	0.16	0.81	1.56	0.86	1.43	1.43	0.00	1.51
1901 FINE \$100 & PROBATION 1 YEAR	0.31	0.87	1.61	0.82	1.54	1.52	0.01	1.21
2210 RESTITUTION & UNSUPERVISED PROBATION 90 DAYS	-0.01	0.88	1.69	0.86	1.39	1.39	0.00	1.71
2117 JAIL 1 YEAR(SUSPENDED) FINE \$100	0.17	0.88	1.89	0.86	1.54	1.54	0.00	1.71
2113 JAIL 6 MONTHS(SUSPENDED) FINE \$100	0.18	0.89	1.98	0.96	1.63	1.63	0.00	1.70
1609 FINE \$100 & TREATMENT 6 MONTHS	0.23	0.90	1.74	0.94	1.56	1.56	0.00	1.51
2406 TREATMENT PROGRAM 30 DAYS & SUSPENSION OF DRIVERS LICENSE 30	0.37	0.91	1.70	0.97	1.71	1.59	0.02	1.33
1901 FINE \$100 & TREATMENT 30 DAYS	0.20	0.91	1.56	0.92	1.45	1.45	0.00	1.46
2204 RESTITUTION & TREATMENT PROGRAM 6 MONTHS	0.14	0.93	1.35	0.98	1.84	1.73	0.02	1.81
1613 FINE \$100 & TREATMENT 1 YEAR	0.33	0.97	1.91	1.05	1.81	1.73	0.01	1.58
2206 RESTITUTION & SUSPENSION OF DRIVERS LICENSE 30 DAYS	0.37	0.98	1.76	1.02	1.74	1.38	0.01	1.40
1310 PROBATION 2 YEARS	0.39	1.02	1.86	1.07	1.74	1.56	0.01	1.47
2109 JAIL 90 DAYS(SUSPENDED) FINE \$100	0.10	1.08	2.20	1.11	1.74	1.64	0.01	2.10
1610 SUSPENSION OF DRIVERS LICENSE 90 DAYS	0.45	1.11	1.81	1.12	1.82	1.69	0.03	1.38
0120 FINE \$1,000	0.36	1.13	1.96	1.14	1.86	1.86	0.00	1.30
2205 RESTITUTION & TREATMENT PROGRAM 1 YEAR	0.46	1.14	1.75	1.12	1.69	1.62	0.01	1.20
2105 JAIL 60 DAYS(SUSPENDED) FINE \$100	0.30	1.15	1.97	1.14	1.74	1.74	0.00	1.67
2412 TREATMENT PROGRAM 1 YEAR & SUSPENSION OF DRIVERS LICENSE 30 D	0.52	1.17	1.96	1.21	1.97	1.97	0.00	1.44
2213 RESTITUTION & PROBATION 1 YEAR	0.35	1.18	2.23	1.24	1.93	1.93	0.00	1.37
1701 FINE \$100 & SUSPENSION OF DRIVERS LICENSE 30 DAYS	0.45	1.20	2.14	1.25	1.83	1.83	0.00	1.59
2106 JAIL 60 DAYS(SUSPENDED) FINE \$1,000	0.37	1.21	2.61	1.35	2.03	2.03	0.00	2.24
2214 RESTITUTION & PROBATION 2 YEARS	0.52	1.22	2.20	1.29	2.06	1.99	0.02	1.69
2408 TREATMENT PROGRAM 6 MONTHS & SUSPENSION OF DRIVERS LICENSE 30	0.54	1.25	2.00	1.26	1.99	1.69	0.00	1.46
2207 RESTITUTION & SUSPENSION OF DRIVERS LICENSE 90 DAYS	0.54	1.26	2.25	1.33	2.06	2.06	0.00	1.71

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	LHNGE	MEDIAN	WHNGE	TRMEN	MEAN	MEAN	OUTLIR	SPSPED
1905 FINE \$100 & PROBATION 2 YEARS	0.56	1.28	1.89	1.25	1.77	1.77	0.00	1.93
2405 TREATMENT PROGRAM 90 DAYS & SUSPENSION OF DRIVERS LICENSE 90	0.53	1.28	1.97	1.26	1.86	1.78	0.02	1.44
0620 SUSPENSION OF DRIVERS LICENSE 6 MONTHS	0.55	1.29	2.06	1.30	2.00	2.00	0.00	1.51
1610 FINE \$1,000 & TREATMENT 6 MONTHS	0.50	1.35	2.11	1.33	2.00	1.91	0.02	1.61
2410 TREATMENT PROGRAM 6 MONTHS & SUSPENSION OF DRIVERS LICENSE 6	0.60	1.38	2.23	1.39	2.15	2.15	0.00	1.63
2114 JAIL 6 MONTHS(SUSPENDED) FINE \$1,000	0.65	1.39	2.04	1.37	1.96	1.96	0.00	1.39
1402 FINE \$1,000 & RESTITUTION	0.60	1.39	2.23	1.40	1.95	1.95	0.00	1.63
1902 FINE \$1,000 & PROBATION 1 YEAR	0.54	1.40	2.28	1.41	2.01	1.92	0.01	1.74
2001 JAIL 30 DAYS FINE \$100	0.66	1.41	2.36	1.46	2.27	2.27	0.00	1.70
1705 FINE \$100 & SUSPENSION OF DRIVERS LICENSE 90 DAYS	0.63	1.42	2.65	1.53	2.20	2.20	0.00	2.02
2404 TREATMENT PROGRAM 90 DAYS & SUSPENSION OF DRIVERS LICENSE 30	0.64	1.42	2.06	1.39	2.04	1.91	0.02	1.41
2102 JAIL 30 DAYS(SUSPENDED) FINE \$1,000	0.65	1.43	2.04	1.39	1.85	1.89	0.00	1.39
1702 FINE \$1,000 & SUSPENSION OF DRIVERS LICENSE 30 DAYS	0.68	1.44	2.16	1.43	2.02	2.02	0.00	1.48
1614 FINE \$1,000 & TREATMENT 1 YEAR	0.63	1.45	2.44	1.49	2.17	2.07	0.02	1.80
0920 PROBATION 4 YEARS	0.51	1.46	2.45	1.47	2.03	2.03	0.00	1.94
1806 FINE \$1,000 & UNSUPERVISED PROBATION 6 MONTHS	0.90	1.50	2.15	1.51	2.16	2.05	0.03	1.25
2208 RESTITUTION & SUSPENSION OF DRIVERS LICENSE 6 MONTHS	0.73	1.53	2.37	1.54	2.20	2.14	0.01	1.64
2401 TREATMENT PROGRAM 90 DAYS & SUSPENSION OF DRIVERS LICENSE 90	0.68	1.54	2.57	1.58	2.29	2.29	0.00	1.89
1802 FINE \$1,000 & UNSUPERVISED PROBATION 90 DAYS	0.75	1.54	2.44	1.57	2.22	2.02	0.03	1.85
1303 FINE \$1000 & CONDITIONAL DISCHARGE	0.64	1.54	2.46	1.55	2.12	2.12	0.00	1.84
1812 FINE \$1,000 & UNSUPERVISED PROBATION 1 YEAR	0.77	1.57	2.50	1.60	2.26	2.13	0.02	1.73
1908 FINE \$100 & PROBATION 4 YEARS	0.55	1.57	2.69	1.59	2.27	2.14	0.02	2.13
1602 FINE \$1,000 & TREATMENT 30 DAYS	0.80	1.61	2.50	1.63	2.20	2.20	0.00	1.70
2402 TREATMENT PROGRAM 30 DAYS & SUSPENSION OF DRIVERS LICENSE 6 M	0.93	1.67	2.62	1.72	2.36	2.36	0.00	1.69
2414 TREATMENT PROGRAM 1 YEAR & SUSPENSION OF DRIVERS LICENSE 6 MO	0.96	1.68	2.65	1.74	2.33	2.33	0.00	1.69
2215 RESTITUTION & PROBATION 4 YEARS	0.86	1.69	2.57	1.70	2.23	2.23	0.00	1.65
2412 TREATMENT PROGRAM 1 YEAR & SUSPENSION OF DRIVERS LICENSE 90 D	0.87	1.69	2.66	1.73	2.45	2.45	0.00	1.82
1502 FINE \$1,000 & MEDIATION	0.82	1.71	2.55	1.70	2.31	2.27	0.01	1.73
2118 JAIL 1 YEAR(SUSPENDED) FINE \$1,000	0.88	1.71	2.71	1.75	2.41	2.41	0.00	1.84
2209 RESTITUTION & SUSPENSION OF DRIVERS LICENSE 1 YEAR	0.94	1.75	3.88	2.08	2.84	2.84	0.00	2.93
1608 FINE \$1,000 & TREATMENT 90 DAYS	1.04	1.75	2.73	1.82	2.41	2.33	0.01	1.69
1906 FINE \$1,000 & PROBATION 2 YEARS	1.06	1.75	2.75	1.83	2.56	2.36	0.03	1.69
2411 TREATMENT PROGRAM 6 MONTHS & SUSPENSION OF DRIVERS LICENSE 1	0.73	1.77	3.21	1.87	2.65	2.65	0.00	2.47
2406 TREATMENT PROGRAM 90 DAYS & SUSPENSION OF DRIVERS LICENSE 6 M	0.92	1.78	2.73	1.80	2.47	2.47	0.00	1.61
2110 JAIL 90 DAYS(SUSPENDED) FINE \$1,000	0.72	1.78	2.80	1.77	2.36	2.36	0.00	2.08
2600 PROBATION 1 YEAR & JAIL 30 DAYS	1.04	1.79	3.11	1.93	2.65	2.65	0.00	2.07
1708 FINE \$100 & SUSPENSION OF DRIVERS LICENSE 6 MONTHS	0.86	1.81	2.75	1.82	2.57	2.57	0.00	1.93
0630 SUSPENSION OF DRIVERS LICENSE 1 YEAR	0.73	1.82	2.76	1.78	2.54	2.54	0.00	2.05
2407 TREATMENT PROGRAM 90 DAYS & SUSPENSION OF DRIVERS LICENSE 1 Y	1.01	1.84	3.16	1.96	2.71	2.71	0.00	2.17
2409 TREATMENT PROGRAM 6 MONTHS & SUSPENSION OF DRIVERS LICENSE 90	1.15	1.87	2.67	1.88	2.50	2.41	0.01	1.52
2403 TREATMENT PROGRAM 30 DAYS & SUSPENSION OF DRIVERS LICENSE 1 Y	0.88	1.87	3.11	1.93	2.71	2.61	0.01	2.22
2415 TREATMENT PROGRAM 1 YEAR & SUSPENSION OF DRIVERS LICENSE 1 YE	0.87	1.88	3.15	1.95	2.56	2.56	0.00	2.29
2601 PROBATION 1 YEAR & JAIL 60 DAYS	1.17	1.90	2.90	1.97	2.66	2.66	0.00	1.73
2605 PROBATION 2 YEARS & JAIL 30 DAYS	1.23	1.91	3.27	2.08	2.75	2.75	0.00	2.04
1713 FINE \$100 & SUSPENSION OF DRIVERS LICENSE 1 YEAR	1.08	1.92	3.05	2.00	2.76	2.58	0.03	2.01
1000 JAIL 30 DAYS	1.08	1.93	3.13	2.02	2.65	2.65	0.00	2.05
1706 FINE \$1,000 & SUSPENSION OF DRIVERS LICENSE 90 DAYS	1.17	2.09	3.46	2.20	2.97	2.97	0.00	2.29
2609 PROBATION 4 YEARS & JAIL 30 DAYS	1.20	2.11	3.11	2.13	2.65	2.75	0.01	1.91
1910 FINE \$1,000 & PROBATION 4 YEARS	1.38	2.17	3.05	2.19	2.76	2.76	0.00	1.67
2005 JAIL 60 DAYS FINE \$100	1.41	2.20	3.10	2.23	2.86	2.78	0.01	1.65
1710 FINE \$1,000 & SUSPENSION OF DRIVERS LICENSE 6 MONTHS	1.37	2.24	3.44	2.32	3.01	3.01	0.00	2.07
1020 JAIL 90 DAYS	1.39	2.26	3.25	2.29	3.03	2.85	0.03	1.86
2002 JAIL 30 DAYS FINE \$1,000	1.31	2.27	3.75	2.40	3.26	3.26	0.00	2.44
2107 JAIL 60 DAYS(SUSPENDED) FINE \$10,000	1.36	2.28	2.92	2.21	3.02	2.89	0.02	1.56
2218 RESTITUTION & JAIL 90 DAYS	1.50	2.31	3.33	2.36	3.17	3.17	0.00	1.83
2009 JAIL 90 DAYS FINE \$100	1.44	2.33	3.45	2.38	3.09	3.09	0.00	2.02
2217 RESTITUTION & JAIL 60 DAYS	1.61	2.40	3.25	2.41	3.04	3.04	0.00	1.84

JEFFERSON INSTITUTE FOR JUSTICE STUDIES.
PRELIMINARY ANALYSIS OF SENTENCING SCALE.

	CHANGE	MEDIAN	CHANGE	TRIMED	MEAN	MEAN	OUTLIER	SPREAD
1506 PROBATION 2 YEARS & JAIL 60 DAYS	1.49	2.46	4.02	2.60	3.20	3.20	0.00	2.53
1503 FINE \$10,000 & TREATMENT 30 DAYS	1.33	2.46	3.65	2.53	3.26	3.26	0.00	2.53
2006 JAIL 60 DAYS FINE \$1,000	1.55	2.46	3.50	2.49	3.13	3.13	0.00	1.55
1507 FINE \$10,000 & TREATMENT 30 DAYS	1.42	2.47	4.22	2.34	3.48	3.48	0.00	2.50
2215 RESTITUTION & JAIL 30 DAYS	1.56	2.53	3.62	2.56	3.17	3.17	0.00	2.16
2010 JAIL 90 DAYS FINE \$1,000	1.30	2.55	3.80	2.52	3.26	3.26	0.00	2.13
2510 PROBATION 4 YEARS & JAIL 60 DAYS	1.53	2.55	3.75	2.60	3.24	3.24	0.00	2.22
1714 FINE \$1,000 & SUSPENSION OF DRIVERS LICENSE 1 YEAR	1.77	2.61	3.62	2.65	3.30	3.30	0.00	1.55
1303 FINE \$10,000 & UNSUPERVISED PROBATION 90 DAYS	1.30	2.62	4.23	2.69	3.40	3.40	0.00	2.32
2115 JAIL 6 MONTHS(SUSPENDED) FINE \$10,000	1.89	2.63	3.86	2.75	3.58	3.45	0.02	1.97
1707 FINE \$10,000 & SUSPENSION OF DRIVERS LICENSE 90 DAYS	1.61	2.64	3.34	2.71	3.52	3.52	0.00	2.33
1502 PROBATION 1 YEAR & JAIL 90 DAYS	1.74	2.65	3.79	2.71	3.37	3.37	0.00	2.06
1309 FINE \$10,000 & UNSUPERVISED PROBATION 6 MONTHS	1.73	2.65	3.94	2.74	3.48	3.48	0.00	2.21
1304 FINE \$10,000 & CONDITIONAL DISCHARGE	1.94	2.65	3.68	2.73	3.23	3.23	0.00	1.74
1703 FINE \$10,000 & SUSPENSION OF DRIVERS LICENSE 30 DAYS	1.63	2.68	3.68	2.67	3.41	3.31	0.01	2.55
2013 JAIL 6 MONTHS FINE \$100	1.74	2.70	3.98	2.78	3.46	3.46	0.00	2.25
2103 JAIL 30 DAYS(SUSPENDED) FINE \$10,000	1.39	2.75	3.32	2.70	3.39	3.39	0.00	2.53
1511 FINE \$10,000 & TREATMENT 6 MONTHS	1.30	2.75	4.02	2.33	3.49	3.49	0.00	2.23
2507 PROBATION 2 YEARS & JAIL 30 DAYS	2.09	2.80	3.39	2.30	3.53	3.48	0.01	1.90
1303 FINE \$10,000 & PROBATION 1 YEAR	1.93	2.81	3.91	2.84	3.49	3.49	0.00	2.09
1307 FINE \$10,000 & PROBATION 2 YEARS	2.03	2.88	4.30	3.02	3.67	3.67	0.00	2.27
1515 FINE \$10,000 & TREATMENT 1 YEAR	2.11	2.93	4.56	3.13	3.89	3.89	0.00	2.44
1403 FINE \$10,000 & RESTITUTION	1.30	2.93	4.56	3.05	3.73	3.73	0.00	2.75
2003 JAIL 30 DAYS FINE \$10,000	2.14	2.95	4.43	3.11	3.83	3.83	0.00	2.23
2014 JAIL 6 MONTHS FINE \$1,000	2.09	2.95	4.32	3.09	3.74	3.74	0.00	2.23
1313 FINE \$10,000 & UNSUPERVISED PROBATION 1 YEAR	1.33	3.00	4.13	2.59	3.70	3.70	0.00	2.23
2511 PROBATION 4 YEARS & JAIL 90 DAYS	2.27	3.02	3.32	3.06	3.79	3.72	0.01	1.55
2119 JAIL 1 YEAR(SUSPENDED) FINE \$10,000	2.24	3.02	3.92	3.05	3.76	3.69	0.01	1.98
1503 FINE \$10,000 & MEDIATION	1.81	3.03	4.27	3.03	3.69	3.69	0.00	2.46
2007 JAIL 60 DAYS FINE \$10,000	2.16	3.08	4.83	3.29	4.00	4.00	0.00	2.67
2111 JAIL 30 DAYS(SUSPENDED) FINE \$10,000	1.69	3.08	3.83	2.92	3.46	3.46	0.00	2.13
2304 PROBATION 1 YEAR & JAIL 1 YEAR	2.26	3.12	4.43	3.23	3.82	3.82	0.00	2.17
2219 RESTITUTION & JAIL 6 MONTHS	2.35	3.15	4.30	3.24	3.88	3.88	0.00	1.55
2503 PROBATION 1 YEAR & JAIL 6 MONTHS	1.83	3.29	4.38	3.20	3.63	3.63	0.00	2.55
1030 JAIL 6 MONTHS	1.79	3.31	4.55	3.24	3.90	3.90	0.00	2.75
1711 FINE \$10,000 & SUSPENSION OF DRIVERS LICENSE 6 MONTHS	2.23	3.34	4.44	3.34	3.99	3.99	0.00	2.20
1715 FINE \$10,000 & SUSPENSION OF DRIVERS LICENSE 1 YEAR	2.48	3.46	5.43	3.71	4.59	4.59	0.00	2.55
2017 JAIL 1 YEAR FINE \$100	1.75	3.50	4.73	3.37	3.88	3.88	0.00	2.68
1311 FINE \$10,000 & PROBATION 4 YEARS	2.56	3.63	4.79	3.65	4.21	4.21	0.00	2.22
2015 JAIL 6 MONTHS FINE \$10,000	2.48	3.64	5.08	3.71	4.25	4.25	0.00	2.53
1040 JAIL 1 YEAR	2.68	3.79	4.72	3.75	4.22	4.22	0.00	2.04
2018 JAIL 1 YEAR FINE \$1,000	2.59	3.83	5.02	3.82	4.48	4.48	0.00	2.43
2220 RESTITUTION & JAIL 1 YEAR	2.07	3.92	4.74	3.81	4.27	4.27	0.00	2.07
2011 JAIL 90 DAYS FINE \$10,000	2.56	3.93	5.15	3.89	4.44	4.44	0.00	2.60
2508 PROBATION 2 YEARS & JAIL 1 YEAR	2.99	3.97	5.25	4.04	4.59	4.59	0.00	2.27
2019 JAIL 1 YEAR FINE \$10,000	3.19	4.37	5.10	4.50	4.39	4.39	0.00	2.31
1100 PENITENTIARY 2-5 YEARS	4.08	4.88	6.13	4.59	5.71	5.71	0.00	2.74
1110 PENITENTIARY 3 YEARS	4.09	5.00	6.08	5.04	5.49	5.49	0.00	1.59
1120 PENITENTIARY 5 YEARS	4.83	5.81	6.34	5.82	6.35	6.35	0.00	1.12
1130 PENITENTIARY 5-10 YEARS	5.15	6.20	6.55	6.13	6.50	6.50	0.00	1.30
1140 PENITENTIARY 10 YEARS	6.28	7.17	8.19	7.20	7.59	7.59	0.00	1.31
1160 PENITENTIARY 20 YEARS	6.59	7.58	8.48	7.56	7.80	7.80	0.00	1.33
1150 PENITENTIARY 10-20 YEARS	7.04	7.82	8.38	7.67	7.95	8.12	0.03	1.34
1170 PENITENTIARY 39 YEARS	6.22	8.35	9.44	8.84	8.22	8.22	0.00	1.22
1130 PENITENTIARY LIFE	3.42	9.04	9.52	9.01	8.41	8.45	0.01	1.10
1130 PENITENTIARY LIFE + 99 YEARS	3.49	9.05	9.52	9.03	8.33	8.53	0.03	1.14
1200 DEATH	3.22	9.48	9.74	9.48	8.50	8.58	0.02	0.52

TABLE 2
MEDIAN SEVERITY RATINGS FOR SINGLE-ORDER PENALTIES

Penalty	Median	Penalty	Median
Fine, \$10	-0.23	Suspension of Drivers License, 1 Year	1.82
Mediation	-0.23	Jail, 30 Days	1.93
Conditional Discharge	-0.04	Jail, 90 Days	2.26
Unsupervised Probation 6 Months	0.00	Jail, 60 Days	2.40
Unsupervised Probation 1 year	0.00	Fine \$10,000	2.43
Unsupervised Probation 90 Days	0.06	Jail, 6 Months	3.31
Treatment Program 30 Days	0.17	Jail, 1 Year	3.79
Fine, \$100	0.29	Penitentiary 2-5 Years	4.88
Restitution	0.33	Penitentiary 3 Years	5.00
Treatment Program 90 Days	0.47	Penitentiary 5 Years	5.81
Suspension of Drivers License 30 Days	0.54	Penitentiary 5-10 Years	6.20
Probation, 1 year	0.56	Penitentiary 10 Years	7.17
Treatment Program 6 Months	0.65	Penitentiary 20 Years	7.58
Treatment Program 1 Year	0.75	Penitentiary 10-20 Years	7.62
Probation, 2 Years	1.02	Penitentiary 99 Years	8.85
Suspension of Drivers License 90 Days	1.11	Penitentiary Life	9.04
Fine, \$1,000	1.13	Penitentiary Life plus 99 Years	9.05
Suspension of Drivers License 6 Months	1.29	Death	9.48
Probation, 4 Years	1.46		

are followed closely by unsupervised probation for either 90 days or 1 year and treatment program for 30 days.

An examination of these single categories by either dollars or time shows that there is a nonlinear pattern of monotonically increasing values. This at least indicates that some measurement is actually taking place. Within the category of fines, it can be seen that they start essentially at -.23 with a fine of \$10. A fine of \$100 is recorded at .29 level of severity; of \$1,000, the value has increased to 1.13 and the highest level of 2.40 is recorded for a fine of \$10,000. A similar pattern is exhibited for time served.

It appears from this initial test that some of the sanctions do, indeed, appear to have comparable severity scores. For example, 1 year probation has a value of .56 which is approximately the value of suspension of drivers license, 30 days (.54). Similarly, a \$1,000 fine is equivalent to suspension of drivers license for 90 days. Treatment programs and unsupervised probation generally tend to have the same equivalency in severity, and that severity is for all practical purposes considered to be zero by the prosecutors. Whether these will remain stable once the characteristics of the case are introduced is still to be tested.

Diversion programs have gained in popularity over the past ten years. From the responses, it appears that these programs tend to have little penalty attached to them regardless of time indicated. Thus, it appears that they are most likely perceived by prosecutors as treatment and rehabilitation programs rather than penalties. This is also suggested by the fact that there is an upward bound of how severe these sanctions are. The limit (.75) is very low, and occurs in the second decile of the severity ladder.

When one begins to examine the more severe penalties that include incarceration (see Table 2), the range of severity becomes more startling, and the increases are clearly nonlinear. In fact they exhibit a somewhat quadratic behavior with a rapid rise recorded for the 30 days to one year

period and then a slowly increasing rate up to 20 years. From 20 years to 99 years, the increase is practically zero.

It is difficult to interpret this relationship because of the uncertainty attached to the interpretation of the sentences themselves which may be jurisdictionally dependent. For example, if in one jurisdiction a life sentence means that a minimum of seven years has to be served, then the severity should be rated less than for other jurisdictions where this is not true. However, the fact that the median severity for life is 9.04 tends to indicate that the respondents take the sentence literally.

This leads to the point that there also may be some truncation at the top of the distribution because the value for death is 9.48 on a scale of 10. In future tests, it might be valuable to extend the scale slightly at this end. However, it is interesting to note that the penalty of death is not seen as being much different from the penalties for 99 years, life and life plus 99.

Moving down the scale to sentences involving jail in conjunction with probation, (Table 3) the results indicate that while the severity score increases as the length of probation is increase, the increases are not additive. For a sentence of 30 days in jail, the value is 1.93; when probation for 1 year is added, the score decreases to 1.79; when probation of 2 years is added, the score is 1.91; for 4 years, 2.11. If the increase was additive, a value of 2.49 would have been recorded when probation for 1 year was added. Interestingly, this score is not even achieved when a 4 year probation term is added. This same pattern also holds when the jail sentence is increased. The results suggest that prosecutors view the jail term as the primary penalty and give little extra weight to the constraints or penalties imposed by probation. Whether this is subject to jurisdictional variation should be investigated in later analysis.

TABLE 3

MEDIAN SEVERITY SCORES BY INCARCERATION AND PROBATION

<u>Penalty</u>			<u>Median</u>
<u>Jail and Probation</u>			
30 Days	0	.....	1.93
30 Days	1 Year	.....	1.79
30 Days	2 Years	.....	1.91
30 Days	4 Years	.....	2.11
60 Days	0	.....	2.40
60 Days	1 Year	.....	1.90
60 Days	2 Years	.....	2.46
60 Days	4 Years	.....	2.55
90 Days	0	.....	2.26
90 Days	1 Year	.....	2.65
90 Days	2 Years	.....	2.80
90 Days	4 Years	.....	3.02
6 Months	0	.....
6 Months	1 Year	.....	3.31
6 Months	2 Years	.....	3.29
6 Months	4 Years	.....
1 Year	0	.....
1 Year	1 Year	.....	3.77
1 Year	2 Years	.....	3.12
1 Year	4 Years	.....	3.97

Conclusion

Overall, the preliminary results indicate that this type of approach to the development of criminal penalty scales is a fruitful one and worthy of further analysis and testing. There does appear to be sets of sanctions having equivalent severity levels but how well these will hold up when subjected to testing with actual cases has yet to be determined.

Additionally, it is clear that this type of testing needs to be performed by criminal justice system professionals and defendants other than prosecutors to determine the extent to which there is consistency among them with respect to ordering and the magnitude of the weights assigned. To this end, tests are being undertaken and the results will be presented when analyzed. In the same vein, the testing here should not be considered concluded, but rather responses should be continually collected and added to the data base, so that some other factors such as jurisdictional differences can be examined for their contribution to the overall variance.

In conclusion, however, the results are heartening and certainly support the continuation of this effort to develop the ability to weight dispositions by the quality of the outcome; and ultimately, establish boundaries for what can be called acceptable as compared to unacceptable dispositions. As a first preliminary step, it appears that this approach has already shown its value.

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