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Sentencing

Various sentencing guidelines have been implemented in the past several decades in order to reduce crime rates. Mandatory minimums are the focus of this report due to their pervasive usage. Other sentencing guidelines that have been implemented recently include civil commitments, GPS tracking, advisory guidelines and other state specific prescriptions.

Mandatory Minimum Sentencing

Mandatory minimums have been the trend in sentencing reform in recent decades, representing a shift from an 'indeterminate' system to a more 'determinate' one. "[M]andatory sentencing laws since 1975 have been America's most popular sentencing innovation. By 1983, forty-nine of the fifty states (Wisconsin was the holdout) had adopted mandatory sentencing laws for offenses other than murder or drunk driving" (Shane-DuBow, Brown, and Olsen 1985, table 30). Despite their popularity, the preponderance of scholarly research on mandatory minimums overwhelmingly agrees that sentencing guidelines have had little or no effect on crime rates.

Effects on Crime Rates

All major studies have either decided that there is no conclusive evidence of a deterrent effect of mandatory minimums or that there is no deterrent effect. After the most comprehensive study completed to date the National Academy of Sciences' Panel of Research on Deterrent and Incapacitative Effects found that "...we cannot assert that the evidence warrants an affirmative conclusion regarding deterrence" (Blumstein, Cohen and Nagin 1978). A more recent study by the National Academy of Sciences that looked at the effect of mandatory minimums on prison populations concluded that "[a]fter documenting that the average prison sentence per violent crime tripled between 1975 and 1989" it had "apparently little" effect on crime rates (Reiss and Roth 1993).

Drugs have been a major focus of research on mandatory minimums, "...an evaluation of the "Rockefeller Drug Laws," which required severe mandatory minimum sentences for drug crimes and forbade plea bargaining to avoid the laws' application, found no discernable effects on drug use or crime in New York" (Joint Committee on New York Drug Law Evaluation 1978). These results concur with many international findings (Tonry 1996).

A leading scholar on this issue, Michael Tonry, concluded that “No matter which body of evidence is consulted—the general literature on the deterrent effects of criminal sanctions or the evaluation literature on mandatory penalties—the conclusion is the same. There is little basis for believing that mandatory penalties have any significant effects on rates of serious crime” (Tonry 1996, p. 141). Researchers from the Rand Drug Policy Research Center concluded “...that passing and maintaining laws such as the federal mandatory minimum sentencing statutes do not represent an effective or efficient way of reducing drug use, drug spending, or drug related crime.” (Caulkins *et al* 1997, p. 80).

The researchers at Rand have also criticized the purported deterrent effect of such sentencing laws. The Rand group points to increased guilty pleas to lesser charges, resulting in weaker penalties for crimes. These weaker penalties lessen the deterrent effect of the laws. Also, deterrence is of limited effect against black-market crime. As the expected sentence (the non-monetary cost to the dealer) increases, so does the markup in drug price (to compensate the dealer for added risk) and the benefit increases as well. Thus extending sentences acts to increase the benefit of selling drugs to drug dealers (Caulkins *et al* 1997, p. 14).

As part of the research for this report we consulted with University of Vermont Professor Kathy Fox (bio at <http://www.uvm.edu/~soceval/?Page=facultystaff/facultystaff.html>), a sociologist and expert on prison rehabilitation. Professor Fox regarded Michael Tonry’s *Sentencing Matters* (cited above) as a leading resource in sentencing studies. She also believed that the RAND study (cited above) is the most widely cited study of recent years in academic research. With reference to mandatory minimum sentencing Professor Fox commented that “Longer isn’t better, and you’d be hard pressed to find a criminologist that disagrees” (Fox, 1/23/06).

Effects on Convictions

Massachusetts: The Bartley-Fox Amendment implemented in 1974 imposed mandatory minimum sentences for certain firearm offenses and some violent felony offenses that involved the use of a firearm. According to a study by James Beha, “the proportion of acquittals among all dispositions, however, rose sharply for robbery (from 6% to 31%), assault with a deadly weapon (from 8% to 12%), and firearm offenses (from 16% to 36%). The higher prison risk on conviction on the mandatory carrying charge reduced incentives for guilty pleas in exchange for lenient sentences (Wicharaya 1995, pp. 65-66).

Michigan: Heumann and Loftin analyzed the effects on conviction rates following the implementation of mandatory minimums in the Michigan Felony Firearm Statute of 1977. According to their study, the rate of other assault cases dismissed increased by 14% (from 12% to 26%) and the rate for armed robbery increased by 9% (from 13% to 22%). For armed robbery, the chance of being dismissed and acquitted combined rose from 32% to 39%. The figure for other assault charges increased from 36% to 50% (Wicharaya 1995, pp. 66-68).

Other Sentencing Reforms

Civil Commitment

Civil commitment refers to the process in which states confine criminals who are found to have a mental abnormality that causes them to pose as a danger to themselves or others. The states retain a large degree of latitude in defining those who are mentally abnormal and sexually violent criminals who continue to pose as a danger to others following incarceration.

Opinions over the effectiveness of such civil commitment policies remain mixed. The National Association of State Mental Health Program Directors (NASMHPD) strongly opposes civil commitment on the basis that it diverts scarce resources away from mentally ill patients and expends them on violent criminals with mental abnormalities, individuals viewed as outside of the scope of mental health facilities. Also, concerns have been raised pertaining to the infringement of the criminal's substantive due process. "Supporters of SVP laws believe that civil commitment protects the community while providing treatment, where possible, to a small, but extremely dangerous segment of society" (Strayhorn). The civil commitment process has been adopted by 17 states (NASMHPD). Sexually violent predators have been civilly committed in many states since the 1990's, including California, Kansas, Texas, Wisconsin, Minnesota and Washington (Strayhorn).

One study, drawing from six case studies, concluded that

[i]t appears that Sexually Violent Predator (SVP) Civil Commitment policies have generally delivered on their fundamental promise of protecting society from a subset of sexual offenders. States have succeeded in developing legally tenable and organizationally viable processes for commitment and maintenance of custody, despite certain technical limitations. Hence, considering legal, technical and organizational issues in a vacuum one may fairly conclude that SVP civil commitment policies are here to stay (Harris 2005, p.123).

Harris points out, however, that SVP civil commitments succeed through incapacitation as opposed to treatment and that the availability of resources for civil commitments remains an impediment for many states (Harris 2005).

Global Positioning Systems

As of 2004 there were 30 states that used GPS to track convicted criminals (Castelli 2004). Twelve states use GPS to track released sex offenders (Castelli 2004). Florida, a pioneer in criminal GPS tracking, found that recidivism dropped from 12% to 3% in the first 18 months of release for felony cases (Sharp). Little information about the efficacy of GPS tracking is available because it is such a new technology. See the VLRS report on GPS tracking for more information at: <http://www.uvm.edu/~vlrs/>

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This report has been prepared by undergraduate students at the University of Vermont under the supervision of Professor Anthony Gierzynski. The material contained in the reports does not reflect official policy of the University of Vermont.