1998

The Sociology of Sentencing: Reconceptualizing Decisionmaking Processes and Outcomes

Daniel P. Mears

PRINT VERSION CITATION: Mears, Daniel P. 1998. "The Sociology of Sentencing: Reconceptualizing Decisionmaking Processes and Outcomes." Law and Society Review 32(3):667-724.

PRE-PRINT VERSION

THE SOCIOLOGY OF SENTENCING: RECONCEPTUALIZING DECISION MAKING PROCESSES AND OUTCOMES*

Daniel P. Mears

Department of Sociology
Center for Criminology and Criminal Justice Research
University of Texas at Austin

*Direct correspondence to Daniel P. Mears at the Department of Sociology, Center for Criminology and Criminal Justice Research (CCCJR), Burdine 336, University of Texas at Austin, Austin, Texas 78712-1088, phone (512-471-1122), fax (512-471-1748), e-mail (dpmears@mail.la.utexas.edu). The author is a post-doctoral research fellow with the CCCJR. Grateful acknowledgment is extended to William R. Kelly, Professor of Sociology at the University of Texas at Austin and Director of the CCCJR, and Robert O. Dawson, Professor of Law at the University of Texas at Austin and Faculty Research Associate with the CCCJR, and the anonymous reviewers for their helpful comments and suggestions.

THE SOCIOLOGY OF SENTENCING: RECONCEPTUALIZING DECISION MAKING PROCESSES AND OUTCOMES

Abstract

Research on juvenile and adult sentencing has been characterized by theoretical, methodological, and empirical limitations that preclude adequate description, prediction, or assessment of decision making processes and outcomes. Five limitations are prominent: emphasis upon atheoretical, empirical attempts, generally unsuccessful, to increase predictive accuracy; limited conceptualizations of dependent variables (e.g., incarceration versus non-incarceration); over-reliance upon individual, offender-level data with minimal reference to victims, practitioners, or contextual factors; failure to incorporate analytically multiple research methods; and inattention to intended and unintended uses and effects of sentencing. These limitations can be highlighted by focusing on a context, juvenile justice, in which the goals of sentencing are varied, conflicting, and, due to recent reforms, changing. Using interview and survey data, the present research examines juvenile sentencing reform in Texas to highlight these limitations and to outline an analytical framework for improved description, modeling, and assessment of sentencing.

Word Count = 147

THE SOCIOLOGY OF SENTENCING: RECONCEPTUALIZING DECISION MAKING PROCESSES AND OUTCOMES

INTRODUCTION

Although societies have applied sanctions to criminal behavior for centuries (Wigmore 1936; Barnes 1972), surprisingly we know little about when they are used, why they are used, and to what effect. Nowhere is this more the case than in the world of juvenile justice sentencing. Here, research on the decision making process, save for a handful of case studies (e.g., Cicourel 1976), has been restricted largely to atheoretical attempts to model sentencing outcomes through the use of official data. The primary advantage of such research is that it provides a basis for hypothesis-testing and generalization. The primary disadvantage is that theoretical development is stifled by over-reliance upon existing official data and the restricted focus upon individual-level factors, which, most frequently, reduces to the consideration of offender-level characteristics. In turn, by failing to consider the importance of contextual factors (Dixon 1995) – indeed, by failing to consider the nature of the dependent variable of interest, sentencing outcomes (Cohen & Kluegel 1978) – such research virtually ensures that sentencing models not only will be marked by large amounts of unexplained variance (Blumstein et al. 1983; Hagan 1995) but that they also will be predicting outcomes that bear little connection to actual sentencing practices and their unintended effects (Myers & Talarico 1987). Although it is true that there are fundamental difficulties inherent in quantifying contextual effects (Sampson 1986; Myers & Talarico 1987; Dixon 1995; Sampson & Lauritsen 1997), these difficulties literally are insurmountable unless we know what ideally we want to quantify and to what end (Blumstein et al. 1983; Berk & Rossi 1990).

One way to highlight these and other issues is to focus on a context in which the goals of sentencing are varied, conflicting, and changing. Recent attempts to "criminalize" the juvenile

court (Feld 1993a; Howell 1996; Singer 1996a, 1996b; Torbet et al. 1996; Champion 1998), which traditionally has been characterized by an emphasis upon rehabilitation and the "best interests" of the child (Platt 1977; Sutton 1988; Empey & Stafford 1991; Feld 1993a)[1] rather than punishment, provide such a context. Not only are the goals of juvenile justice in the 1990s more varied and conflicting than in the past, but, clearly they still are in the process of changing. For example, many legislatures are giving primary emphasis to creating "get tough" reforms that make it easier to sentence juveniles in adult courts (Singer 1993, 1996a; Sanborn 1994a; Howell 1996; Torbet et al. 1996), but many alternatives – indeed, far more alternatives than frequently are available in adult courts – still exist for sanctioning juvenile offenders (National Criminal Justice Association 1997; Champion 1998). These reforms are occurring during a time when the merits of continuing to have a separate juvenile court are being debated (Dawson 1990a; Ainsworth 1991, 1995, 1996; Feld 1993b; Hirschi & Gottfredson 1993; Office of Juvenile Justice and Delinquency Prevention 1996). In such a context, it becomes possible to study sentencing in a way that is not possible when the goals are uniform, consonant with one another, and stable over time (see Sjoberg et al. 1991). It becomes possible, for example, to assess better whether and to what extent practitioner consensus regarding particular goals, or weighting of particular goals under varying circumstances, affects sentencing decisions. It also becomes possible to highlight more precisely the stated and actual goals of sentencing and, therefore, the criteria by which to evaluate "successful" sentencing decisions.

Relying upon interview and survey data from a study of determinate sentencing, a product of recent juvenile justice sentencing reforms in Texas that is similar to but also significantly different from typical "get tough" reforms in other states, the present research extends research on sentencing in two ways. First, it highlights theoretical, methodological, and empirical limitations of previous research on juvenile and adult sentencing. Second, it outlines an analytical framework for organizing past research and, more importantly, for guiding future theoretical and empirical description, modeling, and assessment of juvenile and adult sentencing processes[2] and outcomes and, more generally, of legal decision making (Myers & Talarico

1987:178-79).

LITERATURE REVIEW: FIVE LIMITATIONS OF PREVIOUS SENTENCING RESEARCH

Research on juvenile and adult sentencing has advanced considerably in recent decades (see Forst 1995; Myers 1995). The adult sentencing literature has focused primarily upon federal reforms (see, for example, the symposium issue of the American Criminal Law Review, vol. 29, no. 3, 1992; Bureau of Justice Assistance 1996; Albonetti 1997) or state reforms (e.g., Miethe & Moore 1985; Tonry 1993), with particular attention given to issues of disparity in sentencing among "like" offenders (e.g., Stolzenberg & D'Alessio 1994), consistency in sentencing within and across jurisdictions (e.g., Myers & Reid 1995), truth-in-sentencing (e.g., Kleinfeld 1991), proportionality of punishment (e.g., von Hirsch 1992), etc. By contrast, the juvenile sentencing literature has focused primarily upon the use of different types of waiver options (Howell 1996), which have expanded greatly in recent years (Sickmund 1994; Torbet et al. 1996).[3] Only recently has attention been given in the juvenile context to sentencing issues analogous to those in the adult context (Feld 1993a; Sanborn 1993, 1994a, 1994b, 1996; Singer 1993, 1996a, 1996b; Grisso 1997). Meanwhile, debates about the very existence of the juvenile court loom large (Dawson 1990a; Ainsworth 1991, 1995; Feld 1993a, 1993b; Hirschi & Gottfredson 1993; Office of Juvenile Justice and Delinquency Prevention 1996).

Despite the extensive literature on juvenile and adult sentencing, research in each arena frequently has been limited, often unnecessarily so, by a failure to address adequately five key issues: (1) theory, (2) conceptualization of the dependent variable (i.e., sentencing outcomes), (3) limitations of individual, offender-level data for sentence modeling, (4) types of research methods suited to improved sentence modeling, and (5) intended and unintended uses and effects of particular sentencing options.[4] Each of these issues is outlined briefly in this section and then demonstrated empirically in the remaining sections through reference to determinate sentencing and the analytical framework developed herein.

Atheoretical, Empirical Research Focusing on Predictive Accuracy

Most prior sentencing research has consisted largely of atheoretical, empirically-driven attempts, generally unsuccessful, to obtain greater predictive accuracy.[5] The typical approach to sentencing research is to create a dependent variable (e.g., sentence length) that then is regressed upon select legal (e.g., offense type and seriousness, history of offending) and extra-legal (e.g., sex, race, socio-economic status, plea bargaining) variables. More generally, sentencing research frequently consists of descriptive profiles of the characteristics of one population compared to another (see, for example, the review of waiver research in Howell 1996).

Although such research is critical to identifying potential empirical regularities, the failure to provide theoretical accounts for what we should expect, and why, leads to an infinite regress in which our ability to draw conclusions consonant with different studies is minimized if not precluded. What, for example, are we to make of the conflicting facts about racial similarities and differences in sentencing that have been identified at county, state, and federal levels for specific index offenses and general index categories (e.g., violent offending, property offending)? Blumstein et al. (1983:93-108) have provided a cogent review of a wide range of methodological issues that render difficult any simple or generalizable conclusion from studies of race and sentencing (see also Pope & Feyerherm 1993). Sentencing research frequently omits consideration or adequate measurement of key determinants of sentencing. Frequently, too, it relies upon simple linear models that fail to include interaction terms or to account for hierarchical sentencing rules that condition the effects of variables included in prediction models (Blumstein et al. 1983:123-24; see, generally, Lieberson 1985).

Concern with model specification should be paralleled, however, by a concern with developing theoretical expectations regarding the effects of key variables and the conditions under which such effects will occur. There are, of course, exceptions (e.g., Sutton 1994; Dixon 1995; Albonetti 1997), but they are relatively rare and in general insufficiently developed. As

but one example, consider a recent article that uses labeling theory to predict that minority status black males will receive harsher dispositions than non-minority status white males. It is notable that reference to any theory is made, but, as Gibbs (1995) has noted, "what passes for societal reaction theory [i.e., labeling theory] is more nearly a set of diverse arguments and research findings, some of which are inconsistent especially when it comes to identifying the paramount determinant of reactions to deviance and deviants" (p. 87, ftnt. 15; see also Gibbs 1987).

Meaning-less and Context-less Conceptualizations of Sentencing Outcomes

Sentencing research frequently has relied upon limited conceptualizations and contextualizations of dependent variables (see, however, Cohen & Kluegel 1978). Typical examples include conceptualizing sentence type as a binary option (e.g., probation versus incarceration, waiver versus non-waiver), sentence length, or sentence type and length viewed as distinct outcomes, where, in each instance, little consideration is given to the context within which sentencing occurs.

Consider research on juvenile waiver to adult court. In a recent review, Howell (1996) reported few studies (e.g., Podkopacz & Feld 1996) that conceptualized waiver as one of several sentencing options. Instead, most studies focused upon predicting whether a juvenile was waived or not waived, with particular emphasis given to comparing the characteristics of waived and non-waived populations. Yet surely this image of waiver is unrealistic (see Singer 1996a:10), particularly given that sentencing typically involves consideration of a range of sanctions (Sanborn 1993). These include but are not limited to: dismissal, diversion to various programs, standard probation, intensive supervision probation (ISP), community-based programs, indeterminate sentencing to juvenile justice facilities, and waiver to the criminal justice system (Champion 1998). Since incarceration in juvenile facilities or transfer to adult justice systems would seem to be limited only to the most chronic, serious, or violent offenders, consideration of such options might seem unwarranted. However, research consistently shows that juveniles who

are transferred are not necessarily chronic, serious, or violent offenders (Howell 1996), and it is not necessarily true that such youths always are deemed suitable for incarceration. In short, by constraining the dependent variable to be a dichotomous outcome when in reality multiple outcomes are available to prosecutors or judges, researchers risk creating sentencing models of suspect utility or validity.

These observations also extend to the literature on adult sentencing. Rarely do sentencing models consider the existence of multiple sentencing outcomes or the contexts within which decisions among available outcomes are made (for discussion of these issues see Blumstein et al. 1983; Myers & Talarico 1987; Myers 1995). Furthermore, with the advent of various ISPs (Petersilia & Turner 1993) and other alternatives to incarceration (Forst 1995:382-83), along with the widespread development of state-level reforms (Tonry 1993), the need to redress this situation will become all the more critical in coming years.

Restricted Focus Upon Individual, Offender-Level Data

Past research has focused primarily upon individual, offender-level characteristics as independent variables. Only rarely are data about victims, court practitioners, or organizational, cultural, political, or social contexts considered at all much less in a systematic manner (see, however, Sampson 1986; Myers & Talarico 1987; Smith & Paternoster 1990; Dixon 1995; Sanborn 1996; Albonetti 1997). This tendency would not be problematic if research did not consistently identify such factors to be relevant, or potentially relevant, to sentencing decisions (e.g., Cicourel 1976; Blumstein et al. 1983; Feld 1993a; Sutton 1994; Forst 1995; Myers 1995; Ulmer & Kramer 1996; Smith & Damphousse 1998). It is, of course, understandable that researchers typically rely upon individual, offender-level data; such data are relatively easy to access and amenable to standard types of statistical analyses. The question, though, is whether ease of data access should dictate, as it has to date, rather than influence sentencing research. Ultimately, this question can only be answered through research that highlights the predictive

utility of incorporating into sentencing models individual, offender-level data and various types of contextual data.

Over-reliance Upon Official Data (Failure to Use Multiple Research Methods)

Despite repeated calls for the use of multiple research methods (Blumstein et al. 1983; Pope & Feyerherm 1993:10; Bureau of Justice Assistance 1996:121), research on sentencing has relied almost exclusively upon official statistical data. The limitations of such data are, however, becoming increasingly apparent. In a recent analysis of merging and emerging systems of juvenile and criminal justice, Singer (1996a) wrote:

> We can only tap the surface of juvenile/criminal justice systems with currently available data, and only make estimates as to the systems' general effects. For public policy, the important questions are not easily resolved by attempts to examine isolated aspects of juvenile and criminal justice. (P. 11)

The tendency to rely upon official data is understandable given the time and resources required to gather supplemental data through the use of interviews, ethnographies, surveys, merging data sources to conduct multi-level analyses, etc. Nonetheless, the benefits of conducting the latter type of research would seem to outweigh by far the costs of failing to do so. For example, such efforts likely would encourage researchers to develop theories of sentencing that consider a wider range of factors potentially relevant to sentencing, and to consider the relationships among such factors, including especially the conditioning effects of previous decisions within the sanctioning process (Blumstein et al. 1983:124). Similarly, it would encourage researchers to develop theories that view sentencing decisions as examples of more general phenomena (e.g., decision making that occurs within social contexts – see Myers & Talarico 1987) rather than as empirically distinct outcomes, thereby encouraging an accumulation of knowledge rather than of facts.

Inattention to Intended and Unintended Uses and Effects

Finally, a fifth limitation of sentencing research is the relatively scant attention that has been given to empirically researching the intended and unintended uses and effects of sentencing, particularly of recent sentencing reforms. That various reforms generate uses and effects unintended by legislatures is difficult to contest. Indeed, given the quickness with which many state-level reforms have been implemented (Tonry 1993; Torbet et al. 1996), it is difficult to imagine that there would not be unintended uses and effects. It therefore should not be surprising that a recent and comprehensive theoretical and empirical analysis of state-level criminal justice reforms concluded that such uses and effects are the rule rather than the exception.

> In most . . . jurisdictions, changes in sentencing behavior to comply with procedural requirements have largely been compliance in form rather than compliance in substance. However, there is sufficient empirical evidence to assert that internal resistance and deliberate evasion of the new pertinent rules have been prevalent in the United States. (Wicharaya 1995:161)

Some of the specific concerns about unintended uses and effects that have been identified include: inconsistency and disparity in the implementation and administration of sentencing reforms (Tonry 1993, 1995, 1996), circumvention of sentencing guidelines through various charge and plea bargaining practices (Nagel & Schulhofer 1992), displacement of discretion (Miethe 1987; Alschuler 1991), failure to achieve lengthier sentences (Wicharaya 1995), and disproportionate sentencing (Uelmen 1992; Forer 1994).

Reviews of juvenile justice reforms (Guarino-Ghezzi & Loughran 1996; Howell 1996; Singer 1996a) suggest that few guidelines have been established for guiding waiver decisions and, similar to adult sentencing reforms, that these reforms have led to many unintended consequences. Some of the potential unintended consequences of waiver reforms include: lengthy terms of detention while awaiting adult trial; greater rates of victimization of juveniles in adult prisons than in juvenile facilities; decreased emphasis upon rehabilitation of those youth

who likely are most in need of or amenable to rehabilitative services (e.g., chronic, serious, or violent juvenile offenders); waiver of juveniles who are not chronic, serious, or violent offenders; shorter sentences received and served by waived youths compared with juveniles processed through juvenile court; and increased recidivism of waived youth (Fagan 1996; Fritsch, Caeti, & Hemmens 1996; Guarino-Ghezzi & Loughran 1996:2-3 ; Howell 1996:52-53; Singer 1996a:11; Torbet et al. 1996:7; Butts 1997).

Research to date has emphasized the prediction of sentencing without explicitly, systematically, or empirically considering the range of unintended uses and effects of specific sentencing policies. This inattention is unfortunate because it obscures the possibility that policies, even those appearing to achieve their intended goals, may be applied inconsistently and in contradiction to what was intended; in so doing, such policies may result in harmful and costly unintended effects.

Before proceeding, it should be noted that implicit in the foregoing summary of five limitations of sentencing research is the view that juvenile and criminal justice sentencing literatures should be viewed as informing one another rather than as constituting distinct bodies of research. One way to illustrate this assertion is, as this paper attempts to show, to view juvenile and adult sentencing as products of more general types of decision making processes. After reviewing juvenile justice sentencing reform and research in Texas, the remainder of this paper demonstrates this argument through an empirical analysis of Texas' determinate sentencing law.

JUVENILE JUSTICE SENTENCING REFORM IN TEXAS: DETERMINATE SENTENCING

In this section, a brief description of determinate sentencing, including a review of relevant research, is provided. This discussion will provide the context for situating the subsequent analyses and their more general relevance for juvenile and adult sentencing research. As will become evident in the discussion that follows, research about determinate sentencing provides a

unique opportunity to study sentencing for three reasons: the changing context of juvenile justice nationally and in Texas, the contrast that determinate sentencing provides to more typical "get tough" waiver reforms, and the recent changes and expansion of determinate sentencing. Put differently, research on determinate sentencing provides a type of case study (Geis 1991; Sjoberg et al. 1991; Griset 1994) that allows for highlighting issues that otherwise would be difficult to observe.

The Determinate Sentencing Act [Violent or Habitual Offenders Act]

In 1987 the Texas Legislature created the Determinate Sentencing Act in an attempt to address more effectively serious, violent juvenile crime (Dawson 1988; Harris & Goodman 1994; Anderson & Bradley 1995; Fritsch & Hemmens 1996). Determinate sentencing[6] essentially created a "third justice system" (Dawson 1988) to bridge the juvenile and adult justice systems. It provided the possibility for more severe punishment of juveniles ineligible for transfer to the adult system, and, at the same time, for less severe punishment of juveniles eligible – but not necessarily appropriate – for transfer to the adult system. In essence, prosecutors were provided with a means by which (a) to more severely sanction juveniles under the age of waiver, and (b) to provide a "last chance" effort at rehabilitation for a juvenile who could be waived while coupling that effort with a defensible term of incarceration.

In 1995 the Texas Legislature substantially modified and expanded the determinate sentence statute, including renaming it the Violent or Habitual Offenders Act (Dawson 1995, 1996). This revision occurred within an overall "get tough" context in which the concept of punishment was explicitly incorporated into the newly named "Juvenile Justice Code" (Dawson 1996). Two major changes were introduced to determinate sentencing. First, the number of eligible offenses was increased from 5 to approximately 30.[7] Originally the only eligible offenses were first degree and capital felonies (murder, capital murder, attempted capital murder, aggravated kidnapping, aggravated sexual assault, and deadly assault on a law enforcement officer, which

was dropped in 1993). Now, however, they also include the following felonies, including many that are second and third degree felonies: sexual assault, aggravated assault, indecency with a child, aggravated robbery, injury to a child/elderly person, felony deadly conduct by discharging a firearm, criminal attempt (murder, capital murder, indecency with a child, aggravated kidnapping, sexual assault of a child, aggravated sexual assault, aggravated robbery), criminal solicitation of capital and first degree felonies, criminal solicitation of a minor, controlled substance felony, aggravated controlled substance felony, and habitual felony conduct. The second major change involved greatly expanding the parole and prison transfer powers of the Texas Youth Commission (TYC), the agency with administrative oversight over juvenile incarceration (Dawson 1996).

The original determinate sentence legislation and the subsequent expansion occurred within a context in which concerns centered around putative increases in violent juvenile crime (Dawson 1988; Fritsch & Hemmens 1996).[8] These debates, like those nationally (Feld 1993b; Torbet et al. 1996), focused on expanding the use of waiver to adult court. On one side were those who argued that the juvenile court, however flawed, is the most appropriate and effective means by which to combat serious and violent juvenile crime; on the other side were those who argued that the criminal court, no matter how young the offender, is the most appropriate and effective means for doing so. Both sides agreed that TYC was holding juveniles for insufficiently lengthy terms (Dawson 1988). For example, although TYC technically could hold a juvenile until age 21, prior to the inception of determinate sentencing the average length of stay for a juvenile adjudicated of an offense was only 5 months (Dawson 1988:952). Both proponents and opponents of waiver thus felt that indeterminate sentences to TYC did not represent a meaningful semblance of punishment.

Determinate sentencing provided a third option to prosecutors that could be invoked voluntarily if an eligible offense had been committed. Under the original statute, determinate sentencing provided for sentences of up to 30 (later, 40) years, with possible transfer to the adult system; it also restricted the ability of TYC to parole youths.[9] Compared with conventional

delinquency proceedings, determinate sentencing clearly could result in much more severe sanctions. Consequently, constitutional and procedural safeguards equivalent to what adults would receive were implemented (Dawson 1996). For example, a prosecutor must obtain grand jury approval to proceed with determinate sentence proceedings; however, the failure to obtain such approval has no bearing on the prosecutor's ability to proceed with conventional delinquency proceedings or, if the juvenile's age so allows, transfer proceedings.

The potential sentences available under determinate sentencing generally are much more severe than what could be obtained through indeterminate sentencing. Indeterminately sentenced youths can be incarcerated only up to age 21, and the minimum lengths of stay for offenses that technically are eligible for determinate sentencing range from 6 to 24 months. By contrast, determinate sentencing is not constrained by an upper age limit; determinate sentences can range up to 40 years (capital and first degree felonies), 20 years (second degree felony), or 10 years (third degree felony). Moreover, the minimum lengths of stay range from 10 years (capital felony) to 3 years (first degree felony), 2 years (second degree felony), or 1 year (third degree felony), with parole available, subject to the discretion of TYC, any time after the minimum length of stay has been served. In the adult system, corresponding sentences range from life imprisonment (capital felony), 5-99 years or life (first degree felony), 2-20 years (second degree felony), and 2-10 years (third degree felony), with parole available only after half of the original sentence has been served. For juveniles who are given determinate sentences, TYC determines anytime after age 16 whether to seek a juvenile court order of transfer to the Texas Department of Criminal Justice's Institutional Division (TDCJ–ID). Prior to 1995, a hearing was required for all determinately sentenced youths who reached age 18 to determine whether they would be released, recommitted to TYC, or transferred to TDCJ-ID.

Research on Determinate Sentencing

The few studies that have been conducted on determinate sentencing pre-date the 1995

reforms. Given the extent of these reforms it therefore is questionable whether this research is generalizable to determinate sentencing today. For example, Weinmann (1995) conducted research on factors relating to the release/recommit/transfer decision and found that the seriousness of the offense, behavior while incarcerated, and prior juvenile record all were relevant to TYC's recommendation; however, in the post-reform era this hearing no longer is required. Similarly, descriptive analyses of the characteristics of indeterminately sentenced, determinately sentenced, and waived juveniles that have been provided by O'Connell (1994) and the Texas Criminal Justice Policy Council (1997) do not provide information about whether and how the recently modified and expanded version of determinate sentencing will be applied.

These examples aside, other research may have more direct relevance to modeling processes and outcomes relating to determinate sentencing. Dawson's (1990b) comparison of determinately sentenced and waived cases revealed a diverse array of factors, including prosecutorial policy, county, offense, judge or jury trial, and offender's prior record, that appear to affect the decision to seek determinate sentence referrals and dispositions. His study also raised the possibility that prosecutors invoke determinate sentence proceedings to obtain plea bargaining leverage in seeking indeterminate sentences (Dawson 1990b). Research by Fritsch, Hemmens, and Caeti (1996) indicates that determinately sentenced youths receive and serve less lengthy sentences than do waived youths (see also Fritsch, Caeti, & Hemmens 1996), which the authors have argued constitutes evidence of the ineffectiveness of determinate sentencing. Apart from methodological problems, some of which were raised by Fritsch, Hemmens, and Caeti (1996), it is unclear whether similar findings would be found when comparing determinately sentenced and waived youths sentenced after the 1995 reforms. In addition, since one of the two goals of determinate sentencing is to provide an alternative to waiver (Dawson 1988), Fritsch, Hemmens, and Caeti's (1996) findings arguably represent evidence of the effectiveness, not the ineffectiveness, of determinate sentencing. In short, research to date has not addressed systematically the description and prediction of determinate sentencing, especially since the 1995 reforms.

DATA AND METHODS

The present study relied upon three types of data: in-depth, open-ended interviews; surveys; and legislative documents, agency reports, and previously published reports. The interviews, conducted in fall 1997 by the author, involved forty-one Texas juvenile justice practitioners, including defense attorneys (7), judges (5), probation officers (6), prosecutors (8) from rural, suburban, and urban counties, agency officials (11), state legislators (2), and scholars (2) with particular knowledge about determinate sentencing. Each interview lasted from one-half hour to two hours, and was tape-recorded and transcribed. Many respondents were called at a later time with follow-up questions. Respondents were selected through purposive sampling (Babbie 1995) to obtain as broad a spectrum of views as possible, with particular attention to geographic location, practitioner role, and experience with the creation, enactment, or study of the determinate sentence legislation. Questions were designed to address a range of issues, including respondent perceptions about the description of determinate sentencing (including intended and unintended uses and effects), potential sentencing issues (e.g., equity, consistency, truth-in-sentencing, plea bargaining), factors potentially relevant to the use of determinate sentencing, and how to assess effectiveness.

The surveys, administered in spring 1998, were given to Texas juvenile justice practitioners (defense attorneys, judges, probation officers, prosecutors) at an annual juvenile law conference. The questions, a subset of which are relied upon here, were designed to assess practitioner perceptions (see Bishop et al. 1989; Sanborn 1996) about a range of issues; wording of specific questions used in this paper are supplied, where appropriate, in footnotes. Of the 297 conference participants, some of whom were not practitioners, 125 (42 percent) completed the questionnaires. Roughly equal proportions of each of the four types of practitioners completed the questionnaires as attended the conference: defense attorneys (37.6 percent vs. 38.0 percent), judges (12.8 percent vs. 12.5 percent), probation officers (10.4 percent vs. 5.7 percent), and

prosecutors (37.6 percent vs. 31.7 percent). Since respondents were not randomly sampled from the population of all practitioners, the results of the analyses presented may not necessarily be generalizable. Nonetheless, the conference, well-attended, is the only annual juvenile law conference provided in Texas and all practitioners thus have an incentive to attend, if only to obtain continuing legal education credits.

This research is concerned with respondent perceptions about a range of issues relevant to improved description and prediction of sentencing (Sanborn 1996). The strengths of combining research methods to achieve this goal include the ability to highlight limitations of previous theoretical and empirical research, to provide nuanced explanations for specific response patterns, to expand the scope of analysis to include as yet unconsidered or under-researched factors relevant to sentencing, and to highlight disjunctions among practitioner perceptions regarding the causes and effects of sentencing. This research aims to highlight theoretical and empirical concerns relevant to description and prediction of sentencing processes and outcomes, not to demonstrate the validity of any particular empirical generalization. Put differently, the focus of this research is upon establishing the broader contexts and issues relevant to improving our ability to theoretically and empirically describe and predict sentencing processes and outcomes.

ANALYTICAL FRAMEWORK FOR THE DESCRIPTION, MODELING, AND ASSESSMENT OF SENTENCING PROCESSES AND OUTCOMES

In a recent study of practitioner perceptions regarding juvenile sentencing patterns, Sanborn (1996:112) concluded that juvenile dispositions may "involve too many factors, with interactions too subtle and complex and varying too much among courts, to be subjected to the scrutiny of sound research; we may never be able to derive a completely accurate picture of the factors affecting juvenile court sentencing." To researchers who study sentencing, Sanborn's (1996) argument is persuasive. For example, Dixon (1995:1167) has written: "In the past few years,

there have been fewer sentencing studies that empirically examine sentencing processes in courts with differing organizational contexts. Perhaps, this reflects dissatisfaction with the lack of any coherent pattern in the sentencing literature." Although both authors may be in part correct, ironically they each provide an example of the type of research that can delineate the exact limits – some of which already may have been reached and some of which may have not – to which we can accurately describe and predict sentencing.

In keeping with the type of research exemplified by Sanborn (1996) and Dixon (1995), the present study uses interview and survey data from research on juvenile justice sentencing reform in Texas to outline an analytical framework for identifying and examining the determinants and effects of sentencing decisions (see Table 1). These dimensions, discussed below, include: (1) sentencing as a decision making process, (2) sentencing as involving specific sets of outcomes, (3) sentencing as affected by different types of factors, and (4) sentencing assessment as involving analysis of processes, outcomes, causal factors, and substantive issues, including identification of intended and unintended processes and effects.

Table 1 about here

The central argument presented here reduces to the proposition that reference to the dimensions highlighted in this analytical framework is necessary for more accurate description, modeling, and assessment of sentencing processes and outcomes. That is, use of this analytical framework forces consideration about the overall context within which sentencing decisions are made. It thereby encourages researchers to view particular processes and outcomes not as distinct phenomena but as parts of a broader sentencing context. Ultimately, the utility of such a framework will be that researchers be able to discern better the weaknesses and strengths of their own or others' research, including discrimination between basic and superficial causes (Lieberson 1985) of sentencing decisions and the ability to link sentencing research with other types of research on decision making (Myers & Talarico 1987:178-79; Bielby & Bielby 1994).

It should be noted that some of the methodological points raised in the present research have been made elsewhere (see, for example, Blumstein et al. 1983; Pope & Feyerherm 1993; Sampson and Lauritsen 1997), but many have not. Moreover, to date the sentencing literature has lacked a coherent framework for organizing and guiding research, and, by extension, no research systematically has applied empirical data to this end. Indeed, in relying largely upon official data and standard regression techniques, most sentencing research is unable to illustrate the points raised in the present research. The analytical framework presented here constitutes an attempt to redress this situation by emphasizing the importance of four dimensions and the ways in which each dimension, in isolation or in conjunction with the others, is relevant to the description, prediction, and assessment of sentencing.

1. Sentencing as a Process

Sentencing is a decision making process that involves multiple actors, contexts, and outcomes (Black & Reiss 1970; Sampson 1986; Howell 1996:50). This assertion may seem abundantly obvious but most sentencing research focuses on delimited aspects of the sentencing process and then makes inferences about the meaning of particular outcomes. Frequently, little or no reference is made to preceding or subsequent stages in the sentencing process, to one or more sets of actors, or to contextually relevant aspects of sentencing.[10] As a prelude to more systematic demonstration of this assertion, consider the following example.

In one county in Texas, the chief juvenile prosecutor related how his office's policy for proceeding with waiver referrals had been modified recently as a result of changes in the attitudes and policies of the District Attorney's office, which, in previous years, had been reluctant to pursue waivers aggressively. Due in part to the transfer of one of the juvenile prosecutors to the District Attorney's office, improved communications between juvenile and criminal court prosecutors emerged in the last year. For example, the juvenile prosecutors clarified that they were not sending over "soft" cases, and adult prosecutors clarified their concerns about how best

to pursue cases that appeared "soft." Clearly, a cross-sectional analysis of waiver decisions in this one county would be difficult to interpret in a straight-forward manner for any one year, much less if a trend analysis were undertaken or if cases were aggregated across several years. Such an analysis would be made easier if it were understood that the decisions of juvenile prosecutors (e.g., whether to waive a juvenile) and adult prosecutors (e.g., whether to convict and sentence a waived juvenile) were affected by consideration of each other's motivations and practices, by perceptions regarding likely outcomes of particular decisions, and by policy changes over time.

An alternative way to demonstrate the relevance of viewing sentences as resulting from decision making processes involving multiple actors, contexts, and outcomes is to focus on the perceptions that different juvenile justice practitioners have about how and why determinate sentencing is used. Several facts are presented and then discussed.

Table 2 displays the distribution of responses among different practitioners regarding the use of determinate sentencing.[11] Almost 30 percent of all practitioners reported determinate sentencing as never or rarely used, 27 percent viewed determinate sentencing as being used primarily as an alternative to indeterminate sentencing, and 44 percent viewed it as being used primarily as an alternative to waiver. Among prosecutors, equal percentages (30 percent) viewed determinate sentencing as being used as an alternative to indeterminate sentencing and as an alternative to waiver. By contrast, perceptions among defense attorneys, judges, and probation officers regarding how determinate sentencing is used were much more variable. Nonetheless, insofar as practitioner perceptions reflect reality, determinate sentencing, when used, appears to be used equally in the two quite distinct ways originally intended by the Texas Legislature: as an alternative to indeterminate sentencing and as an alternative to waiver. It may be argued that in this context perceptions do not reflect reality. However, given the limitations of official data, which cannot reveal in what way determinate sentencing is being used – but rather only that it was used in a way that resulted in certain youths being sentenced to TYC – they likely are the closest approximation to reality possible to obtain short of collecting case-level data, including

interviews with prosecutors in each case, for all instances in which determinate sentence proceedings are or could be invoked.

Table 2 about here

Consider now how perceptions regarding the use of determinate sentencing vary by type of county. Table 3 shows that in rural and urban counties determinate sentencing is used primarily as an alternative to waiver, while in suburban counties it is used about equally as an alternative to indeterminate sentencing and as an alternative to waiver. Due to some of the complexity involved in the use of determinate sentencing, including the need for grand jury hearings, it perhaps is unsurprising that approximately half of all respondents from rural counties reported little use of determinate sentencing.[12] However, it is somewhat surprising that approximately the same percentage of respondents from suburban counties also reported that determinate sentencing is never or rarely used, a fact that may be attributable to limited court resources in both settings (see Sanborn 1996:105).[13]

Table 3 about here

Finally, consider that 45 percent of defense attorneys, compared with 13 percent of prosecutors, thought that prosecutor's offices had formal policies for processing determinate sentence eligible offenders.[14] Defense attorneys clearly were more likely than prosecutors to view the use of determinate sentencing as arising from formal policies. Regardless of these differences, however, practitioners as a group varied widely in their perceptions about the substantive nature of these policies, whether formal or informal. Specifically, practitioners described the following substantive policies for the use of determinate sentencing[15]:

- non-discretionary, automatic use (or non-use),
- non-discretionary, automatic use (or non-use) only for certain offenses or offense grades,

- discretionary case-by-case use,
- discretionary case-by-case use only for waiver eligible (or ineligible) serious offenders,
- random use.

It is evident that perceptions about how determinate sentencing is used varies according to practitioner role and area of jurisdiction, that there are both formal and informal policies regarding its use, and that these policies vary along several dimensions (Is it used with discretion? Is it used only for certain offenses or offenders? Is its use random?). What is less evident is why. One clue comes from interviews with practitioners. One prosecutor in a suburban county known for its "get tough" orientation toward juvenile crime stated the following about the use of determinate sentencing in his jurisdiction:

> It's an age and offense category that kind of makes us decide sometimes. The other thing is just trying to figure out what we think is the most appropriate for the kid. I mean, we've had determinate sentencing for a guy who stabbed his next-door neighbor – nine times, I believe it was – and it wasn't an option to certify because he was too young.

In this county, determinate sentencing is used in a discretionary manner, and its use depends upon what prosecutors think is most appropriate for each youth, as well as the options (e.g., certification) that are available. Contrast this use with that described by a prosecutor in an equally "get tough" but urban county:

> Our policy is that all of the offenses that are within the [determinate sentence] list go to the grand jury, as long as its an appropriate case – and that's basically 98 percent of them. I know there are a lot of jurisdictions that don't do that and in fact may not send any. Then there are jurisdictions that send a few. Our jurisdiction has decided that if the law allows [the use of determinate sentencing] and that [a determinate sentence eligible case] should be reviewed by a grand jury, then that's what will happen. [When asked why this policy existed, the respondent replied: "The law so provides."]

Compared with the first county, prosecutors in this county use determinate sentencing in a non-discretionary, automatic manner, with little or no consideration given to available alternative

options.[16] Clearly, one promotes discretionary use and the other not.

Consider now the facts that have been presented: practitioners view determinate sentencing as being used in two distinct ways (as an alternative to indeterminate sentencing or to waiver); they have divergent views about whether prosecutors have formal or informal policies for processing offenders eligible for determinate sentencing; and they describe substantively divergent policies and reasons for why and how determinate sentencing is used. What, then, do these facts say about sentencing as a decision making process involving multiple actors, contexts, and outcomes?

First, insofar as sentencing involves decision making processes that include multiple actors, the knowledge and motivation that each actor brings presumably bears upon particular decisions made at different stages in the sentencing process (Sudnow 1964; Blumberg 1967; Cicourel 1976). For example, if a defense attorney believes, correctly or not, that the policy of the local prosecutor is one of using determinate sentencing primarily as an alternative to indeterminate sentencing, or that the policy is one of automatically using determinate sentencing, then the strategies he or she applies presumably will vary. One defense attorney stated: "It seems like the head prosecutor uses [determinate sentencing] as a threat to try to intimidate me, which just pisses me off and makes me work harder." Alternatively, a chief probation officer in an urban county described how defense attorneys in his jurisdiction typically approached juvenile cases:

> Most of the defense attorneys are court-appointed, so they're going to make the same amount of money in twenty minutes that they'll make in three hours. So why pretend that, as a defense attorney, you can fight this thing and win, particularly when there's no advantage to anyone, especially in the juvenile system where you have the family that is usually wanting the child to repent, to demonstrate remorse, and who want the supervision that's going to come with being found guilty. The kid is the least involved actor in this whole deal.

Insofar as this latter description of defense attorneys is apt (and it was borne out in interviews with defense attorneys), it suggests that many decisions are being made long before the final sentencing decision that eventually will be registered in analyses as a "prior adjudication," "prior

probation," "prior incarceration," etc.[17]

It is not, however, only prosecutors and defense attorneys who figure as key actors in sentencing, but judges, probation officers, court coordinators, etc., all of whom may, and generally must, cooperate with one another. As one practitioner stated bluntly:

> I think that if you talk to our judges, you'll find them to be pretty much in control. Prosecutors certainly are a separate arm of the law. But, you know, they work eight-to-five, or whatever, every day in the room together. Nobody really wants to get up every day and come down and get in a pissing contest.

In short, given the potential influence of different actors at various stages in the sentencing process, the finding that practitioners are operating with fundamentally different views of likely or actual sentencing practices becomes striking.

Second, the facts above suggest the operation of different contextual factors that affect how determinate sentencing is used. Such factors do not necessarily operate in a clear or consistent manner, or even at all levels of analysis (e.g., individuals, courts, counties, regions, etc.), but nonetheless may be relevant for predicting sentencing.[18] One consistent factor, though, may be the cultural context within which legal decision making occurs (Dawson 1992:1047). Although admittedly a vague concept as stated (and generally as operationalized in research), it suggests why in several large urban jurisdictions, which seemingly are comparable along several major dimensions (e.g., caseload, availability of resources, juvenile arrest rates), divergent policies or practices prevail. In one, determinate sentencing is pursued in a non-discretionary, automatic manner, enough so that the jurisdiction has a reputation for routinized, "by the book," procedural decision making. In another, determinate sentencing is pursued on a case-by-case basis or, as one practitioner described it, according to "good old boy" standards. In still another, determinate sentencing is used on a discretionary, offense-specific basis; this jurisdiction is one in which the same set of practitioners have been in place for an extended period of time, with clear agendas established against certain crimes. Given these different contexts, the substantive policies guiding the use of determinate sentencing should not be surprising. Nonetheless, the existence of

such divergent policies and the potential effect they have for the use of determinate sentencing presents direct implications for our ability to identify and predict systematic patterns in sentencing.

Third, the data suggest that prediction and interpretation of outcomes cannot be undertaken in any simple or direct manner (this issue is discussed in greater detail below). Not only are different decisions made for different reasons at different stages in the processing of juveniles, but decisions at later stages in part are predicated upon decisions made earlier (Blumstein et al. 1983; Mahoney 1987). As Feld (1993a) has noted:

> Every time a juvenile court judge incarcerates a youth without representation, or uses prior uncounseled convictions to sentence a juvenile, to impose a mandatory minimum or enhanced sentence, to waive a juvenile to criminal court, or to "bootstrap" a status offender into a delinquent through the contempt power, he or she compounds the problems associated with the original denial of counsel. (P. 225; Feld 1989)

Thus, for example, many prosecutors in the present study expressed frustration with juveniles who have long records of prior referrals and adjudications but no commitments to TYC. These prosecutors were far more likely to pursue commitment rather than probation in cases where they felt – correctly or not – that a juvenile had been treated too leniently in the past. Similarly, plea negotiations (about which more will be discussed below) frequently can result in particular outcomes that diverge greatly from what would occur were a trial to be sought. Moreover, as a review of the various policies reveals, different approaches to the use of determinate sentencing result in possibly similar outcomes, thereby rendering suspect any uniform interpretation of the "meaning" of a determinate sentence.

Having thus argued for viewing sentencing as part of an overall decision making process involving multiple actors, contexts, and outcomes, the discussion now turns to a more detailed examination of sentencing outcomes. It should be emphasized that each of the dimensions discussed in this paper overlap to a certain extent such that some examples may appear to have relevance to several dimensions. However, what is important is that these dimensions be seen

for what they are: that is, as analytically distinct aspects of decision making that have direct bearing on the description, prediction, and assessment of sentencing.

2. Sentencing Outcomes

A consistent shortcoming of sentencing research is the limited conceptualization of the dependent variable, which frequently is limited to dichotomous outcomes or to stage-specific analyses. Such conceptualizations fail to consider three inter-related facts: (1) usually there is more than one sentencing outcome available, (2) the comparisons of different groups of offenders, through the use of controls, is problematic, (3) the significance of particular sentencing outcomes is partly a function of previous decisions or of decisions anticipated to occur at later stages. As in the previous section, these points are developed through reference to determinate sentencing.

Available Sentencing Options

One typical approach to statistical modeling of dispositional outcomes among juveniles is to use logistic regression, where waiver/non-waiver is the dependent variable and legal and extra-legal variables are the independent variables (Howell 1996). The question arises, however, whether such models reflect outcomes of actual decision making processes? Consider a recent study of determinate sentencing by Fritsch, Hemmens, and Caeti (1996), which found that determinately sentenced youths receive and serve less lengthy sentences than do their waived counterparts. From this finding the authors concluded that the recent expansion and modification of the determinate sentence statute is likely to be ineffective (Fritsch, Hemmens, & Caeti 1996:128). The conclusion is problematic if only because it is unclear that determinate sentencing was ever meant to provide a tougher alternative to waiver (Mears 1998). More importantly for the discussion at hand is the restriction of the analysis to two outcomes

(determinate sentence versus waiver) rather than multiple outcomes (e.g., probation, indeterminate commitment, determinate sentence, waiver) for the two groups of youths. This type of restriction is unrealistic, but nonetheless pervades the research literature on waiver (Howell 1996). In reality, prosecutors make decisions at disposition – and prior to disposition (e.g., during plea negotiations) – among a wide range of dispositional options (Mahoney 1987; Sanborn 1993; Champion 1998).

In Texas, the available options for a juvenile prosecutor include, in increasing order of putative severity: dismissal, probation, residential placement, indeterminate commitment, determinate sentencing (when the offense allows), and waiver (when the offense and the age of the offender allows). Selection of only two outcomes (determinate sentencing and waiver) for an analysis thus clearly would distort the actual sentencing process and render difficult, if not misleading, interpretation of standard controls or independent variables. This problem is exacerbated by the fact that certain sets of dispositional outcomes may be unique to certain groups of offenders. For example, Fritsch, Hemmens, and Caeti (1996) correctly limited their comparison of determinately sentenced and waived youths to include only those determinately sentenced youths whose age made them eligible for waiver. However, their generalization about the unlikely effectiveness of determinate sentencing fails to consider that it also is used for youths who cannot be waived. That is, their summary assessment of determinate sentencing[19] would be appropriate only if determinately sentenced youth were all like those of Fritsch, Hemmens, and Caeti's (1996) sample (and if the goal of determinate sentencing were lengthier sentences than waiver affords); but they are not – some juveniles who cannot be waived frequently are given determinate sentences.

In short, any analysis of determinate sentencing likely would need to consider the following issues to obtain interpretable results: (1) there are two sets of dispositional options available to prosecutors, depending upon the offense that has been committed and the age of the offender; (2) there may be differences in the actual and perceived goals associated with each of several options, and this variation itself may be a function of whether waiver is an option; (3) there may

be variation in dispositional categories such that some youths are "determinately sentenced" for quite different reasons than are others. Indeed, analyses of each of these three issues supports their actual rather than hypothetical relevance.

The first issue is a definitional if not empirical fact. For youth who are under the age of waiver and who have committed an offense for which determinate sentence proceedings can be invoked, at least three dispositional options are available to prosecutors: probation, indeterminate commitment, and determinate sentence. For youth who are eligible for waiver and who have committed an offense for which determinate sentence proceedings can be invoked, a fourth dispositional option, waiver, is available to prosecutors. (Of course, a successful waiver need not necessarily result in incarceration or a lengthier term of incarceration than otherwise would be received in the juvenile court – see Dawson 1992; more generally, see Howell 1996).

These distinctions are not merely definitional, however. Many prosecutors interviewed for the present study indicated that the availability of waiver fundamentally affected their decision about how to proceed with a particular case, including the type of plea bargaining they would undertake (discussed below). Results from the survey support this view: practitioners viewed determinate sentencing as being used in two distinct ways – as an alternative to indeterminate sentencing or as an alternative to waiver. At the very least, then, we would expect indeterminate sentencing to be one of the available outcomes modeled in any analysis of determinate sentencing.

In addition, and perhaps more importantly, we would expect probation also to be one of the available outcomes included in any analysis of determinate sentencing. It might seem unrealistic to include probation as a potential disposition when more serious dispositions, which have been created specifically to address serious juvenile crime, are available. That is, a seemingly reasonable assumption would be that a juvenile eligible for a determinate sentence or waiver perforce must be a serious offender, thereby rendering inclusion of probation in analyses inappropriate. However, most practitioners interviewed for the present study indicated that this is not true: not only are many juveniles who are eligible for either a determinate sentence or

waiver not necessarily serious offenders, but, even if they were, probation still might be considered. Remarkably, several defense attorneys stated that occasionally in plea bargain negotiations they actually pursued for their clients an indeterminate sentence at TYC instead of probation under determinate sentencing. Their reasoning was that the youth might have to endure only a relatively short length of stay under an indeterminate sentence to TYC, whereas probation under determinate sentencing, if violated, would expose the youth to a potentially quite lengthy term of incarceration.[20]

The second issue – that there may be differences in the actual and perceived goals associated with each of several options, and that this variation itself may be a function of whether waiver is an option – is empirically supported. As a matter of legislative record, determinate sentencing was created (1) to provide a tougher alternative than conventional delinquency proceedings for juveniles under the age of waiver, and (2) to provide a last chance at rehabilitation for juveniles eligible, but not necessarily appropriate, for waiver (Dawson 1988). The first of these goals could perhaps be viewed as constituting a tough, second-best alternative to waiver when waiver is not an option, but clearly the second cannot. In the latter instance, determinate sentencing was created explicitly as a presumably more lenient alternative to waiver (Anderson & Bradley 1995). The question thus arises: Do practitioners have similar perceptions about the goals of determinate sentencing?

Review of Table 2 reveals two quite divergent perceptions about the use of determinate sentencing. On one hand, many practitioners view it as being used as an alternative to indeterminate sentencing; on the other hand, most view it as being used as an alternative to waiver. What Table 2 does not capture is the range of uses to which determinate sentencing can be put. Consider, for example, the following abbreviated list of types of uses to which practitioners reported determinate sentencing being put:

- plea bargaining for more certain adjudications, tougher sanctions, assistance in prosecuting the youth's associates, or managing the court docket (see Sanborn 1993),
- ensuring that juveniles receive services than they otherwise would receive locally by

sentencing them to TYC,

- providing services not available locally and for lengthy periods of time,
- serving as a tougher (not more lenient) alternative to waiver.

Though not proscribed by law, neither are such uses in keeping with the legislatively defined goals of determinate sentencing. Moreover, they reflect enormous variation in the perceived goals or appropriate uses of determinate sentencing, variation that itself is partly a function of whether waiver is an available dispositional alternative.

The third issue – that there may be variation in dispositional categories such that some youths are "determinately sentenced" for quite different reasons than are others – is, as the discussion above demonstrates, empirically supported. Practitioners reported determinate sentencing being used in quite disparate ways and for different reasons. For example, among practitioners who reported determinate sentencing as being used primarily as an alternative to waiver, there is wide variation in the reported sub-variation within this type of use. At two extremes are respondents who view determinate sentencing as a tougher alternative to waiver and those who view it as a more lenient alternative to waiver. Others view determinate sentencing as a means by which to provide services that juveniles would not receive locally. All three of these approaches result in a juvenile who is "determinately sentenced," but it is questionable whether aggregating all such youth into one category for purposes of analysis would be appropriate. Indeed, it also is questionable whether aggregating all waived youth into one category for purposes of analysis is appropriate given the extreme selectivity involved in the process of obtaining a transfer hearing and then of hearings resulting in incarceration (Dawson 1992:1032).

Although this analysis has been restricted to determinate sentencing of juveniles in Texas, the more general methodological points have direct bearing upon existing juvenile and adult sentencing research. These points, which parallel those described for determinate sentencing, include the following: (1) different constellations of sentencing options may vary according to offense type, age, or other factors; (2) the actual or perceived goals associated with different sentencing options may vary, and this variation may itself be a function of the set of options

available; (3) there may be variation within groups (e.g., among individuals who have been given probation, placed on ISP, or incarcerated [whether in juvenile or adult facilities]) such that interpretation of the meaning of a given sentence is difficult to assess. Research that fails to consider these different issues risks creating a dependent variable of suspect meaning that then is "explained" using statistical models of equally suspect meaning.[21]

Appropriate Comparisons

An additional issue confronting researchers who attempt to predict sentencing outcomes is whether the comparisons used are appropriate. In the context of research on waiver, the question is whether the comparison of waived and non-waived youth, after controlling for relevant factors, is appropriate. As indicated in the discussion above, one problematic issue is that selection processes for placing a youth in one sentencing category or another depends largely upon the constellation of options available at the time of sentencing. For example, recall that in Texas determinate sentencing is available for all juveniles but that waiver is only available for juveniles ages 14 through 16. A failure to differentiate determinately sentenced youth for whom waiver was an option from those for whom waiver was not an option would fail to account for systematic selectivity within both the determinately sentenced and waived populations.

From Table 2 recall that practitioners viewed determinate sentencing as being applied equally in two quite distinct ways: as an alternative to indeterminate sentencing and as an alternative to waiver. Fritsch, Hemmens, and Caeti (1996) have argued that determinate sentencing is ineffective because juveniles generally receive and serve less lengthy sentences than do waived juveniles. Clearly, however, the results from Table 2 suggest that for a significant proportion of all determinately sentenced youths, indeterminate sentencing, rather than waiver, is the appropriate comparison. This finding suggests that a prosecutor's reasons for determinately sentencing a youth for whom waiver was an option may be quite different for determinately sentencing a youth for whom waiver was not an option. Alternatively, the meaning of a

particular sentencing outcome may vary depending upon the prosecutor's options, which, in turn, may affect the determination of appropriate comparison groups (Sanborn 1994a:266-67).

In addition, the meaning of particular sentencing outcomes, regardless of whether waiver is an option, may vary over time. Recall the recent expansion of determinate sentencing to include not only capital and first degree felonies but second and third degree felonies as well. Determinately sentenced youths today include not only offenders who commit offenses that were eligible for determinate sentencing prior to the recent legislation, but also offenders who have committed offenses that became eligible for determinate sentencing as a result of the recent legislation. Many prosecutors interviewed for this research expressed strongly divergent views about whether determinate sentencing was appropriate for several of the new offenses. By contrast, most agreed that the original five offenses, given their extreme seriousness, were appropriate. Thus, in recent years there appears to be less consensus among practitioners as to the offenses, or instances of offenses, when determinate sentencing is appropriate. Comparisons among determinately sentenced populations therefore likely would require attention to the type of offense committed and the year in which it occurred (e.g., pre-1995 and post-1995 reforms).

It should be noted that the problem here is not the absence of adequate controls. Indeed, even with the introduction of a wide range of controls, the assumption that thereby there would be created two roughly comparable groups for purposes of comparison would be highly problematic. As Lieberson (1985) has argued:

> The application of controls will decline radically if scholars consider the conditions under which variables are taken into account. Because of selective processes that cannot be ruled out by the control approach, controls are as likely as not actually to worsen approximation of the true influence of the causal variable of interest. (P. 206)

Lieberson's (1985) point is that the use of controls involves the assumption that no initial selective sorting process occurs and, if it does, that it has no effect upon the dependent variable under consideration (see also Blumstein et al. 1983:99; Smith & Paternoster 1990). But this precisely is the issue with determinate sentencing and with waiver or sentencing decisions

generally. That is, there may be some unmeasured nonrandom process (a) that leads one population (e.g., minorities) to have different distributions of relevant independent variables (e.g., prior history of offending), and (b) that has an effect on the dependent variable (e.g., sentencing outcome).

Effects of Previous or Anticipated Decisions on Sentencing Outcomes

Earlier in this paper it was argued that all too often the conceptualization of the dependent variable involves a simplified notion of sentencing. For example, the dependent variable frequently is construed as a binary option (e.g., probation versus incarceration), or it is limited to variation in sentence length given, or sentence type and length are viewed as distinct outcomes. As suggested above, this approach fails to consider that rarely are sentencing decisions made with so few options available. However, this approach also fails to recognize that sentencing occurs within a larger context wherein consideration is given to decisions made at previous stages in the justice process and to decisions anticipated at later stages (Blumstein et al. 1983:124-25). Such considerations affect the significance of particular sentencing outcomes, which, in turn, affects our ability to model outcomes statistically or to interpret meaningfully their significance. Two examples will be discussed.

First, the decision to plea bargain can affect the prosecutor's decision about the type of sentence to seek. If a defense attorney declines to plea bargain, or disagrees with the types of stipulations the prosecutor seeks, the prosecutor at disposition may seek a tougher sanction than what otherwise might have obtained. Conversely, it is likely, although by no means necessary, that plea agreements can result in less severe sanctions than what prosecutors otherwise would obtain. Consider, therefore, that over 40 percent of practitioners in the present research indicated that prosecutors "most of the time" or "often" were likely to invoke determinate sentence proceedings primarily for obtaining plea bargaining leverage. This percentage increases to 68 percent if the category "sometimes" is included. Put differently, only 7 percent of the

practitioners reported that prosecutors never used determinate sentencing in this way, and only 24 percent said it was used in this way infrequently. In short, decisions made during the pre-sentencing stages of the justice process (e.g., decisions to plea bargain or how to plea bargain) can affect actual sentencing decisions. Failure to incorporate systematic patterns in such decisions therefore can distort the meaning and interpretability of control variables in statistical models (Lieberson 1985).

Second, the decisions anticipated to occur at later stages in the justice process can affect the decision to seek determinate sentencing. For example, many prosecutors interviewed for this study indicated that the changed policies at TYC increased their trust that juveniles actually would serve a significant period of time incarcerated at a juvenile facility. Consider the comments of a prosecutor from one suburban county:

> Determinate sentencing opened up an option for me to be able to have a more definite idea of how long the juvenile is going to stay in [TYC]. It was very difficult without that option because you never knew how long the juvenile was going to stay [there]. You never really got to know if it was going to be thirty days, ninety days, one year, eighteen months.

The effect of this prosecutor's increased trust appears to be a modification of the types of sentences he would have pursued in the past. Thus, insofar as this is true, a comparison of similarly sentenced youth from the 1980s and 1990s would need to account for changed perceptions of prosecutors regarding particular outcomes.

The idea that previous or anticipated decisions in the justice process should affect sentencing outcomes should be no surprise. For example, research has shown that juveniles who are detained are sanctioned more severely than those who are not (Feld 1988), and that differences in the effects of screening and processing on dispositions varies by whether juveniles reside in rural or urban counties with part-time or full-time courts (Feld 1991; Feld 1993a). But what is surprising is that sentencing research frequently ignores this issue in developing and interpreting statistical models. If future research on sentencing is to progress past the current stage of development, this issue, along with those discussed in the remainder of this paper, will need to be

addressed.

3. Determinants of Sentencing

Existing research on sentencing decisions rarely involves a systematic or comprehensive analysis of more than a few causally relevant variables. As Blumstein et al. (1983:69) have written: "To date, the general state of knowledge about the factors influencing sentence outcomes remains largely fragmented, and there is no widely accepted theory on the determinants of sentences." This trend likely stems from the pragmatic desire among researchers to include only those variables that are amenable to empirical analysis. However, an equally pragmatic view – and one that constitutes the central argument of this paper – assumes that it is critical first to know what should be modeled before an adequate theoretical or statistical model of sentencing can be developed and, as importantly, before we can collect the data necessary for such modeling. From this perspective, existing attempts to statistically model sentencing decisions neglect a wide range of potentially relevant factors. The significance of such omissions should not be understated: not only is our ability to enhance prediction of sentences constrained, but the true effects of currently emphasized variables (e.g., prior record, race, organizational context) may be masked or exaggerated (Lieberson 1985; Shapiro 1985). This section highlights a range of factors – sentencing goals, case-specific factors, characteristics of participants, organizational context, and cultural, political, and social contexts (see Table 1) – that can affect sentencing decisions. It is argued that these types of factors are relevant not only for sentencing of juveniles in Texas but for cases in juvenile and criminal court contexts in other states.

Before proceeding, three points should be emphasized. First, some of the specific examples discussed below are unique to determinate sentencing, but many are not. Second, this list does not purport to be exhaustive. Other types of factors may be relevant, depending upon the particular context in which specific types of sentencing decisions are being made. Third, when considering determinants of sentencing, it is important not to lose sight of sentencing as a process

that potentially involves multiple sets of outcomes. For instance, determinants quite likely can be of a processual nature (as when a formal or informal method of processing certain types of cases changes from one year to the next) and can vary in their effect depending upon the set of dispositional options available. That said, the following discussion briefly provides a listing of the types of factors that to varying degrees affect sentencing decisions.

Goals

Sentencing is a decision making process affected by the goals associated with particular sentencing systems, frameworks, or options. These goals are defined legislatively and with varying degrees of specificity (see, for example, the essays in von Hirsch & Ashworth 1992). The most frequently emphasized goals include: (a) public safety (achieved through general or specific deterrence, incapacitation, or rehabilitation), (b) "just deserts" (achieved through retributive sanctioning), (c) maintaining moral order (i.e., normative validation, achieved through sanctioning generally), and (d) treatment of the offender (achieved through education and rehabilitation). Such goals are quite general and may underlie more specific goals. For example, as stated earlier, determinate sentencing is designed (1) to provide a tougher alternative to indeterminate sentencing in cases where waiver is not possible, and (2) to provide a more lenient alternative to waiver in cases where waiver would not be appropriate (Dawson 1988).

More often than not, several goals will be emphasized, as will be the means by which these goals are achieved. One result is that occasionally two or more goals, or two or more means to different goals, will come into conflict with one another. With determinate sentencing, clearly one goal strongly emphasizes public safety and retribution, while the other goal emphasizes treatment of the offender. In neither case, however, is the emphasis necessarily total. Thus, in the first instance, rehabilitation still may be a relevant consideration, and, in the second instance, retribution also may be a relevant consideration.

Given this type of ambiguity (e.g., we lack information concerning precisely what weights to

give which goals and which means under which conditions), a priori it is likely that dissensus among practitioners within and across courts, and among courts within and across jurisdictions, regarding the actual or appropriate goals of sentencing will influence strongly actual decision making processes and outcomes. Although such dissensus might be less relevant in jurisdictions governed by sentencing guidelines, it would be of direct relevance for predicting sentencing patterns among prosecutors who hold different views of the goals of sentencing. It thus is surprising that research on sentencing outcomes rarely takes into account practitioner perceptions about what the goals, and associated means to the goals, of sentencing are or should be (see, however, Sanborn 1996). Instead, research typically focuses on broad distinctions between legal and extra-legal variables. Legal variables generally are those factors that are prescribed by law as relevant to determining sentences; offense type and severity, and prior history of offending are the two most frequently used such factors. (The commission of an offense is, of course, a de facto requirement for juvenile or criminal processing to occur.) Extra-legal variables generally include those factors that either are proscribed (e.g., race), or are neither prescribed nor proscribed (e.g., caseload). Despite the fact that sentencing frequently appears to involve multiple types of extra-legal variables, it is rare for these to be included in statistical models of sentencing. In this section, the relationship between the goals of sentencing and the use of legal variables is explored. Discussion of extra-legal variables, as presented in Table 1, then will be provided.

Not surprisingly, practitioners in the interviews and surveys considered legal factors (e.g., type and severity of offense, presence of a weapon, prior history of offending) to be critical in determining the outcome of particular cases.[22] Nonetheless, it was rare for any practitioner – regardless of perceptions about the actual or appropriate goals of determinate sentencing – to suggest that sentencing decisions were based on only these factors. Moreover, the effect of these factors was held to be contingent upon other factors (e.g., the nature of the case, harm to victims, available court or local rehabilitative resources, etc.). To highlight this fact, and to illustrate how the sentencing options available can moderate the effects of legal and extra-legal factors on

sentencing, consider the following exchange between the interviewer (I) and a prosecutor (P) from a large urban county:

> I: It sounds like the policy [in your county] in situations where regular commitment proceedings and determinate sentence proceedings are the only options is always to go for determinate sentencing. Is it like that in a situation where certification is an option?
>
> P: No. [The use of certification] is more a function of the elements of certification for a felony – you know, a serious offense, typically against a person, and so on. That's not to say that in past years we haven't [used certification] on property offenders, but it's hard to quantify that because it's a balancing act based on the defendant's background and history and on the current offense. It's a balance of those factors.

In this exchange, the prosecutor states that only a legal factor (i.e., commission of an eligible offense) dictates whether determinate sentence proceedings are pursued but that extra-legal factors govern the decision to certify a juvenile.[23] By contrast, some prosecutors reported that even if the opportunity arises they never use determinate sentencing, while others use it only for certain types of offenses.

Consideration of these findings is striking when we consider how rarely theoretical or empirical research incorporates expectations about interaction effects between or among legal and extra-legal variables (for similar observations, see Blumstein et al. 1983; Myers & Talarico 1987; Pope & Feyerherm 1993)[24], much less about effects of legal or extra-legal variables depending upon available sentencing options. They are more striking when we consider that the effects of legal variables (e.g., offense type) may vary by county, organizational constraints, or cultural context, as the following statement by one prosecutor reveals:

> In some counties that kid with the one marijuana cigarette is going to have the book thrown at him and be sent to [TYC]. In other places like _____, simply because of the volume that we're talking about, that kid may have nothing happen to him. There's a lot of factors – resources, volume of cases, political attitude, is the district attorney up for re-election? – [that affect how a given case is handled].

As this example and those above indicate, the effects of legal variables can be conditioned by other variables. Thus, even if we assume that legal variables are relevant to sentencing outcomes, the effect itself need not necessarily be an obvious or direct one. Indeed, within any one legal variable (e.g., offense type) there may be considerable variation that affects how the case is processed. Consider the following comments made by one prosecutor about how similarly classified events can represent quite different events:

> [Two] kids go in [to a convenience store]. They're pointing a big old gun in the clerk's face, and he's begging for his life, trying to give them all the money. It's a very horrifying thing. That's an aggravated robbery. Okay? Now, you get the little kid at school who says, "I've got a knife in my pocket and if you don't give me your lunch money, I'm going to cut you with my knife." That's an aggravated robbery. But those [aggravated robberies] are two very different offenses!

In short, considerable attention should attend attempts to "control" for legal variables without carefully and systematically considering the potential ways in which they affect sentencing outcomes (see Lieberson 1985; Myers 1995:419-20).

The categorization relied upon in the remaining discussion distinguishes among case-specific factors, characteristics of participants, organizational context, and cultural, political, and social contexts. Although other categorizations surely can be developed (see, for example, Blumstein et al. 1983:70-71), they all likely would share an emphasis upon describing micro and macro-level structures and processes that systematically affect sentencing outcomes.

Case-Specific Factors

Case-specific factors refer to the nexus of factors unique to the case involved, including the offender's and/or the victim's age, sex, race, ethnicity, socioeconomic status, history of offending, gang affiliation, etc., and, more generally, the circumstances surrounding a particular criminal event. As with legal variables, the effects of these factors need not necessarily be direct;

they may condition, or be conditioned by, other factors. It is not possible here to relate all possible case-specific factors nor to demonstrate empirically their actual relevance. However, one example, gang affiliation, should suffice to demonstrate the necessity of considering carefully the ways in which case-specific factors can affect sentencing decisions.

In recent years, concern and publicity about gang activity has increased dramatically (Howell 1994; Klein 1995; Triplett 1996). For example, TYC reports a large increase in the 1990s in the percentage of its youthful population self-identifying as a gang member (Briscoe 1997). Moreover, interviews with practitioners across Texas suggest that concerns about gang activity are widespread. But does this concern translate into systematic patterns in sentencing? If so, how?

One way to examine this question is to consider a typical description of juvenile offenders that emerged in many of the interviews. Commenting upon the effectiveness of "get tough" measures in his community, one juvenile court judge stated:

> I think that adult gang members were using juveniles to do the serious crimes and telling them, "Nothing is going to happen to you. You're just going to get spanked on the hand." One thing [that we are doing is] taking some of the predators off of the streets – I mean, the children who are very serious offenders, who are repeat offenders, who are very dangerous. We don't know how to rehabilitate them, but they basically are being taken off the street for their adolescence and well into their twenties.

Here, the respondent transitions subtly from implying that juveniles who are influenced by adult gang members are relatively innocent to describing these same juveniles as predators. The apparent logic is that inadequate sanctioning measures, as well as association with adult gang members, cause innocent juveniles to become predator-like and thus beyond redemption. Although the judge then limits his characterization only to those "children who are very serious offenders, who are repeat offenders," this qualification was not consistently maintained throughout the interview. Indeed, his comments consistently implied that in the 1990s <u>all</u> juveniles have been and will be more violent. The validity of this view is not relevant here (see,

however, Bernard 1992; Sutton 1994; Snyder 1997). What is relevant is that many practitioners, particularly prosecutors, who were interviewed for this study applied a similar type of logic. Frequently, reference to gang membership and activity seemed to serve as a short-hand for implying that juveniles today are predators and thus deserve as severe a punishment as possible.[25] Such views appeared to be more prevalent, even among defense attorneys, in urban areas.

The point is this: Insofar as practitioners associate gang membership (or any factor, such as race or sex) with a greater likelihood of a juvenile being beyond redemption, there is a greater likelihood that disproportionately severe sanctions, net of controls for offense type, severity, or history, will be applied to that juvenile (Sanborn 1993, 1996).[26] Moreover, the emphasis given to a factor like gang membership may vary both within and across counties. Practitioners in urban counties, for example, displayed a greater tendency than practitioners in rural areas to emphasize not only gang membership but the meaning associated with it. The more general point is that practitioners may use certain case-specific factors, or clusters of such factors, to identify certain cases as being of a particular "type" (Sudnow 1964) in order to streamline decision making (Blumberg 1967; March & Olsen 1976; Jacob 1983) and to legitimize these decisions (Meyer & Rowan 1977). This information in turn consistently may be used to justify application of a particular type of sentence or simply to assist with efficient processing of cases (Dixon 1995).

Characteristics of Court Practitioners

It would seem self-evident that the characteristics, attitudes, and perceptions of court practitioners affect sentencing decisions, yet researchers rarely include such factors in their analyses. Although inclusion of such factors admittedly poses considerable methodological challenges, the widespread failure even to acknowledge or consider their influence is striking. By way of illustration, particular focus is given in this section to the ways in which prosecutorial

attitudes and perceptions can affect sentencing decisions.

Prosecutors play a central role in the processing of both juveniles and adults. Juvenile court prosecutors in Texas occupy a singularly unique role in sentencing due to their capacity to voluntarily invoke determinate sentence proceedings (assuming commission of an eligible offense) as an alternative to conventional delinquency proceedings or, when the child is old enough, to waiver. Dawson (1990b:1906-907) has identified several factors that potentially can affect a prosecutor's decision to pursue determinate sentencing: (a) belief that any instance of a particular offense by an offender under the age of waiver merits use of determinate sentencing; (b) belief that the discretion as to whether to proceed with determinate sentencing should always rest with grand juries and thus all eligible offenses should be pursued as determinate sentencing cases (which requires grand jury approval); (c) desire to avoid lengthy waiver and/or adult sentencing proceedings[27]; (d) fear of the unknown or frustration with minute procedural details; (e) belief that use of determinate sentencing might increase plea bargaining leverage; and (f) desire to more equitably process multiple-respondent cases in which one respondent is below the age of waiver. Other factors suggested by juvenile justice practitioners interviewed for this study include the prosecutor's philosophy of punishment, perceptions about likely sentence lengths to be received and served (including perceptions about the likely actions of judges and juries), and knowledge of programs available through TYC. Although some of these factors may be of more or less relevance to prosecutorial decision making, it is notable that were even one of them to exert any particularly strong influence and yet not be included in statistical analyses, resulting sentencing models would be specified improperly and the meaning of general outcome categories (such as determinate sentence versus waiver) would be rendered ambiguous.

To explore empirically this assertion, the present research asked juvenile justice practitioners to assess the extent to which a range of seemingly relevant factors were likely to affect the decision to use determinate sentencing (see Table 4[28]). Three patterns are notable: 65 percent of respondents stated that the prosecutor's philosophy of punishment had a strong effect on the use of determinate sentencing, 60 percent stated that prosecutorial attempts to obtain plea bargaining

leverage had a moderate to strong effect, and 57 percent of respondents stated that prosecutorial attempts to obtain stricter terms of probation also had a moderate to strong effect. These findings suggest that prosecutors significantly affect the use of determinate sentencing, and do so in varied ways.

Still, the response categories do not reveal the precise direction or ways in which prosecutorial influence is wielded. For example, the philosophy of punishment of one prosecutor can contradict another prosecutor's. In fact, one defense attorney in a rural county described how juvenile cases in an adjacent county were handled in a manner entirely different from how juvenile cases in her county were handled, which she attributed not to demographics, caseload, and the like, but to differences in philosophies that each county prosecutor exhibited. Of particular interest was the fact that both prosecutors adopted a "get tough" philosophy with adults, but only one maintained this philosophy with juveniles (the other prosecutor adopted the philosophy that it was best to keep juveniles locally and to focus on rehabilitation). This difference in approach suggests the strong influence that a prosecutor's philosophy of punishment carries. It also suggests the particular leeway afforded juvenile prosecutors. As the defense attorney in this example noted, it would seem that elections generally are won or lost based on a prosecutor's attitude toward or treatment of adults, not juveniles.

Table 4 about here

One final, and perhaps less obvious, example is that of using determinate sentencing to obtain greater plea bargaining leverage: one prosecutor may seek plea bargaining leverage to indeterminately sentence a juvenile who in the past likely would have been placed on probation, while with the same case another prosecutor may seek plea bargaining leverage to obtain a stricter level of probation.[29] In this example, determinate sentencing quite clearly is being used and it is being used in distinct ways, but in neither instance would the sentenced juvenile appear in official records as a determinately sentenced youth. Thus, understanding why juveniles are

sentenced the way they are requires more than merely controlling for a plea bargaining variable; it requires understanding the different uses to which plea bargaining is being put by different prosecutors.

Organizational Context

Sentencing outcomes are produced in organizational contexts, and it therefore is logical to expect that these contexts produce variation in sentencing. In the sentencing literature, organizational context typically is described with reference to court caseload or by using rural versus urban, tightly coupled versus loosely coupled, or bureaucratic versus non-bureaucratic distinctions (Dixon 1995; Hagan 1995). Such distinctions do not, however, in and of themselves identify how sentencing is affected. In addition, empirically-driven research generally neglects organizational context or fails to conceptualize adequately the ways in which organizational context affects sentencing outcomes (see, however, Myers & Talarico 1987; Dixon 1995).

What is needed are theories that can identify the ways in which particular types of organizational contexts, and aspects within these contexts, affect sentencing. Furthermore, before such theories are applied, a priori knowledge is needed about the substantive nature of sentencing in a particular setting. For example, within a tightly coupled system (Hagan 1995), it is possible that the nature of the relationship between prosecutors and judges or probation officers may affect sentencing outcomes in diverging or even opposite ways. In addition, the effects of a tightly coupled system may not be obvious with respect to whether and how certain other variables are relevant to sentencing. Consider the possible effects of race within two tightly coupled systems. In one all participants could be agreed that race is irrelevant to sentence severity, while in another all participants could be agreed that race is relevant either to increasing or to decreasing sentence severity. Here, the effect of coupling may be to make sentencing outcomes less variable (i.e., race is or is not consistently emphasized) but the substantive direction indicated for the effects of race (or other variables) cannot be determined a priori. The

issue is not simply how organizational context conditions the effect of other factors but whether certain organizational features are at all relevant and if so in what way.

Two key aspects of organizational context center around roles and administrative processes. In the context of determinate sentencing, consider the possible effects of the relationship between prosecutors and judges or probation officers (see Table 4). Table 4 reveals that approximately half of all respondents viewed the relationship between prosecutors and judges, and the relationship between prosecutors and probation officers as well, as having a moderate to strong effect on the use of determinate sentencing. Although such a finding is not particularly surprising, what is surprising is the diversity of effects that these relationships exert. For example, in one county the probation department's unwillingness to cooperate with what was perceived as the overzealous and inappropriate use of too harsh sentencing by prosecutors appeared to inhibit the use of determinate sentencing. Thus, if in a relatively weak case prosecutors used determinate sentencing to seek a stricter term of probation than could otherwise be obtained[30], including the possibility of a lengthy term of incarceration if probation were violated, the probation department reported that it would be unwilling to volunteer to the prosecutor's office non-felony offense behaviors that might result in the revocation of probation. The concern was that prosecutors were too willing to seek incarceration for minor infractions that nonetheless technically constituted revocable behaviors.[31] In this same county practitioners reported that judicial support for the use of determinate sentencing varied from judge to judge. For example, several defense attorneys expressed a preference for having cases that were eligible for determinate sentencing taken before one of the judges that preferred to see it being used in a highly selective manner.

Another organizational aspect of juvenile courts involves administrative processes that systematically facilitate or constrain decision making. As but one example, consider that 42 percent of respondents stated that the availability of court resources had a moderate to strong effect on the use of determinate sentencing (see Table 4). Similarly, half of all respondents stated that the availability of resources locally had a moderate to strong effect on the use of determinate

sentencing. As with the above example, this finding should not come as a particular surprise. What is surprising, though, is the diversity of effects that resources potentially can have. For example, if a county has many programs and services available locally, large juvenile court caseloads do not necessarily translate into greater numbers of juveniles determinately (or otherwise) sentenced to TYC. Prosecutors and judges, for example, may work to keep juvenile offenders, even relatively serious or violent offenders, in the local community. Conversely, if a county has few programs or services available locally, greater numbers of juveniles, even relatively non-serious, non-violent offenders, may be sentenced to TYC. Indeed, several prosecutors interviewed for this research suggested that frequently they sentenced juveniles to TYC not out of a desire to incapacitate or punish the juvenile per se but because of the availability of programs and services that the juvenile likely would receive while there.

As these examples suggest, two key issues for researchers are to identify those aspects of organizational context that affect sentencing and to discern the direction and magnitude of these effects. This exercise involves the difficult but critical enterprise of determining whether aspects of organizational context always have the same effect, sometimes have opposite effects (and, if so, under what conditions), or have effects that are negated by other organizational or non-organizational factors. Although research on organizational context (e.g., Myers & Talarico 1987; Dixon 1995) has advanced greatly in recent years, these types of issues have yet to be addressed but nonetheless arguably are central to interpreting aggregate sentencing outcomes (e.g., state-level percentages of juveniles retained in juvenile court or transferred to adult court).

Cultural, Political, and Social Contexts

A common recommendation at the end of research articles is for greater attention to the cultural, political, and social contexts in which sentencing occurs (Myers & Talarico 1987; Feld 1993a; Dixon 1995). It nonetheless remains rare for researchers to consider cultural, political, and social contexts (e.g., level of public support for particular sentencing policies, elections,

region of state, rural/suburban/urban settings, media coverage, amount and kind of juvenile crime, etc.) when attempting to model sentencing decisions. Of course, there are significant empirical and methodological barriers to creating models that systematically incorporate cultural, political, or social contextual information, but to date too few researchers have made the attempt, with the consequent risk of failing to identify important sources of variation in sentencing. As (Feld 1993a) has noted:

> Studies that analyze and interpret aggregated statewide data without accounting for procedural, contextual, and structural characteristics or intrastate variations may systematically mislead and obscure, rather than clarify. Studies reporting differences in juvenile courts' decision making actually may reflect sampling errors, population biases, or system differences. (P. 218; see also Howell 1996:51; Pope & Feyerherm 1993:9; Sampson & Lauritsen 1997:343)

As with the discussion above regarding other determinants of sentencing, a brief illustration is provided below to suggest further why and how incorporation of cultural, political, and social contextual information is critical to describing and predicting sentencing outcomes.

During interviews with juvenile justice practitioners, many respondents emphasized two factors – public support for harsher punishments and media coverage of juvenile crime – as strongly influencing how particular kinds of cases were handled. Table 4 displays the distribution of survey responses that practitioners gave when queried about these two factors. Over 76 percent of respondents reported that public support for lengthier or harsher sentences had a moderate to strong effect on the decision to use determinate sentencing, while 56 percent reported that media coverage had a moderate to strong effect. It should not be surprising that prosecutors attempt to be responsive to perceived public concerns – never mind that such concerns rarely are simple or uniform (Schwartz et al. 1993; Wortley et al. 1997) – but it is surprising that more attention has not been given to the relationship between prosecutorial perceptions of crime (or public opinion) and sentencing patterns. For example, even if we assume that there is an effect, it should not be assumed that it occurs in all places at all times.

Judges and prosecutors interviewed in some counties appeared relatively impervious to media coverage of high profile cases, while in others sentencing appeared to flow directly from attempts to reflect the perceived desire of the public to "get tough." Moreover, some practitioners reported that prosecutors not infrequently would use media coverage to create the appearance of a mandate to "get tough" with a particular case. In such cases prosecutors are using media to their own ends rather than being pressured directly by the media to take particular actions.

The effects of cultural, political, and social context may not always be obvious or direct, and they may vary according to other factors such as type of offense. For example, Smith and Damphousse (1998) provide an excellent example of how widespread public and political support for getting tough with what are perceived to be especially heinous crimes can lead to more consistent and harsher punishment of particular types of offenses (e.g., terroristic acts).[32] The more general point is that even if cultural, political, and social context are not easily quantified, researchers might better recognize the limits of sentencing models that omit consideration of such factors. Indeed, since much of the sentencing literature aims to inform public policy, knowledge of the limits to which sentencing models can be applied is critical (Sanborn 1996). For social scientists, the challenge that remains is to identify those factors that potentially may affect sentencing and then to attempt theoretical and empirical exploration of their precise relationship to sentencing outcomes (see, for example, Sampson 1986; Myers & Talarico 1987; Smith & Paternoster 1990).

Before concluding this section, it should be emphasized that a perhaps deeper issue than that of identifying myriad determinants of sentencing outcomes is that of how to make sense of them. For example, why are certain variables relevant at all? Even assuming a high coefficient of determination (R^2), what is the deeper, underlying connection, if any, among various causal variables? Here, Lieberson (1985) has provided a cogent argument regarding the need to distinguish between superficial and basic causes of dependent variables. Superficial causes are those that "appear to be responsible for a given outcome," whereas basic causes are those that "are actually generating the outcome" (Lieberson 1985:185). Lieberson (1985) has argued

convincingly that standard statistical techniques generally are inadequate on theoretical and methodological grounds for distinguishing between the two types of causes and, if anything, encourage viewing superficial causes as basic causes (see also Geis 1991). This problem is compounded by a failure to characterize adequately the dependent variable as constituting a theoretically derived type of fact itself to be explained. Hence, researchers are apt to view a specific empirical regularity as a fact unto itself to be explained rather than as a manifestation of a more general type of empirical regularity.

Lieberson (1985) also has argued that (a) "the dependent variable in a typical setting is actually responding to a small number of causes (which may include an important stochastic element)" (p. 186), and (b) "explanation of a variable's variation should not be confused with explanation of the event or process itself" (p. 115). These arguments are particularly convincing if it is argued that in most social scientific research both the dependent and independent variables constitute empirical manifestations of more general types of variables that have theoretical relevance along specified dimensions. Typically, however, this is not the case; the usual approach is to identify a dependent variable that is described literally (e.g., a sentencing outcome) rather than as an instance of a more general type of event or process (e.g., a type of decision making outcome). Only when variables and their relationships are characterized in general terms would it seem possible for knowledge about the "fundamental cause" (Lieberson 1985:115) of a process or event to be obtained, and thereby provide explanations not only about variation but about the very existence of the process or event itself. In other words, what is needed are attempts to characterize specific empirical phenomena and their causes as instances of more general phenomena; in turn, this approach allows for discovery of the basic causes of variation in, and the existence of, (types of) dependent variables. For sentencing research the analogue would be research that develops or implies a theory about general types of sentencing processes and decisions rather than about an empirically specific sentencing process or outcome.

4. Criteria for Assessing Sentencing Processes and Outcomes

A primary motivation for improved description and prediction of sentencing is a desire among researchers and policymakers to address potential inequities or inefficiencies. Careful consideration must first be given, however, to what these terms mean, how they can be operationalized, and what kind of balance between various sentencing issues is desirable or at least acceptable. Assume, for instance, there is a sentencing policy that results in gross, non-racial differences across all jurisdictions in sentencing of "like" offenders. Compare this situation with one where an alternative policy results in relatively consistent sentencing, with statistically significant but substantively nominal racial differences of "like" offenders across all jurisdictions. Which policy is "better"?

To date, sentencing research has failed to identify "ideal" balances (see, however, von Hirsch & Ashworth 1992) and, more generally, has focused on one criterion or another without carefully considering alternative or supplemental criteria for evaluating sentencing policies (Blumstein et al. 1983; Myers & Talarico 1987; Pope & Feyerherm 1993; Bureau of Justice Assistance 1996). This tendency is reinforced by research that neglects the processual nature of sentencing. What is needed, therefore, is research that attends to sentencing as a decision making process, assessment of which involves reference not only to general sets of processes, outcomes, and determinants, but to unintended processes (e.g., shifting discretionary authority among justice practitioners, changed plea bargaining dynamics) and outcomes (e.g., disparity in sentencing of like offenders, inconsistency in sentencing of like offenders within or across jurisdictions, truth-in-sentencing, proportionality of punishment, managing prison capacity, achievement of particular goals such as deterrence, incapacitation, rehabilitation, and retribution). In the remainder of this section, this point is illustrated briefly through reference to determinate sentencing, with particular attention given to the issues of plea bargaining, likely effects of determinate sentencing, and potential unintended effects.

Plea Bargaining

Until 1997, plea bargaining in juvenile courts in Texas was not formally acknowledged or legitimated (Dawson 1997). Prior to 1997, plea bargaining occurred but was not formally sanctioned, either positively or negatively. Regardless, plea bargaining was and is a necessary means by which efficiently to manage large numbers of cases (Sanborn 1993). When determinate sentencing was created, it essentially provided another source of leverage for prosecutors, and to a lesser extent defense attorneys, to plea bargain. This potential use of determinate sentencing was not formally addressed by the Texas Legislature, although Dawson (1990b) documented ways in which it was being so used. When determinate sentencing was modified and expanded in 1995, the questions left unaddressed included whether, how, and to what extent determinate sentencing would be used for plea bargaining, what effects this plea bargaining would have, and if the use of determinate sentencing to plea bargain would be appropriate. Such questions are critical for, as von Hirsch and Ashworth (1992) have noted, "[Pretrial] decisions are largely discretionary, and yet they constitute an exercise of official power which may be no less significant for defendants than the sentencing decision itself" (p. 396).

The present research clearly indicates that determinate sentencing in fact is used to plea bargain cases and that this use occurs frequently. A judge from a large, urban county stated:

> I will tell you that in our cases, especially with the sexual assault cases, about 95 percent of those that start out as determinate sentences are handled with plea bargains that do not involve placement at [TYC].

Moreover, as noted earlier, over 40 percent of survey respondents indicated that prosecutors invoke determinate sentencing proceedings for the primary purpose of obtaining plea bargaining leverage. The data also reveal that over 63 percent of practitioners view the prosecutor's attempt to obtain plea bargaining leverage as having a moderate to strong effect on the use of determinate sentencing (see Table 4). The substantive uses to which plea bargaining is put can vary, however. For example, plea bargaining may result in a juvenile who in the past would have been

put on probation being indeterminately sentenced to TYC. It can also result in a juvenile being placed on a stricter level of probation than what otherwise could be obtained through conventional delinquency proceedings (see Table 4).[33]

What such facts do not reveal, and what official data regarding aggregate percentages of youth indeterminately sentenced, determinately sentenced, or waived to adult court cannot reveal, are the effects of plea bargaining. Based on interviews with practitioners, it appears that plea bargaining can serve many different ends. According to many prosecutors and defense attorneys, determinate sentencing plea bargains frequently can result in much harsher punishments than are appropriate or necessary for various ends; that is, plea bargaining does not always result in a lesser sentence (see Myers 1995). Indeed, as noted earlier, defense attorneys occasionally attempt to plea bargain what appear to be more severe sanctions (e.g., an indeterminate sentence rather than probation, or waiver rather than a determinate sentence) in the belief that such sanctions in reality are less severe. Other prosecutors and defense attorneys reported that plea bargains actually afford the opportunity to provide greater due process to juveniles and to offer a best "last chance" before being sent to the adult system. Whether these or other effects (e.g., more efficient processing of juveniles relative to what waiver to adult court would entail, greater leverage by TYC for motivating juveniles to participate actively in programs) can be translated into a standard of effectiveness remains unclear, particularly if researchers do not consider the wide range of possible effects that can be associated with any given sentencing policy and if legislators do not clearly stipulate whether particular uses or effects are acceptable or ideal (see Blumstein et al. 1983:43).[34]

Likely Effects

As stated earlier, determinate sentencing was created (1) to provide a tougher alternative than conventional delinquency proceedings for juveniles under the age of waiver, and (2) to provide a last chance at rehabilitation for juveniles eligible, but not necessarily appropriate, for waiver

(Dawson 1988). The modification and expansion of determinate sentencing in 1995 occurred within a context in which greater emphasis was given to punishment in the newly named Juvenile Justice Code (Dawson 1996). As Dawson (1995) wrote at the time of the enactment of this legislation: "Rehabilitation of the juvenile is not eliminated as a legislative purpose, but its focus is shifted to accountability and responsibility" (p. 5). Given the wide range of goals associated with sanctioning (e.g., public safety, "just deserts," treatment of the offender, maintaining moral standards in society, etc.) and the various means to such goals (e.g., deterrence, incapacitation, rehabilitation, retribution, etc.), the 1995 legislation left the criteria for evaluating determinate sentencing's effectiveness ambiguous. It nonetheless is relatively clear that the two stated purposes reduce roughly to an emphasis, on the one hand, upon public safety and "just deserts" (via incapacitation) and, on the other hand, upon treatment of the offender (via rehabilitation and potentially shorter lengths of stay than would be received through adult sanctioning).

Since presumably there are other goals, and means to those goals, implicit in the legislation, the present research undertook an assessment of practitioner perceptions regarding the likely effects, along several dimensions, of determinate sentencing (see Figure 1[35]). The results were surprising. Forty-five percent of practitioners reported that retribution was a likely "strong effect" of determinate sentencing. Similarly, 49 percent reported that incapacitation was a likely "strong effect" of determinate sentencing. These figures suggest that determinate sentencing is perceived to be quite effective in fulfilling one of its stated goals (i.e., to provide a tougher alternative than conventional delinquency proceedings for juveniles under the age of waiver).

Figure 1 about here

However, only 13 percent of respondents reported rehabilitation was a likely "strong effect" of determinate sentencing (a response roughly matched by the measures for deterrence, normative validation, and better balancing of different goals). It thus would appear that

practitioners do not perceive determinate sentencing as effectively meeting the second of its stated goals (i.e., to provide a last chance at rehabilitation for juveniles eligible, but not necessarily appropriate, for waiver). This fact takes on added significance when we consider that only 27 percent of respondents viewed determinate sentencing as being used as an alternative to conventional delinquency proceedings, while 44 percent viewed it as being used as an alternative to waiver (see Table 2). Put differently, the type of use to which determinate sentencing apparently is most frequently put also seems to be the least effective.

Table 5 about here

One explanation for this paradoxical finding is that determinate sentencing may be used consistently and primarily for the purpose of obtaining lengthier sentences, whether as an alternative to conventional delinquency proceedings or to waiver. This explanation appears to be supported by the fact that over two-thirds of respondents viewed determinate sentencing as resulting in lengthier actual sentences than occurs with waiver in cases in which a relatively serious offense has been committed (see Table 5[36]). This finding sharply diverges from that of Fritsch, Hemmens, and Caeti (1996), who used official data and found that waived youths receive and serve lengthier sentences than do determinately sentenced youths. Resolution of the different findings requires empirical analysis of case-level data that incorporate information about prosecutorial intent in seeking particular types of dispositions for particular types of cases; that is, neither official nor perceptual data alone are adequate to the task. It is, for example, possible that prosecutors obtain lengthier sentences with determinate sentencing for specific types of cases that, were they transferred, likely would not result in successful conviction or a lengthy sentence. But it may also be true that prosecutors are in error in believing that such would be the actual outcome. In short, the argument presented and sustained here simply is that it is necessary to incorporate analysis of stated and perceived goals and, implicitly, appropriate comparison groups (e.g., juveniles determinately sentenced as an alternative to conventional

delinquency proceedings or waiver, and, in either of these cases, as a means to obtain shorter or lengthier sentences), when determining the effectiveness of determinate sentencing.

To reinforce this point, consider that many practitioners identified another goal – better balancing of different sentencing goals – as a key criterion for evaluating this particular sentencing option. It therefore is relevant that 65 percent of respondents viewed determinate sentencing as having a moderate to strong effect on providing a better balancing of different sentencing goals relative to what would occur through conventional delinquency proceedings or waiver (Figure 1). Although operationalization of this criterion admittedly would be difficult to create, the fact that in practice many practitioners apply this type of standard suggests warrant for at least making the attempt. Indeed, in the context of both juvenile and adult sentencing, it likely is the case that practitioners and policymakers apply such standards to their personal evaluations of how individual cases should be or are handled (see Guarino-Ghezzi & Loughran 1996).

Potential Unintended Effects

It can be as important to determine the range and extent of unintended effects of a given policy as it can be to determine whether intended goals have been achieved. For the sake of illustration only, imagine that a policy intended to raise student test scores does so but also results in a greater prevalence of mental disorder among students. An adequate assessment of the policy presumably would rest upon careful determination of the magnitude of changes in both test scores and the prevalence of mental disorder. If the increase in test scores was great and the increase in the prevalence of mental disorder substantively negligible (even if statistically significant), we might characterize the policy as "successful." Conversely, if the increase in test scores was nominal and the increase in the prevalence of mental disorder substantively large, we likely would characterize the policy as an abysmal failure. Clearly, if mental disorder was indicated as a possible unintended effect, it would be inappropriate for proponents of the policy simply to ignore it or not to measure the extent to which it is present. Similarly, there well may

be unintended positive effects of a given policy that, were they known or quantifiable, might enable proponents to sustain more defensible arguments for the policy's viability. In either case, assessment of any policy requires careful attention to potential unintended effects and to measurement of the likely extent of such effects.

Returning to the example of determinate sentencing, consider the range of unintended effects that practitioners associated, in interviews and in open-ended survey questions, with determinate sentencing as practiced prior to and after the changes in 1995. (Recall that the two primary goals of determinate sentencing are to provide a tougher alternative than conventional delinquency proceedings for juveniles under the age of waiver, and to provide a last chance at rehabilitation for juveniles eligible, but not necessarily appropriate, for waiver.) Determinate sentencing:

- helps prosecutors get re-elected by appearing "tough on crime,"[37]
- relieves pressure to provide services locally by ensuring that juveniles stay for extended periods of time at TYC,
- provides a tougher alternative to waiver,
- allows for better management of court dockets,
- serves better the needs and desires of victims and victim families,
- reduces the influence of probation departments,
- increases plea bargains that result in indeterminate sentences for cases that in the past would have resulted in probation,
- results in too-severe sanctioning of relatively trivial instances of eligible offenses,
- decreases between-county consistency in sentencing of "like" offenders.

It should be evident that this partial listing involves reference to criteria of evaluation significantly different from that of the traditional, "best interest of the child" juvenile court or even that of the modern "get tough," "criminalized" juvenile court (Sanborn 1993, 1994a, 1994b).[38] Although it is unclear to what extent these various effects exist or which ones are the basis for a positive or negative valuation, the point is to be aware of them and to attempt measurement of those that seem most likely to occur or to be relevant to assessing the use and

effects of determinate sentencing.

This last point requires greater emphasis and elaboration. Typically, sentencing research has focused on relatively delimited views of the purposes of sentencing and, correspondingly, to the effects of sentencing. But, as this research highlights, the range of purposes, uses, and intended and unintended effects of a given policy frequently exceed those indicated in most research. It simply is not sufficient therefore to attend to the intended effects of sentencing, nor is it sufficient to restrict inquiries to concerns about racial disparities and discrimination, inconsistency, truth-in-sentencing, proportionate sentencing, etc. Such issues are critical, but their import is likely to be underappreciated or exaggerated if considered to the exclusion of the range of uses and effects of a given policy or the effects that such uses and effects might have on them. In short, greater attention is needed to a clear statement of the goals of sentencing, the means by which these goals are to be achieved, appropriate uses of particular sentencing options, possible unintended effects, and criteria for evaluation (including operationalization of key terms such as "disparity," "inconsistency," and the like).

CONCLUSION

Previous analyses of sentencing remain limited both by their inability to account for much of the variance in sentencing (Hagan 1995), by their limited reference to the range of factors that can affect sentencing (Blumstein et al. 1983), and by their limited use of sociological theory to make consistent predictions (Dixon 1995). The analytical framework presented in this paper provides a way to highlight these issues, and, ideally, to overcome them. This framework consists of four dimensions: (1) sentencing as a decision making process, (2) sentencing as involving specific sets of outcomes, (3) sentencing as affected by different types of factors, and (4) sentencing assessment as involving analysis of processes, outcomes, causal factors, and substantive issues, including identification of intended and unintended processes and effects. If we are to improve our analyses of sentencing, particularly the understanding of basic processes,

meanings, and effects of sentencing, and, ultimately, the prediction of sentencing, then careful and systematic attention must be given to the dimensions articulated in this framework. To reiterate an example given earlier, if we do not know that the decision to incarcerate or not to incarcerate actually entails consideration of other alternatives, as well as decisions already made or anticipated at other stages in the justice process, then our logistic regression models not only simplify the decision making process, they distort them. Consideration of the dimensions of the analytical framework presented here should go some way to vitiate this possibility. More generally, use of this framework hopefully will achieve the following goals.

First, by encouraging researchers to consider qualitatively distinct analytical dimensions of sentencing (e.g., processes, determinants, outcomes), the complexity of sentencing processes, and the range of issues relevant to assessments of processes and outcomes, it will help offset the limitations that have beset much of the sentencing literature (e.g., lack of theory, meaning-less and context-less analyses of outcomes, restricted focus upon individual/offender-level units of analysis, over-reliance upon official data, and inattention to the intended and unintended uses and effects of sentencing). Indeed, if these dimensions are considered explicitly in sentencing research, it is likely that greater attention will be given to developing theories that can synthesize empirical findings from a wide body of studies. In so doing, such research perforce will attend to integrating information from multiple units of analysis and sources of data. Sentencing research in turn likely will be able to incorporate information about the meaning and context of specific sentencing outcomes, and will be led to clarify the types of effects, intended or otherwise, likely to be associated with particular sentencing policies.

Clearly, there is no one "best" approach to describing, modeling, or assessing sentencing processes and outcomes. However, as this and other research (e.g., Cohen and Kluegel 1978; Blumstein et al. 1983; Sanborn 1994a, 1994b, 1996; Dixon 1995) attests, clearly, too, it is possible to identify limitations and then possibly to overcome them. For example, Blumstein et al. (1983:124) have recommended hierarchical modeling, rather than simple linear models that are applied uniformly to all cases, for analyses of sentencing so as to increase the possibility of

identifying factors whose effect on sentencing depends upon the presence of one or more other factors. Furthermore, as they have noted and as this research ideally has demonstrated: "Specifying the actual forms of alternate models of sentencing decisions to be tried will probably benefit from the insights derived from interviews of participants and extensive observations of the process" (Blumstein et al. 1983:124). Myers and Talarico (1987) have provided extensive examples of how contextual analyses can inform research on sentencing decisions, as has Sampson (1986), who found that neighborhood socioeconomic levels condition differentially the effects of individual-level socioeconomic status at the arrest and referral stages of juvenile justice processing (see also Smith and Paternoster 1990). The factorial survey approach (e.g., Rossi & Nock 1982; Rossi & Berk 1997) has yet to be exploited to full advantage, particularly as a means by which to assess ways in which sentencing policies are likely to be implemented or used by various justice practitioners. Finally, it is likely that methods typically employed in marketing research, such as conjoint analysis (Green & Srinivasan 1990; Hair et al. 1995:ch. 10), which attempts to model complex decisions in which consumers consider multiple factors jointly rather than in a simple or additive manner, could greatly aid research on sentencing. With conjoint analysis, respondents are required to apply relative weights to various strategies and options; it thus reflects the type of decision making process that prosecutors and judges must undertake in pursuing particular sentencing outcomes. It is likely, too, that decision making research generally (Marshall & Oliver 1995), could greatly inform studies of sentencing as a decision making phenomenon (Myers & Talarico 1987:179).

Second, it will encourage development of sociological theories not only of juvenile justice sentencing but of civil and criminal court decision making (Gottfredson 1987; Myers & Talarico 1987) and, indeed, of decision making generally (see, for example, Bielby & Bielby 1994). Insofar as decision making occurs within organizational or otherwise institutionalized contexts – including, for example, decisions by parents or teacher to sanction children – the framework should have broad applicability.

Third, it will provide a broader and more realistic basis for evaluating existing theories and

for suggesting ways in which they can or should be modified. Evaluation of theories is not academic but poses direct policy implications. Writing about juvenile justice reforms in the 1960s that aimed at providing juveniles with greater due process rights, Feld (1993a) has noted:

> There remains, however, a substantial gulf between theory and reality, between the law on the books and law in action. Theoretically, delinquents are entitled to formal trials and the assistance of counsel. In actuality, the quality of procedural justice is far different. (P. 219)

Similar statements could be made about the discrepancy between the intended uses and effects of criminal justice sentencing reforms and their actual uses and effects (see Tonry 1995, 1996). The framework presented here highlights ways in which various theories fail to identify certain patterns, underappreciate or exaggerate the importance of certain patterns or the factors thought to cause these patterns, or distort the meaning or significance of identified patterns. For example, the framework highlights ways in which conflict theories potentially risk mistaking sentencing disparities (i.e., differences in sentencing of similar offenders) as evidence of discrimination when, as Myers and Talarico (1987) have noted, disparities can be a function of different levels of aggregation along different dimensions. The policy implications of failing to consider such possibilities clearly are profound given that many sentencing reforms aim to reduce racial sentencing disparities. Alternatively, the framework highlights ways in which consensus theories fail to identify a range of extra-legal factors (e.g., race) relevant to sentencing, as well as the potential unintended uses and effects of sentencing. The framework highlights ways in which organizational context approaches to sentencing research (e.g., Dixon 1995) fail to identify systematically the range of organizational and non-organizational factors, such as substantive rational orientations (Ulmer & Kramer 1996; Albonetti 1997), political or cultural contexts (Myers & Talarico 1987), extent of bureaucratization or rationalization (Weber 1978), or media coverage (Wortley et al. 1997) that can affect sentencing. It highlights ways in which neoinstitutional theories (Sutton 1994) potentially overemphasize the large-scale symbolic content of juvenile justice reforms by neglecting the diversity of contexts in which sentencing decisions are exercised, the extent to which such decisions result from the confluence of many

types of factors, and the range of effects associated with specific types of decisions. It highlights ways in which structural-contextual theories, including those that emphasize proactive political environments (e.g., Smith & Damphousse 1998), fail to identify many factors that presumably are relevant to adequate characterizations of "structural context." Finally, it highlights ways in which rational-choice theories generally are ill-equipped to identify and examine the range of contexts within which decision making occurs and that affect outcomes.

Fourth, it will clarify that the failure to obtain more than nominal predictive accuracy in sentencing (Hagan 1995) in part is a function of omitting important predictors, of failing to consider use of alternative units of analysis, and, by extension, of failing to compare appropriate populations. Omission of important predictors not only reduces predictive accuracy, it also distorts the apparent relevance of predictors that are included in models (Lieberson 1985). The failure to consider alternative units of analysis involves unnecessarily restricting focus to one or another unit, with the attendant result that conclusions regarding the adequacy of theories or statistical models are made prematurely. It is, for example, possible that a statistical model specified for individuals as the unit of analysis, when respecified with counties or certain types of courts as the unit of analysis, might reveal greater or less explanatory power. Finally, the failure to incorporate appropriate comparison groups into analyses risks reducing explained variance and the ability to interpret any variance that is "explained."

Fifth, it will highlight that a balance is needed between emphasizing hard-to-quantify, yet nonetheless relevant, variables and emphasizing more easily obtained, quantifiable variables. The balance to date has tilted toward the latter approach, to the neglect of having research informed by those people who potentially are most knowledgeable about the sanctioning process (e.g., judges, prosecutors, defense attorneys, and probation officers – see Blumstein et al. 1983:124); however, care should be given in future research not to tilt too far in the other direction. In short, and as suggested by the present research and that of others (e.g., Myers & Talarico 1987; Bishop et al. 1996), more attention should be given to integrating multiple research methods.

Finally, use of this framework will highlight the common ground shared by juvenile and adult sentencing research, including the attempt to provide better descriptions, predictions, and assessments of sentencing. Ideally, the precise contours of this common ground will be clarified in future research and lead to more general sociological theories of sentencing and, ultimately, to accumulation of knowledge about decision making generally.

FOOTNOTES

[1] The juvenile court in the United States historically has been governed by the doctrine of *parens patriae* (literally, "parent of the country"), which is grounded in the idea that the "state has a primary and legitimate interest in the upbringing of its children" (Champion 1998:14-15).

[2] In the juvenile context, the functional equivalent of receiving a "sentence" is receiving a "disposition" (Champion 1998). The two terms are used interchangeably in this paper.

[3] The terms "waiver," "transfer," and "certification" all are used interchangeably in this paper; each indicates that the jurisdiction over an offender has changed from the juvenile to criminal court.

[4] For comprehensive reviews of the relevant adult justice sentencing literatures, see Blumstein et al. (1983), Tonry (1993, 1996), Dixon (1995), Forst (1995), Myers (1995), Bureau of Justice Assistance (1996), and Albonetti (1997); for relevant juvenile justice sentencing literatures, see Feld (1993a), Howell (1996), Moore and Wakeling (1997), and Champion (1998:chs. 6-12).

[5] For similar observations, albeit with less explicit discuss of theoretical gaps in the sentencing literature, see Blumstein et al. (1983), Dixon (1995), and Hagan (1995).

[6] Determinate sentencing is not "determinate" in the traditional sense of the term in that prosecutors have discretion over whether to invoke determinate sentence proceedings, judges or juries have wide latitude in applying sentences, and parole is an option (Dawson 1988).

[7] Due to the inclusion of criminal attempt and criminal solicitation offenses, which include within them many specific offenses to which they apply, it is not possible to determine the exact number of offenses eligible for determinate sentencing (Dawson 1996).

[8] Review of county-by-county juvenile arrest rates in Texas, 1991-1995, reveals few consistent patterns that hold either within or across counties (National Center for Juvenile Justice 1997).

[9] See note 6.

[10] One recent review of existing waiver literature concluded with the following assessment:

> [Few] of the studies [in this literature review] address the important antecedent practices, policing charging decisions and plea bargaining, that are so crucial to subsequent transfer results. Transfer is a socio-legal policy based on very little information. (Howell 1996:50)

[11] The specific question asked of practitioners was: *In your jurisdiction, do you think that determinate sentencing is used (a) never or rarely, (b) primarily as an alternative to determinate sentencing, (c) primarily as an alternative to certification?*

[12] Forty-eight percent of respondents from rural areas reported that the complexity of the determinate sentencing process had a moderate to strong effect on whether determinate sentencing was used in their jurisdiction, compared with 35 percent of respondents from suburban areas and 28 percent of respondents from urban areas.

[13] Approximately 50 percent of both rural and suburban respondents reported that the availability of court resources had a moderate to strong effect on the use of determinate sentencing, compared with 35 percent of respondents from urban jurisdictions.

[14] Table not shown here (available upon request). It is notable that many practitioners (14 percent) did not know whether in their jurisdiction there was a policy, formal or informal, for processing determinate sentence cases.

[15] These policies are based on an analysis of open-ended comments (Swift 1996) given in response to the request that practitioners describe the policy in their jurisdiction.

[16] A caveat to this statement is that in this same jurisdiction, the policy is to waive eligible cases to adult court unless a compelling reason exists not to do so. Thus, in a case where both determinate sentencing and waiver are available, the juvenile generally will be waived.

[17] The chief probation officer's comment is interesting for an entirely separate reason as well, namely, the image that is evoked of the juvenile justice system, including defense attorneys, as being driven by a desire for efficiency rather than the "best interests" of the child (see Sanborn 1993, 1994b).

[18] For a discussion of related methodological implications, see Lieberson (1985:101-2).

[19] It should be emphasized that the argument here is not that Fritsch, Hemmens, and Caeti's (1996) analysis is for all purposes fundamentally flawed; the contention simply is that methodological and substantive considerations preclude making any kind of summary assessment or generalization about the likely effectiveness of determinate sentencing.

[20] A violation of regular probation subjects a youthful offender to a possible indeterminate sentence to TYC until age twenty-one; by contrast, a violation of a determinate sentence probation subjects an offender to the full range of sentencing (e.g., up to forty years) that was available at the initial disposition hearing (Dawson 1996).

[21] It is likely that pragmatic concerns, such as convenience in computing and interpreting statistical models, govern the decision to code sentencing outcomes in simplified ways. The equally pragmatic issue, however, is whether the

gains from such approaches are worth the costs. But this question cannot even be assessed if researchers do not know what the potential costs may be.

[22] It should be emphasized that the decision to invoke determinate sentence proceedings requires only that an eligible offense have been committed. Technically, any other factor used in determining a sentence outcome constitutes an "extra-legal" consideration; nonetheless, it is safe to assume that a factor such as prior history of offending represents a "legal" factor while race or social context represents an "extra-legal" variable.

[23] Dawson's (1990:1907) suggestion that some prosecutors might always use determinate sentencing, where possible, was confirmed in the interview from which the quotation was taken.

[24] The creation of interaction terms between offense severity or prior record and race represent two obvious exceptions.

[25] This view neglects two facts. First, empirical documentation of juveniles being more violent or predator-like than in the past is lacking (see Snyder 1997). Second, commission of a crime with others is not de facto evidence of gang membership since delinquency has always been a group phenomenon (Warr 1996), yet many practitioners in this study appeared to believe otherwise.

[26] This arguably is the type of dynamic that might occur in jurisdictions in which racial disparity – not necessarily discrimination (see Blumstein et al. 1983) – in sentencing exists.

[27] In smaller counties, one prosecutor may handle both juvenile and adult cases. Thus, a decision to waive a youth does not mean that the juvenile no longer is within the particular prosecutor's purview. By contrast, in larger, urbanized counties, waiver frequently results in the juvenile never appearing before the juvenile prosecutor again. It should be noted that in comparison with conventional delinquency proceedings and waiver proceedings (but not adult trials), determinate sentencing potentially can entail lengthier processing.

[28] The specific question asked of practitioners was: *To what extent do you think that each of the following in general affects the use of determinate sentencing in your jurisdiction?* The response categories were "no effect," "slight effect," "moderate effect," and "strong effect." Specific factors included: prosecutor's philosophy of punishment, prosecutor's attempt to obtain plea bargaining leverage, prosecutor's attempt to obtain stricter probation, complexity of the determinate sentencing process, relationship between the judge and prosecutor, relationship between probation and prosecutor, availability of court resources, availability of court resources locally, influence of defense counsel, public support for lengthier or harsher sentences, and media coverage. An open-ended response category ("other") also was provided to respondents.

[29] See note 20.

[30] See note 20.

[31] Many practitioners, including prosecutors, emphasized that young attorneys begin their criminal justice careers as juvenile court prosecutors. Turnover in this position frequently is rapid, with attorneys viewing their brief sojourn there as but a temporary stay before entering the "real" world of criminal justice. Consequently, such attorneys are apt to be unfamiliar with the intricacies of juvenile law or to appreciate its traditionally non-criminal, rehabilitative focus.

[32] Perceptions among practitioners about crime and public attitudes toward crime clearly would seem to affect the use of specific sentencing options. Consider the remarks of a judge from an urban, "get tough" county about the effectiveness of determinate sentencing in reducing crime:

> In this county we've already seen the effects of using determinate sentencing. There was a time here in 1993 when we filed 120 homicide cases against juveniles. Last year [1996], it was like 40-something, and this year it will be about the same. That's a substantial decrease. We're talking 300 percent.

A check on arrest rates for this county (National Center for Juvenile Justice 1997) revealed that the murder arrest rate had decreased by 30 percent from 1992 to 1993, the year prior to the beginning of the trend identified by the judge. It may be that the prior trend (from 1992 to 1993) was due to the use of determinate sentencing, but the judge's comment suggests otherwise. Additionally, it is unlikely that any substantial decrease in the murder rate among juveniles could be attributed to the use of determinate sentencing. Indeed, if generalized to the state as a whole (as this judge did), such an assessment would be rendered problematic by the fact that not all jurisdictions use determinate sentencing in the same manner or to the same extent. The more general issue is that perceptions, whether accurate or not, about crime and about public attitudes toward crime may strongly influence practitioners and the entire decision making process.

[33] See note 20.

[34] In this context, it is particularly noteworthy that few studies of waiver have examined whether waiver results in reduced recidivism (see, however, Fagan 1996).

[35] The specific question asked of practitioners was: *Please indicate the extent to which you believe that each of the following is a likely effect of determinate sentencing.* The response categories were "no effect," "slight effect,"

"moderate effect," and "strong effect." Specific effects included: deter offenders from committing crimes after being released, deter others from committing crimes, maintain moral standards in society, make offenders pay for their crimes, prevent offenders from committing crimes while incarcerated, rehabilitate offenders, better balance some or all of these goals. An open-ended response category ("other") also was provided.

[36] The specific question asked of practitioners was: *In a situation where a relatively serious offense has been committed for which both determinate sentencing and certification are options, which option do you believe is most likely to result in a lengthier term of actual incarceration (that is, time actually served)? (a) determinate sentencing, or (b) certification?*

[37] This effect is noteworthy if only because of the absence of any obvious "best interest," the traditional purpose of the juvenile court, that children have in assisting prosecutors to be elected.

[38] Sanborn (1994a) has reported similar effects elsewhere, finding, for example, that workers in the courts he studied "considered transfer as simply the inability of the juvenile court to service all youths, rather than as acting like a safety valve or a form of societal retribution" (p. 275).

REFERENCES

Ainsworth, Janet E. (1991) "Re-imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court," 69 North Carolina Law Rev. 1083-133.

——— (1995) "Youth Justice in a Unified Court: Response to Critics of Juvenile Court Abolition," 36 Boston College Law Rev. 927-51.

——— (1996) "The Court's Effectiveness in Protecting the Rights of Juveniles in Delinquency Cases," 6 The Future of Children 64-74.

Albonetti, Celesta A. (1997) "Sentencing Under the Federal Sentencing Guidelines: Effects of Defendant Characteristics, Guilty Pleas, and Departures on Sentence Outcomes for Drug Offenses, 1991-1992," 31 Law & Society Rev. 789-822.

Alschuler, Albert W. (1991) "The Failure of Sentencing Guidelines: A Plea For Less Aggregation," 58 Univ. of Chicago Law Rev. 901-51.

Anderson, Ken, & John Bradley (1995) Texas Sentencing. 2d ed. Bulverde, TX: Omni.

Babbie, Earl R. (1995) The Practice of Social Research. 7th ed. Belmont, CA: Wadsworth.

Berk, Richard A., & Peter H. Rossi (1990) Thinking About Program Evaluation. Newbury Park, CA: Sage.

Bernard, Thomas J. (1992) The Cycle of Juvenile Justice. New York: Oxford Univ. Press.

Bielby, William T., & Denise B. Bielby (1994) "'All Hits Are Flukes': Institutionalized Decision Making and the Rhetoric of Network Prime-Time Program Development," 99 American J. of Sociology 1287-313.

Bishop, Donna M., Charles E. Frazier, & John C. Henretta (1989) "Prosecutorial Waiver: Case Study of a Questionable Reform," 35 Crime & Delinquency 179-201.

Bishop, Donna M., Charles E. Frazier, Lonn Lanza-Kaduce, & Lawrence Winner (1996) "The Transfer of Juveniles to Criminal Court: Does It Make a Difference?" 42 Crime & Delinquency 171-91.

Black, Donald, & Albert J. Reiss, Jr. (1970) "Police Control of Juveniles," 35 American

Sociological Rev. 63-77.

Blumberg, Abraham S. (1967) "The Practice of Law as a Confidence Game," 1 Law & Society Rev. 15-39.

Blumstein, Alfred, Jacqueline Cohen, Susan E. Martin, & Michael H. Tonry (1983) Research on Sentencing: The Search for Reform, vol. 1. Washington, DC: National Academy Press.

Briscoe, Judy (1997) "Breaking the Cycle of Violence: A Rational Approach to At-Risk Youth." 62 Federal Probation 3-13.

Bureau of Justice Assistance (1996) National Assessment of Structured Sentencing. Washington, DC: U.S. Department of Justice – Bureau of Justice Assistance.

Butts, Jeffrey A. (1997) "Necessarily Relative: Is Juvenile Justice Speedy Enough?" 43 Crime & Delinquency 3-23.

Champion, Dean J. (1998) The Juvenile Justice System: Delinquency, Processing, and the Law. Upper Saddle River, NJ: Prentice Hall, Inc.

Cicourel, Aaron V. (1976) The Social Organization of Juvenile Justice. London, England: Heinemann Educational Books Limited.

Cohen, Lawrence E., & James R. Kluegel (1978) "Determinants of Juvenile Court Dispositions: Ascriptive and Achieved Factors in Two Metropolitan Courts," 43 American Sociological Rev. 162-76.

Dawson, Robert O. (1988) "The Third Justice System: The New Juvenile-Criminal System of Determinate Sentencing for the Youthful Violent Offender in Texas," 19 St. Mary's Law J. 943-1016.

——— (1990a) "The Future of Juvenile Justice: Is it Time to Abolish the System?" 81 The J. of Criminal Law & Criminology 136-55.

——— (1990b) "The Violent Juvenile Offender: An Empirical Study of Juvenile Determinate Sentencing Proceedings as an Alternative to Criminal Prosecution," 21 Texas Tech Law Rev. 1897-939.

——— (1992) "An Empirical Study of Kent Style Juvenile Transfers to Criminal Court," 23 St.

Mary's Law J. 975-1054.

———, ed. (1995) 9 State Bar Section Report Juvenile Law: Special Legislative Issue (3).

——— (1996) Texas Juvenile Law. 4th ed. Austin: Texas Juvenile Probation Commission.

———, ed. (1997) 11 State Bar Section Report Juvenile Law: Special Legislative Issue (3).

Dixon, Jo (1995) "The Organizational Context of Criminal Sentencing," 100 American J. of Sociology 1157-98.

Empey, LaMar T., & Mark C. Stafford (1991) American Delinquency: Its Meaning and Construction. 3rd ed. Belmont, CA: Wadsworth.

Fagan, Jeffrey (1996) "The Comparative Advantage of Juvenile Versus Criminal Court Sanctions on Recidivism among Adolescent Felony Offenders," 18 Law & Policy 77-112.

Feld, Barry C. (1988) "In re Gault Revisited: A Cross-State Comparison of the Right to Counsel in Juvenile Court," 34 Crime & Delinquency 393-424.

——— (1989) "The Right to Counsel in Juvenile Court: An Empirical Study of When Lawyers Appear and the Difference They Make," 79 J. of Criminal Law & Criminology 1185-346.

——— (1991) "Justice by Geography: Urban, Suburban, and Rural Variations in Juvenile Justice Administration," 82 J. of Criminal Law & Criminology 156-210.

——— (1993a) "Criminalizing the American Juvenile Court" in M. H. Tonry, ed., Crime and Justice: A Review of Research, vol. 17. Chicago: Univ. of Chicago Press.

——— (1993b) "Juvenile (In)Justice and the Criminal Court Alternative," 39 Crime & Delinquency 403-24.

Forer, Lois G. (1994) A Rage to Punish: The Unintended Consequences of Mandatory Sentencing. New York: W. W. Norton.

Fritsch, Eric J., & Craig Hemmens (1996) "An Assessment of Legislative Approaches to the Problem of Serious Juvenile Crime: A Case Study of Texas 1973-1995," 23 American J. of Criminal Law 563-609.

Fritsch, Eric J., Tory J. Caeti, & Craig Hemmens (1996) "Spare the Needle but Not the Punishment: The Incarceration of Waived Youth in Texas Prisons," 42 Crime &

Delinquency 593-609.

Fritsch, Eric J., Craig Hemmens, & Tory J. Caeti (1996) "Violent Youth in Juvenile and Adult Court: An Assessment of Sentencing Strategies in Texas," 18 Law & Policy 115-36.

Geis, Gilbert (1991) "The Case Study Method in Sociological Criminology," in J. R. Feagin, A. M. Orum, & G. Sjoberg, eds., A Case for the Case Study. Chapel Hill, NC: Univ. of North Carolina Press.

Gibbs, Jack P. (1987) "The State of Criminological Theory," 25 Criminology 821-40.

——— (1995) "The Notion of Control and Criminology's Policy Implications," in H. D. Barlow, ed., Crime and Public Policy: Putting Theory to Work. Boulder, CO: Westview Press.

Gottfredson, Don M. (1987) "Prediction and Classification in Criminal Justice Decision Making," in D. M. Gottfredson & M. H. Tonry, eds., Criminal Justice: A Review of Research, vol. 9. Chicago, Illinois: Univ. of Chicago Press.

Green, Paul E., & V. Srinivasan (1990) "Conjoint Analysis in Marketing: New Developments with Implications for Research and Practice," 54 J. of Marketing 3-19.

Griset, Pamala L. (1994) "Determinate Sentencing and the High Cost of Overblown Rhetoric: The New York Experience," 40 Crime and Delinquency 532-48.

Grisso, Thomas (1997) "The Competence of Adolescents as Trial Defendants," 3 Psychology, Public Policy, & Law 3-32.

Guarino-Ghezzi, Susan, & Edward J. Loughran (1996) Balancing Juvenile Justice. New Brunswick, NJ: Transaction.

Hagan, John (1995) Crime and Disrepute. Thousand Oaks, CA: Pine Forge Press.

Hair, Joseph F., Jr., Ralph E. Anderson, Ronald L. Tatham, & William C. Black (1995) Multivariate Data Analysis: With Readings. 4th ed. Englewood Cliff, NJ: Prentice Hall.

Harris, Chris, & Toby Goodman (1994) A Comprehensive Review of the Texas Family Code. Austin: Texas Legislative Council.

Hirschi, Travis, & Michael R. Gottfredson (1993) "Rethinking the Juvenile Justice System," 39 Crime & Delinquency 262-71.

Howell, James C. (1994) "Recent Gang Research: Program and Policy Implications," 40 Crime & Delinquency 495-515.

——— (1996) "Juvenile Transfers to the Criminal Justice System: State of the Art," 18 Law & Policy 17-60.

Jacob, Herbert. (1983) "Courts as Organizations," in K. O. Boyum & L. Mather, eds., Empirical Theories About Courts. New York: Longman.

Klein, Malcolm W. (1995) "Street Gang Cycles," in J. Q. Wilson & J. Petersilia, eds., Crime. San Francisco: Institute for Contemporary Studies.

Kleinfeld, Andrew J. (1991) "The Sentencing Guidelines Promote Truth and Justice," 55 Federal Probation 16-25.

Lieberson, Stanley (1985) Making It Count: The Improvement of Social Research and Theory. Los Angeles: Univ. of California Press.

Mahoney, Anne Rankin (1987) Juvenile Justice in Context. Boston, MA: Northeastern Univ. Press.

March, James G., & Johan P. Olsen (1976) Ambiguity and Choice in Organizations. Bergen, Germany: Universitetsforlaget.

Marshall, Kneale T., & Robert M. Oliver (1995) Decision Making and Forecasting: With Emphasis on Model Building and Policy Analysis. New York: McGraw-Hill.

Mears, Daniel P. (1998) "Evaluation Issues Confronting Juvenile Justice Sentencing Reforms: A Case Study of Texas" 44 Crime & Delinquency 443-63.

Meyer, John W., & Brian Rowan (1977) "Institutionalized Organizations: Formal Structure as Myth and Ceremony," 83 American J. of Sociology 340-63.

Miethe, Terance D. (1987) "Charging and Plea Bargaining Practices Under Determinate Sentencing: An Investigation of the Hydraulic Displacement of Discretion." 78 J. of Criminal Law & Criminology 155-76.

Miethe, Terance D., & Charles A. Moore (1985) "Socioeconomic Disparities Under Determinate Sentencing Systems: A Comparison of Preguideline and Postguideline Practices in

Minnesota," 23 Criminology 337-63.

Moore, Mark H., & Stewart Wakeling (1997) "Juvenile Justice: Shoring Up the Foundations," in M. H. Tonry, ed., Crime and Justice: A Review of Research, vol. 22. Chicago: Univ. of Chicago Press.

Myers, Laura B., & Sue Titus Reid (1995) "The Importance of County Context in the Measurement of Sentence Disparity: The Search for Routinization," 23 J. of Criminal Justice 223-41.

Myers, Martha A. (1995) "The Courts: Prosecution and Sentencing," in J. F. Sheley, ed., Criminology: A Contemporary Handbook. Boston, MA: Wadsworth.

Myers, Martha A., & Susette M. Talarico (1987) The Social Contexts of Criminal Sentencing. New York: Springer-Verlag.

Nagel, Ilene H., & Stephen J. Schulhofer (1992) "A Tale of Three Cities: An Empirical Study of Charging and Bargaining Practices Under the Federal Sentencing Guidelines," 66 Southern California Law Rev. 501-79.

National Center for Juvenile Justice (1997) "Easy Access to FBI Arrest Statistics 1991-1995." Pittsburgh, PA: National Center for Juvenile Justice.

National Criminal Justice Association (1997) Juvenile Justice Reform Initiatives in the States: 1994-1996. Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

O'Connell, John (1994) "Characteristics of Sentenced Offenders under the Determinate Sentence Act," 8 State Bar Section Report Juvenile Law 26-50 (3).

Office of Juvenile Justice and Delinquency Prevention (1996) "Has the Juvenile Court Outlived Its Usefulness?" National Satellite Teleconference aired on December 13, 1996. Washington, DC: U.S. Department of Justice – Office of Juvenile Justice and Delinquency Prevention.

Petersilia, Joan, & Susan Turner (1993) "Intensive Probation and Parole," in M. H. Tonry, ed., Criminal Justice: A Review of Research, vol. 17. Chicago, Illinois: Univ. of Chicago Press.

Platt, Anthony (1977) The Child Savers: The Invention of Delinquency. 2nd ed. Chicago: Univ. of Chicago Press.

Podkopacz, Marcy R., & Barry C. Feld (1996) "The End of the Line: An Empirical Study of Judicial Waiver," 86 J. of Criminal Law & Criminology 449-92.

Pope, Carl E. & William Feyerherm (1993) "Minorities and the Juvenile Justice System: Research Summary." Washington, DC: U.S. Department of Justice – Office of Juvenile Justice and Delinquency Prevention.

Rossi, Peter H., & Richard A. Berk (1997) Just Punishments: Federal Guidelines and Public Views Compared. Hawthorne, NY: Aldine de Gruyter.

Rossi, Peter H., & Steven L. Nock, eds. 1982. Measuring Social Judgments: The Factorial Survey Approach. Beverly Hills, CA: Sage.

Sampson, Robert J. (1986) "Effects of Socioeconomic Context on Official Reaction to Juvenile Delinquency," 51 American Sociological Rev. 876-85.

Sampson, Robert J., & Janet L. Lauritsen (1997) "Racial and Ethnic Disparities in Crime and Criminal Justice in the United States," in M.H. Tonry, ed., Crime and Justice: A Review of Research, vol. 21. Chicago, Illinois: Univ. of Chicago Press.

Sanborn, Joseph B., Jr. (1993) "Philosophical, Legal, and Systemic Aspects of Juvenile Court Plea Bargaining," 39 Crime & Delinquency 509-27.

——— (1994a) "Certification to Criminal Court: The Important Policy Questions of How, When, and Why," 40 Crime & Delinquency 262-81.

——— (1994b) "Remnants of Parens Patriae in the Adjudicatory Hearing: Is a Fair Trial Possible in Juvenile Court?" 40 Crime & Delinquency 599-615.

——— (1996) "Factors Perceived to Affect Delinquent Dispositions in Juvenile Court: Putting the Sentencing Decision into Context," 42 Crime & Delinquency 99-113.

Schwartz, Ira M., Shenyang Guo, & John J. Kerbs (1993) "The Impact of Demographic Variables on Public Opinion Regarding Juvenile Justice: Implications for Public Policy," 39 Crime & Delinquency 5-28.

Shapiro, Susan P. (1985) "The Road Not Taken: The Elusive Path to Criminal Prosecution for White-Collar Offenders," 19 Law & Society Rev. 178-217.

Sickmund, Melissa (1994) How Juveniles Get to Criminal Court. Washington, DC: U.S. Department of Justice – Office of Juvenile Justice and Delinquency Prevention.

Singer, Simon I. (1993) "The Automatic Waiver of Juveniles and Substantive Justice," 39 Crime & Delinquency 253-61.

——— (1996a) "Merging and Emerging Systems of Juvenile and Criminal Justice," 18 Law & Policy 1-15.

——— (1996b) Recriminalizing Delinquency: Violent Juvenile Crime and Juvenile Justice Reform. New York: Cambridge Univ. Press.

Sjoberg, Gideon, Norma Williams, Ted R. Vaughn, & Andree F. Sjoberg (1991) "The Case Study Approach in Social Research: Basic Methodological Issues," in J. R. Feagin, A. M. Orum, & G. Sjoberg, eds., A Case for the Case Study. Chapel Hill, NC: Univ. of North Carolina Press.

Smith, Brent L., & Kelly R. Damphousse (1998) "Terrorism, Politics, and Punishment: A Test of Structural-Contextual Theory and the 'Liberation Hypothesis,'" 36 Criminology 67-92.

Smith, Douglas A., & Raymond Paternoster (1990) "Formal Processing and Future Delinquency: Deviance Amplification as Selection Artifact," 24 Law & Society Rev. 1109-31.

Snyder, Howard N. (1997) Juvenile Offenders and Victims: Update on Violence. Washington, DC: U.S. Dept. of Justice – Office of Juvenile Justice and Delinquency Prevention.

Stolzenberg, Lisa, & Stewart J. D'Alessio (1994) "Sentencing and Unwarranted Disparity: An Empirical Assessment of the Long-Term Impact of the Sentencing Guidelines in Minnesota," 32 Criminology 301-10.

Sudnow, David (1964) "Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office," 12 Social Problems 255-76.

Sutton, John R. (1988) Stubborn Children: Controlling Delinquency in the United States, 1640-1981. Berkeley, CA: Univ. of California Press.

——— (1994) "Children in the Therapeutic State: Lessons for the Sociology of Deviance and Social Control" in G. S. Bridges & M. A. Myers, eds., Inequality, Crime, and Social Control. Boulder, CO: Westview Press.

Swift, Betty (1996) "Preparing Numerical Data," in R. Sapsford & V. Jupp, eds., Data Collection and Analysis. Thousand Oaks, CA: Sage.

Texas Criminal Justice Policy Council (1997) Determinate Sentencing: Examining the Growing Use of the Tougher Juvenile Incarceration Penalty. Austin: State of Texas.

Tonry, Michael H. (1993) "Sentencing Commissions and Their Guidelines" in M. H. Tonry, ed., Criminal Justice: A Review of Research, vol. 17. Chicago, Illinois: Univ. of Chicago Press.

——— (1995) Malign Neglect: Race, Crime, and Punishment in America New York: Oxford Univ. Press.

——— (1996) Sentencing Matters New York: Oxford Univ. Press.

Torbet, Patricia McFall, Richard Gable, Hunter Hurst IV, Imogene Montgomery, Linda Szymanski, & Douglas Thomas (1996) State Responses to Serious and Violent Juvenile Crime. Washington, DC: U.S. Department of Justice – Office of Juvenile Justice and Delinquency Prevention.

Triplett, Ruth (1996) "The Growing Threat: Gangs and Juvenile Offenders," in T. J. Flanagan & D. R. Longmire, eds., Americans View Crime and Justice: A National Opinion Public Opinion Survey. Thousand Oaks, CA: Sage.

Uelmen, Gerald F. (1992) "Federal Sentencing Guidelines: A Cure Worse than the Disease," 29 American Criminal Law Rev. 899-905.

Ulmer, Jeffery T., & John H. Kramer (1996) "Court Communities Under Sentencing Guidelines: Dilemmas of Formal Rationality and Sentencing Disparity," 34 Criminology 383-407.

von Hirsch, Andrew (1992) "Proportionality in the Philosophy of Punishment" in M. H. Tonry, ed., Crime and Justice: A Review of Research, vol. 16. Chicago: Univ. of Chicago Press.

von Hirsch, Andrew and Andrew Ashworth, eds. (1992) Principled Sentencing. Boston: Northeastern Univ. Press.

Warr, Mark (1996) "Organization and Instigation in Delinquent Groups," 34 Criminology 11-37.

Weber, Max (1978) Economy and Society, vol. II, eds. G. Roth and C. Wittich, trans. various. Los Angeles, California: Univ. of California Press.

Weinmann, Beth (1995) "Release/Transfer Hearings Under the Determinate Sentencing Act," 9 State Bar Section Report Juvenile Law 21-9 (4).

Wicharaya, Tamasak (1995) Simple Theory, Hard Reality: The Impact of Sentencing Reforms on Courts, Prisons, and Crime. Albany, NY: State Univ. of New York Press.

Wortley, Scot, John Hagan, & Ross Macmillan (1997) "Just Des(s)erts? The Racial Polarization of Perceptions of Criminal Injustice," 31 Law & Society Rev. 637-76.

TABLES AND FIGURE