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EVALUATION ISSUES CONFRONTING JUVENILE JUSTICE SENTENCING REFORMS: A CASE STUDY OF TEXAS*

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EVALUATION ISSUES CONFRONTING JUVENILE JUSTICE SENTENCING REFORMS: A CASE STUDY OF TEXAS

Abstract

Many states currently are implementing "get tough" sentencing reforms in juvenile justice. Surprisingly, however, little attention has been given to evaluation issues identified by the adult justice sentencing literature as critical to assessments of efficacy. Analysis of one recent juvenile justice sentencing reform in Texas – determinate sentencing – provides an opportunity to highlight such issues and to demonstrate their relevance to assessment of other states' juvenile justice sentencing reforms. This article identifies the failure to attend adequately to design, implementation, use, and assessment issues, including identification of potential unintended effects, as barriers to effective evaluation of these reforms.

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EVALUATION ISSUES CONFRONTING JUVENILE JUSTICE SENTENCING REFORMS: A CASE STUDY OF TEXAS

In recent years, sentencing reforms in state and federal systems have been driven largely by a desire to "get tough on crime" as well as to reduce the inconsistency and disparities that can result from judicial discretion (Ashworth 1992; Tonry 1993; U.S. Bureau of Justice Assistance 1996; Sampson and Lauritsen 1997). However, research on these reforms has revealed many unintended consequences that result from conflicting goals, organizational context, and prosecutorial discretion, and that threaten to offset any putative gains made through these reforms (Blumstein, Cohen, Martin, and Tonry 1983; Alschuler 1991; Wicharaya 1995; Parent, Dunworth, McDonald, and Rhodes 1996; Clark, Austin, and Henry 1997). Such findings are particularly striking since many states currently are applying similar types of reforms to their juvenile justice systems (Torbet, Gable, Hurst, Montgomery, Szymanski, and Thomas 1996) without careful attention to these types of evaluation issues and their relevance in the context of the juvenile court (Sanborn 1993, 1994a, 1994b, 1996; Singer 1996a, 1996b; Grisso 1997).

Current juvenile justice sentencing reforms fit within a more general cycle of emphasizing retribution as against rehabilitation, but nonetheless are striking for their apparent extremism (Polier 1989; Bernard 1992; Feld 1995).[1] Evidence strongly suggests a trend towards arresting more juveniles, processing them more quickly, incarcerating them for longer periods of time with fewer opportunities for rehabilitation, and, in general, treating violent or chronic juvenile offenders as adults (Snyder and Sickmund 1995). Regardless of the cause (e.g., perceived or real increases in juvenile crime), these reforms frequently have been undertaken despite lack of information concerning their potential effects and efficacy and despite severe fiscal constraints (U.S. Bureau of Justice Assistance 1996). Indeed, while relatively little research has attended to the unintended effects of recent adult sentencing reforms, even less has been conducted on the effects,

intended or otherwise, of recent juvenile sentencing reforms (Singer 1996a).

This situation is unfortunate because evidence about adult sentencing reforms suggests that there have been many unintended effects of the newer, tougher sentencing laws.[2] It is partly for this reason that sentencing reforms have engendered bitter debates about their usefulness, appropriateness, or viability. Consider, for instance, the following reasons Lois Forer (1994, p. 3; paraphrase) gave for why she held a state mandatory sentencing law unconstitutional and for why, when she was ordered to apply this law, she resigned her position as a trial court judge: it vested sentencing power in the prosecutor not the judge; it abolished individualized sentencing; it violated the idea that punishment should not exceed the gravity of the offense; and the crimes to which the mandatory law applied were arbitrarily selected and bore no rational relationship to public safety, dangerousness, culpability, law enforcement, or deterrence of crime.

Whether these and similar arguments apply to the juvenile justice system is largely open to debate since few empirical analyses have been conducted on the goals or effects of recent juvenile justice sentencing reforms. However, what is at stake in debates about these reforms cannot be understated. At issue fundamentally is whether current juvenile court systems should be abolished. In the words of one advocate for abolishment: "As long as young people are regarded as fundamentally different from adults, it becomes too easy to rationalize and justify a procedurally inferior justice system" (Feld 1993a, p. 267). Indeed, this argument constitutes one of the central issues facing juvenile justice today, as evidenced by a recent national satellite conference entitled, Has the Juvenile Court Outlived Its Usefulness? (Office of Juvenile Justice and Delinquency Prevention 1996).

One strategy for addressing these and similar types of arguments is to conduct a case study of a juvenile justice sentencing reform in one state (see, for example, Bishop, Frazier, and Henretta 1989; Fabelo 1994; Griset 1996). Specifically, this article examines a recent Texas juvenile sentencing reform, determinate sentencing[3], to outline a range of evaluation issues relevant to assessment of both adult and juvenile justice sentencing

reforms. Data for this analysis derive from two sources: in-depth interviews with juvenile justice practitioners, scholars, legislators, and agency officials; and archival data, including agency reports, legislative documents, and published research about the statute. A brief overview of juvenile justice sentencing reforms and research is first provided.

Juvenile Justice Sentencing Reforms in the United States

All societies have some form of legal system that defines acceptable behavior and that involves some form of sanctioning. In the United States the criminal justice system derives from English common law and, until late in the nineteenth century, included both juveniles and adults within its purview. Sanctions historically included many punishment alternatives, with incarceration to prison emerging as an option in the late eighteenth century (Inciardi 1996). However, ideological and cultural changes in the nineteenth century led to the development of new views not only of sanctioning but of childhood (Platt 1977; Empey and Stafford 1991). The eventual result was the creation of the first juvenile court in 1899 (Sutton 1988), legitimated by the doctrine of *parens patriae*, the state as parent, and justified by the view that "juvenile court proceedings were civil rather than criminal in nature" (Feld 1993a, p. 203). In contrast to the many, and, as Gibbs (1975) has shown, frequently inconsistent theories of punishment used to justify punishment of adults, particularly retribution and deterrence, a rehabilitative theory of sanctioning developed. Children were viewed as less culpable than adults for criminal behavior and more amenable to rehabilitative services (Feld 1993a). Juvenile sanctions ("dispositions") thus emphasized individualized treatment and, correspondingly, informal systems of substantive and procedural "rights" to "benefit" children.

Widespread concern about abuses of this separate juvenile justice system led to a series of United States Supreme Court cases in the 1960s and early 1970s (*Kent v. United States*, *In re Gault*, *In re Winship*, *McKeiver v. Pennsylvania*)[4] and to the enactment of

reforms aimed at restricting these abuses through increased procedural rights (Dawson 1990a). The resulting changes were not, however, merely procedural but led to an overall criminalizing of the juvenile court (Feld 1993a). In turn, the sentencing philosophy toward juveniles shifted from rehabilitation to retribution (Bazemore and Umbreit 1995), and from offender- to offense-based sanctioning (Feld 1993b, p. 407), a trend that has continued into the present (Feld 1995). Indeed, wide-ranging juvenile justice reforms have occurred in virtually all states (Torbet et al. 1996; National Criminal Justice Association 1997) in response to public and legislative concerns over increased violent, serious, and chronic juvenile crime. Some of the more prominent reforms include: increased flexibility in and opportunity for waiver of juveniles to adult court (Singer 1996a), introduction of the concept of punishment into juvenile justice (Feld 1995; Dawson 1995), greater access to juvenile records (Etten and Petrone 1994), and, in general, greater sentencing authority over juveniles (Torbet et al. 1996).

These and past changes have engendered considerable debate about the merits of retaining a juvenile court. On one side are those who argue for continuation of a flawed, but potentially redeemable, separate juvenile justice system that maintains an individual- and rehabilitation-oriented focus and that ameliorates current and past injustices (Melton 1989; Dawson 1990a; Moore and Wakeling 1997). On the other side are those who argue that these goals, while desirable, are best achieved through a unified and "juvenilized" criminal justice system (Feld 1993b; Hirschi and Gottfredson 1993; Ainsworth 1995). Although this debate is important, it sidesteps a basic fact about current juvenile justice: in recent years there have been wide-ranging state-level reforms that defy unidimensional description and that remain largely unevaluated.

Research on Juvenile Justice Sentencing Reforms

Many states have promoted "get tough" juvenile sentencing reforms that parallel adult

sentencing reforms (Torbet et al. 1996). However, more than changes in adult sentencing laws, these reforms rarely reduce to a focus only on lengthier periods of incarceration (Singer 1996a). Indeed, federal and state criminal justice sentencing reforms have been designed to achieve multiple goals (e.g., managing prison populations, setting resource priorities, reducing disparity) through multiple means (U.S. Bureau of Justice Assistance 1996). Similarly, juvenile justice sentencing reforms include attempts to focus on crime prevention, graduated sanctions, intermediate sanctions (e.g., boot camps), greater involvement of parents, expanded sentencing authority and use of juvenile waiver, and increasing coordination of services and efforts among state agencies (Howell 1995; Coordinating Council on Juvenile Justice and Delinquency Prevention 1996).

Despite these wide-ranging goals and efforts, global assessments of sentencing reforms frequently reduce to analysis of one goal or one means to a goal, and thereby neglect consideration of alternative evaluative criteria (Blumstein et al. 1983). Moreover, they often fail to address issues such as whether and to what extent lengthier incarceration results in desired outcomes (Wicharaya 1995); how different factors contribute to a given outcome (Myers and Talarico 1987); the extent to which circumvention of goals occurs (Alschuler 1991); and the need for quantitative and qualitative evaluations of sentencing design, implementation, and use (U.S. Bureau of Justice Assistance 1996, pp. 120-21).

Research on juvenile justice sentencing reforms, like research on adult sentencing reforms, has been narrowly focused. Indeed, almost exclusive attention has been given to whether prosecutorial, judicial, or legislative waiver results in lengthier sentences and reduced recidivism relative to what otherwise would obtain (Howell 1996). What much of this research neglects, however, is the contextual nature of waiver, including how it is perceived and used by practitioners (Bishop, Frazier, and Henretta 1989) and how cultural, social, and organizational factors affect the implementation and use of waiver (Sanborn 1993, 1994a, 1994b, 1996). The situation is aggravated by the absence in most states of alternatives to waiver (Singer 1996a; Torbet et al. 1996).

Juvenile Justice Sentencing Reform in Texas

Texas is similar to other states in its attempt to “get tough” on juvenile crime (Torbet et al. 1996). For example, in 1995 the legislature renamed Title 3 of the Family Code the “Juvenile Justice Code” and introduced into it the concept of punishment (Dawson 1996). This shift represents a significant departure from the traditional *parens patriae* view of the juvenile justice system. However, as Dawson (1995, p. 5) has noted: “Rehabilitation of the juvenile is not eliminated as a legislative purpose, but its focus is shifted to accountability and responsibility.” More generally, changes introduced by the legislature (e.g., allocation of more resources, creation of a progressive sanction model, lowering the age of waiver to fourteen, and modification and expansion of the determinate sentencing statute) have resulted in a juvenile justice system that is “more judicial, more adversarial, more criminal and less confidential than before. It is a much tougher system than before, although it is still significantly different from the criminal system” (Dawson 1995, p. 3).

The specific measures introduced by the Texas Legislature place Texas’s adult and juvenile justice sentencing reforms directly in the center of trends nationwide. Consider, for instance, a recent article entitled, “Whatever Is Next After the Prison-Building Boom Will Be Next in Texas” (Fabelo 1996), and the fact that Texas has led the way in incarceration of adults.[5] Indeed, in the 1994 gubernatorial campaign, being “tough on crime” was a theme pursued equally by Democrats and Republicans. This orientation has carried over into the juvenile justice system and led to the modification and expansion of a special type of sentencing created in 1987, entitled the Determinate Sentence Act.

The Determinate Sentencing Act [Violent or Habitual Offenders Act]

Determinate sentencing was enacted by the Texas Legislature to address more effectively violent crime committed by juveniles (Dawson 1988; Harris and Goodman

1994; Anderson and Bradley 1995; Fritsch and Hemmens 1996). Specifically, legislators hoped to create a system of juvenile sentencing that provided more severe punishment of serious, violent, or chronic offenders who either were not eligible for transfer to the criminal justice system or were eligible for transfer but nonetheless would not typically be viewed as appropriate for transfer. The creation of determinate sentencing essentially introduced a third sentencing option that bridged the gap between juvenile and adult justice, thereby giving rise to one description of Texas as having three justice systems, a juvenile, criminal, and juvenile-criminal justice system, respectively (Dawson 1988).

Apart from minor changes, this legislation remained largely unchanged until 1995, when it was renamed the Violent or Habitual Offenders Act (Dawson 1996). At that time two major changes occurred: the number of determinate sentence–eligible offenses was increased from five to approximately thirty[6], and the conditions under which parole or transfer to the adult prison could occur were modified (Dawson 1996). As of 1987, the offenses eligible for determinate sentencing included: murder, capital murder, attempted capital murder, aggravated kidnapping, aggravated sexual assault, and deadly assault on a law enforcement officer (dropped in 1991). As of 1995, eligible offenses include these five and a wide range of first, second, and third degree felonies as well.

Determinate sentencing arose within a context in which debates centered primarily around lowering the age of waiver as a means to combat juvenile crime (Dawson 1988; Fritsch and Hemmens 1996). Proponents of waiver felt that the adult court was appropriate for all serious and violent juvenile offenders. Opponents felt that not only was the adult court an inappropriate place for many serious and violent juvenile offenders but that lowering the age of waiver could result in unfair sentencing practices. Both sides expressed dissatisfaction with what were perceived to be relatively short periods of incarceration of youth. At the time, the Texas Youth Commission (TYC), the agency charged with administratively determining lengths of incarceration for youthful offenders, was holding juveniles convicted of a crime for an average of five months even though

technically youth could be held until age twenty-one (Dawson 1988, p. 952). By contrast, a fifteen- or sixteen-year old could be waived to adult court for any felony offense and could be incarcerated for up to ninety-nine years or life for a capital or first degree felony.

Representing a compromise between the two sides, determinate sentencing was created as an optional alternative to conventional delinquency proceedings and to waiver. As such it allowed for potentially lengthier sentences (up to thirty years, with possible transfer to an adult prison) than could occur under conventional proceedings, reduced discretion by TYC to release determinately sentenced youth on parole[7], and provided all of the procedural rights that normally would be afforded an adult, thereby circumventing successful constitutional challenges (Dawson 1996). In addition, failure to obtain grand jury approval (a procedural safeguard) to pursue determinate sentencing proceedings was not to have any bearing on the prosecutor's ability to petition for waiver (if a youth's age so allowed) or to proceed with conventional delinquency proceedings (Dawson 1988).

Recent changes to determinate sentencing have resulted in significant expansion and modifications but have not altered its fundamental goals. First, new sentencing ranges, and corresponding minimum lengths-of-stay, were created to reflect the inclusion of lesser offenses: up to forty years for a capital felony (three and ten year minimum length-of-stay, respectively), twenty years for a second degree felony (two year minimum length-of-stay), and ten years for a third degree felony (one year minimum length-of-stay). The corresponding minimum lengths-of-stay for indeterminately sentenced youth adjudicated for the same offenses range from six to twenty-four months; parole is available to juveniles any time after the minimum length-of-stay, subject to the discretion of TYC. In the adult system, the corresponding range of possible sentences, including probation, is life imprisonment for a capital felony, five to ninety-nine years for a first degree felony, two to twenty years for a second degree felony, and two to ten years for a third degree felony; parole is available after serving half of the original sentence.

Second, the requirement for a release/recommit/transfer decision by age eighteen was

eliminated. Previously, the committing court determined whether a youth was released, recommitted to TYC, or transferred to the Texas Department of Criminal Justice's Institutional Division (TDCJ-ID). Now, however, TYC determines whether and when to seek transfer. Prior to this change, almost 50% of all determinately sentenced offenders were transferred to TDCJ-ID (Texas Criminal Justice Policy Council 1997c, p. 8).[8]

Research on Determinate Sentencing

The recent juvenile justice reforms have yet to be assessed in a systematic or comprehensive manner. Research has been limited primarily to studies by the Texas Criminal Justice Policy Council (1997b, 1997d) of compliance with the progressive sanctions model, long-term demands for additional bedspace, and profiling of youth who have been determinately sentenced to TYC. These studies conform with the Policy Council's attempts to provide policy-relevant "bottom-line" information (Fabelo 1994, p. 293) but are notable for their limited attention to process-related factors that may affect outcomes and that are relevant for identifying potential unintended uses and effects.

Most research on determinate sentencing predates the 1995 changes and has not addressed these types of issues. Furthermore, given the magnitude and nature of the changes, it remains unclear to what extent this past research applies to determinate sentencing today. For example, Weinmann (1995) found that seriousness of offense, behavior while incarcerated, and prior juvenile record are relevant to TYC's recommendation at the release/recommit/transfer hearing, a recommendation followed 80% of the time by the committing judge. However, since this hearing no longer is required for youth determinately sentenced for offenses committed on or after January 1, 1996, it is uncertain the extent to which Weinmann's (1995) findings are generalizable to release/recommit/transfer hearings that today occur at the initiative of TYC.

The most definitive research on determinate sentencing has been conducted by Fritsch, Caeti, and Hemmens (1996), who determined that waived juveniles receive but

do not generally serve lengthier sentences than what potentially are available in juvenile court. Further, Fritsch, Hemmens, and Caeti (1996) examined differences between determinately sentenced and waived youth, and found that the former receive and serve less lengthy sentences than do the latter. The authors concluded from this assessment that the recent expansion and modification of the determinate sentencing statute likely will be ineffective (Fritsch, Hemmens, and Caeti 1996, p. 128).

Apart from methodological issues discussed by Fritsch, Hemmens, and Caeti (1996, p. 127)[9], there are several problems with this assessment. First, lengthier sentences and actual terms of incarceration are not the only goals of determinate sentencing. Other goals include rehabilitation, reduced recidivism, and, from the practitioner's perspective, more balanced sentencing. More to the point, determinate sentencing was created expressly to provide prosecutors with "an <u>alternative</u> to seeking discretionary transfer of a 15- or 16-year old to criminal court for prosecution as an adult" (Dawson 1988, pp. 946-47; emphasis added), a view also expressed by the legislature (Harris and Goodman 1994). Thus, it should be neither surprising nor a basis for negative assessments that determinately sentenced youth (may) serve less time incarcerated than do waived youth. Second, determinate sentencing applies to youthful offenders age ten through sixteen; thus, one important comparison for future assessments of length of incarceration will be between indeterminately and determinately sentenced offenders who were not eligible for waiver. Third, there is evidence that some prosecutors invoke determinate sentence proceedings for the purpose of obtaining greater plea bargaining leverage in seeking an indeterminate sentence or a stricter level of probation.[10] For example, Dawson (1990b, p. 1931) cited one prosecutor who stated: "(J)ust because a grand jury approves a petition doesn't mean we'll seek thirty years. We might want the [TYC] to keep a kid two years." These indeterminately sentenced (or probated) youths will not appear as determinately sentenced youths in databases, and thus in statistics, but nonetheless can receive potentially more serious sanctions than they otherwise might have received absent the

availability of determinate sentencing, an effect clearly unintended by the legislature (Dawson 1990b, pp. 1935-36). Fourth, variation in use of determinate sentencing by county (or other dimensions) may obscure positive effects (e.g., lengthier sentences served, improved rehabilitation, reduced recidivism) that a disaggregated analysis might reveal (Alschuler 1991; Feld 1993a). Dawson (1990b) raised this issue indirectly in finding that factors as diverse as prosecutorial policy, county, offense, judge or jury trial, and offender's prior record affect determinate sentence referrals and dispositions.

In sum, in contrast to previous research, future assessments of the current or potential efficacy of determinate sentencing should consider further its goals, how successful achievement of these goals is to be measured, the actual use to which it is being put, and whether there are positive or negative unintended effects associated with its use.

A Study of Texas Juvenile Justice Sentencing Reform

The present study examined evaluation issues, including design, implementation, use, and assessment (Decker 1984; Rossi, Freeman, and Sandefur 1993; Scheirer 1994), relevant to assessing the efficacy of Texas's determinate sentence statute. These issues were explored using data from two sources: a) in-depth, open-ended interviews, conducted in fall 1997 by the author, with Texas juvenile justice practitioners (judges, prosecutors, defense attorneys, probation officers) from urban and rural counties, state legislators, agency officials, and scholars; and b) legislative documents, agency reports, and previously published research. The interviews were designed to address respondent perceptions about determinate sentencing, with particular attention to policy design (what are the goals of determinate sentencing and how are they attained?), implementation and use (when and why is determinate sentencing used?), and assessment (what are intended and potential unintended effects? is there consistency of use within and across jurisdictions? is determinate sentencing effective and, if so, by what criteria?).

This research was concerned with respondent perceptions about a range of evaluation issues (Bishop, Frazier, and Henretta 1989; Sanborn 1996). The goal was not to arrive at empirical generalizations but rather to highlight potential evaluation issues that should be addressed if adequate assessments regarding the efficacy of various state juvenile sentencing reforms are to be made. For example, if in one jurisdiction use of determinate sentencing is affected by X, that fact is of relevance only for the potential implication it has for an assessment of determinate sentencing generally and not for whether X in fact is present or whether it in fact is relevant in another jurisdiction. Ultimately, empirical evaluations of use and efficacy are critical, but, as will be discussed, such evaluations are difficult if not impossible without knowing what constitutes a relevant fact.

Design Issues

A fundamental axiom of evaluation research is that a program or policy is unevaluable if its goals are unclear or ambiguous (Berk and Rossi 1990, pp. 71-72). It is critical therefore that the goals of a policy, as well as the means by which those goals are to be achieved, be stated as clearly and as concretely as possible. Consider determinate sentencing, which was created for two relatively clear goals: 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).

Taking the first goal first, left unstated legislatively and in commentaries is what a tougher sanction means operationally and what exactly is achieved by that tougher sanction. For example, does it mean a lengthier sentence, exposure to tougher programs or increased surveillance while incarcerated, greater ease of eventual transfer to TDCJ-ID, stricter probation or parole, or increased likelihood of receiving long-term rehabilitative services? In each instance, is the goal retribution, deterrence (specific or general), incapacitation, rehabilitation, or, possibly, a balance of these goals (if so, what is the

precise balance being sought)? These are not idle questions. Many respondents in this study operationalized the first goal, and the means of achieving it, in precisely these ways (discussed in more detail below). Furthermore, answers to these questions would circumscribe the validity of summary assessments of determinate sentencing that rely upon emphases on only one means or goal (cf. Fritsch, Caeti, and Hemmens 1996).

The second goal, like the first one, suffers from similar ambiguities. What about situations, as suggested in the interviews, in which determinate sentencing likely would result in a lengthier term of incarceration than would be obtained through waiver (e.g., due to the greater leniency possibly shown to a young defendant in adult court)? Answering this question requires clarifying whether determinate sentencing in this context should be used for retributive or incapacitive/public safety purposes. Indeed, the question is important if only because the recent expansion of determinate sentencing to include less serious offenses increases the likelihood that different jurisdictions will interpret the statute in different ways. The situation is confused even more by the fact that when both determinate sentencing and waiver are options, some defense attorneys reported actively seeking waiver because they believed that chances favored their client receiving a lesser sentence (Bishop, Frazier, and Henretta 1989). In the process, however, their clients likely are forsaking access to more and better rehabilitative services at TYC. This practice seems inconsistent with the second goal of determinate sentencing, yet presumably defense attorneys act on behalf of the client's best interests (Sanborn 1996). Clarification of the goals of determinate sentencing would assist in establishing, or, more precisely, defining, criteria for how to assess this and other situations.

Implementation Issues

Interviews with respondents who were involved in juvenile justice when determinate sentencing was first enacted suggested that several factors affected its implementation. First, determinate sentencing was learned about and used in more urban counties where

there were greater opportunities (i.e., occurrences of eligible offenses) to use it and where there were resources available to sustain the additional requirements of grand jury proceedings and potential jury trials. Second, within the larger urban counties, the decision to implement determinate sentencing as a matter of policy appears to have been driven largely by the attitude of local prosecutors (Dawson 1990b, p. 1909). As one respondent stated: "You've got to understand that Texas is a composite of a bunch of little parts. One little part and another little part may be as different as night and day. If the prosecutor wants to use it, he'll use it; if he doesn't want to, he won't." Finally, the cultural context of counties and courts also seems to have been a factor, as evidenced by respondent descriptions of some counties embracing recent changes in the same way they had embraced the original legislation, despite new district attorneys having been elected.

Use Issues

A major focus of this research was to explore empirically factors that previously have been enumerated as potentially relevant to ongoing use of determinate sentencing (Dawson 1988, 1990b). The strongest factor identified in previous research (Dawson 1990b, p. 1906), and sustained here, is the heinousness of the particular offense committed, especially when waiver is not possible. This fact comports with the legislature's intent originally to include only a few undeniably serious offenses (e.g., capital murder) about which there would be little disagreement regarding particular instances of the offense (Dawson 1988, p. 976). However, the recent expansion of offenses eligible for determinate sentencing, including second and third degree felonies, appears to have engendered much less agreement about what constitutes a concrete instance of an offense serious enough to warrant determinate sentencing. In turn, this decreased consensus appears to have given greater emphasis to local county or court contexts in affecting the use of determinate sentencing. As one respondent noted: "In some counties, that kid with the one marijuana cigarette is going to have the book thrown

at him and be sent to TYC, [whereas] in other places . . . that kid may have nothing happen to him." Existing county-level variability therefore may become even more pronounced than it has since the original inception of determinate sentencing.[11]

The recent expansion of offenses thus almost certainly will change within- and across-county use of determinate sentencing; the challenge will be to identify how and why. This challenge is of particular relevance for aggregate-level analyses, such as comparisons between all determinately sentenced and all waived youth. In commenting about the fundamental importance of case-level contextual factors (Sanborn 1996), many of the practitioners interviewed for this study implicitly invoked similar methodological arguments about aggregated analyses that neglect possible interactions among relevant independent variables (Blumstein et al. 1983). As but one additional example, motivation for using determinate sentencing appears to be partly a function of local resources. Thus, in rural jurisdictions, determinate sentencing sometimes is used to obtain lengthier stays at TYC, not for purposes of retribution, incapacitation, or deterrence, but rather to provide lengthier exposure to rehabilitative services in comparison to what the juvenile would receive if retained locally. In urban jurisdictions, where more programs generally are available, this kind of use appears to occur infrequently. Indeed, in some urban areas, where access to rehabilitative programs is greater, determinate sentencing sometimes is automatically sought as a means by which to obtain lengthier incarceration, with concerns about rehabilitation having little or nothing to do with the decision.

Assessment Issues

As used here, assessment refers to the attempt to identify factors potentially relevant to evaluating a policy. Assessment issues include general questions (e.g., what are the intended and potential unintended effects of determinate sentencing?) and policy-specific questions (e.g., is consistency across jurisdictions in the use of determinate sentencing relevant to ongoing support of it?). With respect to the former, the interviews clearly

established substantial variation in perceptions of efficacy (regardless of how "intended effect" was operationalized) and identified a range of unintended effects: prosecutors invoking determinate sentencing for the express purpose of obtaining plea bargaining leverage (Dawson 1990b, pp. 1935-36); use of determinate sentencing to obtain rehabilitative services for youths who otherwise, were resources available, would be retained locally; increasing pressure upon TYC to allocate more resources to its determinately sentenced population; increased leverage for TYC in motivating, through threat of transfer to TDCJ-ID, determinately sentenced youths to actively participate in resocialization programs; and defense attorneys advocating waiver (on the chance of obtaining a lesser sentence) as an alternative to determinate sentencing in situations that in the past most likely would have resulted in youths receiving indeterminate sentences.

Policy-specific issues involve consideration about whether determinate sentencing is being used consistently across jurisdictions (most practitioners said it is not); whether there is disparity in the use of determinate sentencing across individuals (most thought there is not); whether determinate sentencing results in terms of actual incarceration that reflect the judge's or jury's intent at disposition (many thought it did not); whether prosecutorial discretion has displaced judicial discretion (most thought it had not); and which goals should be emphasized in evaluating determinate sentencing (mixed response both within and across jurisdictions). Other considerations include cost-benefit analyses and comparisons of recidivism rates for differently sentenced groups of like offenders.

Whether and how to weigh these issues in arriving at summary assessments of determinate sentencing cannot be addressed here, save to suggest that they are precisely the types of issues that need at least to be considered. Howell (1996, p. 50) has written: "Transfer is a socio-legal policy based on very little information." Much the same can be said of determinate sentencing; it is a policy based on little information about how it is viewed or used, what criteria should be used to assess its efficacy, or what unintended effects it is having. The issues (design, implementation, use, assessment) outlined here

pose significant challenges to those who would evaluate determinate sentencing's efficacy. Hardly unique to determinate sentencing, they arise presumably not because of malice or ignorance but because of the competing and frequently overwhelming burdens placed upon legislators. Indeed, the existence of these issues does not imply a negative evaluation of determinate sentencing, but rather that more careful attention is needed to arrive at more reliable and valid evaluations than will occur otherwise.

Evaluation Issues Confronting Juvenile Justice Sentencing Reforms

This analysis has raised several issues relevant to assessment of state-level juvenile justice sentencing reforms. First, failure to characterize operationally what reform rhetoric means, or what the likely effect of a given reform will be, risks making that reform vulnerable to arbitrary assessments of worth (Blumstein et al. 1983).

Second, with many state-level juvenile sentencing reforms there often is a failure to attend to design, implementation, use, and assessment issues. The result is a neglect of how process-related factors may be directly relevant both for conducting outcome studies and for providing explanations about what can produce particular outcomes (Blumstein et al. 1983; Bishop, Frazier, and Henretta 1989, p. 184; Sanborn 1994a, 1994b, 1996; Grisso 1997; National Criminal Justice Association 1997). For example, by focusing on how a policy affects prosecutorial discretion, it becomes possible to determine whether and how the policy is working and, in turn, to link such analyses to outcome evaluations.

Third, the failure to consider potentially relevant facts directly flows from a failure to consider the role of theory in guiding policy development (Empey and Stafford 1991; Wicharaya 1995). Brickman, Rabinowitz, Karuza, Coates, Cohn, and Kidder (1982) have provided an analytical framework for highlighting this issue and for identifying the types of issues likely to confront states in which sentencing reforms have been or currently are being undertaken. This framework, which consists of what Brickman et al. (1982) have

termed four "models of helping and coping," is derived from cross-classifying attribution of responsibility for causing a personal or social problem with attribution of responsibility for providing a solution to that problem. In the context of juvenile justice, this framework leads to the following type of question: Are juvenile offenders responsible for their actions and for providing a solution to the consequences of their actions, for one but not the other, or neither? According to Brickman et al. (1982), if practitioners, much less offenders, disagree among themselves about the "correct" answer, the efficiency and efficacy of a sanctioning policy will decrease. For example, consider the likely effect upon a juvenile of being exposed to the four different models of helping and coping as he or she proceeds through the juvenile justice system: you are responsible both for how you were raised and for changing your behavior; you are responsible for how you were raised but not for changing your behavior; you are not responsible for how you were raised but you are responsible for changing your behavior; or, finally, you are responsible neither for how you were raised nor for changing your behavior. Current debates about the appropriateness of waiver and the merits of a separate juvenile court attest to the likelihood that juveniles are exposed to these different models of helping and coping.

Fourth, assessment of state-level juvenile sentencing reforms should be undertaken if they are to have a chance of being effective (Blumstein et al. 1983). In a recent study of practitioner's perceptions regarding juvenile sentencing patterns, Sanborn (1996, p. 112) concluded that disposition 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." As the present research suggests, this conclusion is premature and slightly misguided. Too little research has attended to the issues Sanborn (1996) has raised. In addition, the expectation that we derive "a completely accurate picture of the factors affecting juvenile court sentencing" surely is unrealistic. Indeed, even without perfect information, knowledge about the limits to which we can predict or

interpret sentencing outcomes should be useful to scholars and policymakers in their respective attempts to understand and evaluate sentencing reforms.

Conclusion and Implications

In an ideal world, criminal and juvenile justice policy would be driven by concern with developing realistic, appropriate, and evaluable sanctions. Realistic policies would include consideration of potential unintended effects and of how and why a sentencing policy will be viewed and used by practitioners and "consumers." Appropriate policies would focus on the extent to which a defined problem can be addressed, including clarifying the nature of the problem, identifying the population within which the problem purportedly exists, and assessing the extent to which various practitioners will agree with the value of the policy and the means by which it is to be fulfilled (Brickman et al. 1982). Finally, evaluable sentencing policies at minimum would state clear goals, objectives, measures of effectiveness, and general evaluation criteria. Absent such statements, sentencing policies and juvenile justice policies generally, by definition are unevaluable and thus risk incurring post hoc and ad hoc assessments of worth (Berk and Rossi 1990).

Many current juvenile justice sentencing reforms have failed to produce realistic, appropriate, and evaluable policies. One result has been to engage in a costly cycling back-and-forth between policies that over-emphasize incarceration[12] to policies that over-emphasize rehabilitation (Bernard 1992). Consequently, attention is diverted from the possibilities of sentencing (Barlow 1995; Shichor 1997), including consideration of alternative sanctions (Bazemore and Umbreit 1995; Tonry and Lynch 1996) and the use of sentencing for purposes other than punishment. Another result is to obscure the extent to which current "get tough" policies, as in Texas, contain within them possibilities, as yet largely unrealized, for more viable balancing of competing justice goals.

Notes

[1]. The trend is striking, too, because public opinion is more complex and less extreme (Schwartz, Guo, and Kerbs 1993; Flanagan and Longmire 1996; Rossi and Berk 1997).
[2]. See, for example, the American Criminal Law Review (1992[29(3)]) symposium.
[3]. The focus on determinate sentencing is strategic because it represents an alternative to waiver and is unique among other state-level reforms that target serious offenders. The potential for expanded use of determinate sentencing in future years is great and could result in a significantly increased need to provide additional resources for incarcerating juveniles (Texas Criminal Justice Policy Council 1997a, 1997b, 1997c, 1997e).
[4]. *In re Gault*, 387 U.S. 1 (1967); *In re Winship*, 397 U.S. 358 (1970); *Kent v. United States*, 383 U.S. 541 (1966); *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).
[5]. Despite large increases in prison construction in the 1980s and 1990s, Texas experienced another population crisis in late 1997, due partly to the fact that over 70% of prison admissions were for technical violations of parole and probation rather than for commission of new offenses (*Austin American-Statesman* 1997, p. B2).
[6]. An exact enumeration is difficult to determine due to the inclusion of criminal solicitation offenses, which include within them many other offenses. The new offenses include: 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, 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. Arson was added in 1997.
[7]. The parole option and wide latitude in sentencing makes determinate sentencing in Texas less "determinate" than the term traditionally implies (Dawson 1988).
[8]. For a more extensive and complete discussion of the original and recent legislation, see Dawson (1988, 1990b, 1995, 1996) and Fritsch and Hemmens (1996).
[9]. Fritsch, Hemmens, and Caeti (1996) identify as problematic the use of incomplete data and failing to control for the offender's prior record and for offense seriousness. Two additional issues are: the problematic assumption of similar distributions across the given time frame of offenders and of patterns of use of determinate sentencing and waiver (Dawson 1990b, 1992), and failure to recognize that some determinately sentenced offenders presumably represent failed attempts to obtain waiver (Dawson 1996).
[10]. Unlike regular probation, violation of which submits the youthful offender to a possible indeterminate sentence to TYC until age twenty-one, a violation of a determinate sentence probation subjects the offender to the full range of sentencing (e.g., up to forty years) available at the initial disposition hearing (Dawson 1996). Apart from the issue of probation, it is notable that from 1988 to 1994 close to 50% of youthful offenders eligible for determinate sentencing were indeterminately sentenced (O'Connell 1994).
[11]. Between 1987 and 1994, approximately 90% of all juveniles determinately sentenced to TYC were sent by thirty-five of the 254 counties in Texas, and over 50% were sent by two counties (O'Connell 1994), one of which the present research identified as having used determinate sentencing in an automatic, non-discretionary manner.
[12]. Despite recent emphases on crime prevention, Texas juvenile justice funding likely will continue to focus on reactive sanctions. Currently, 67% of juvenile justice expenditures goes toward the incarceration of youths and 33% toward probation (Texas Criminal Justice Policy Council 1997a, p. 17). The daily cost of juvenile incarceration ($113.44) is roughly three times that of adult incarceration ($39.51), thirteen times that of juvenile probation ($8.21), and sixty-four times that of adult probation ($1.77). Notably, current projections through the year 2001 indicate a substantial increase in juvenile arrests and a corresponding need for 30% more bedspace at TYC (Texas Criminal Justice Policy Council 1997b, pp. 27-28).

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