

VOLUME I



Research on Sentencing: The Search for Reform



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Research on Sentencing: The Search for Reform

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and Michael H. Tonry, *Editors*

Panel on Sentencing Research

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and the Administration of Justice

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Preface

The Panel on Sentencing Research is an outgrowth of the ferment that significantly affected sentencing practice in the 1970s. That ferment is reflected in a variety of sentencing “reforms,” many of which had their roots in research, much of which involved technical questions of some complexity.

The Panel on Sentencing Research was established in September 1980 to review that research on sentencing and its impact. The panel was created in response to a request from the National Institute of Justice to the National Academy of Sciences as a panel of the Committee on Research on Law Enforcement and the Administration of Justice of the Commission on Behavioral and Social Sciences and Education of the National Research Council. The panel’s task was to assess the quality of the available research, to indicate how the application of research techniques could be improved, and to suggest directions for future research, especially that supported by the National Institute of Justice. To address this range of issues, the panel was composed of specialists representing a variety of academic disciplines, methodological approaches, and operational expertise in the criminal justice system (see Appendix B for biographical sketches of panel members and staff).

The issue of sentencing is very broad, and so the panel very early had to limit the scope of its work. Much of the public concern over sentencing relates to its effects on crime, but those effects were explicitly excluded from the panel’s efforts because two other panels of the Committee on Research on Law Enforcement and the Administration of Justice—the

Panel on Research on Rehabilitative Techniques and the Panel on Research on Deterrent and Incapacitative Effects—had recently reviewed the research in their respective areas and identified directions for future research.

Sentencing also involves many complex philosophical questions relating to the role of punishment in society, to the appropriate form of punishment, and to the symbolic qualities of punishment. The panel inquired into these areas to provide a background perspective for its work but viewed their resolution to involve predominantly normative, nonempirical considerations and thus to fall outside the panel's research-related mandate. There are also many important issues surrounding the question of the sentencing of juveniles; however, since most of the recent sentencing research and reform has been directed at the adult criminal justice system, that has been the focus of the panel's attention.

In addressing its task, the panel directed its major attention to those issues on which a reasonable body of research already existed or for which new research held promise of making important new contributions. The panel commissioned several papers to synthesize the research in some areas that were particularly extensive, to explicate important methodological issues that limited the validity of existing research, and to identify particularly promising future research possibilities. These papers were presented at a conference the panel organized at Woods Hole, Massachusetts, on July 27–29, 1981 (see Appendix A for a list of participants). The discussion of those papers provided an important contribution to the panel's deliberations, and a number of the commissioned papers, revised in response to the panel's suggestions, are contained in Volume II. Those papers, which represent the views of the individual authors rather than the panel, are published because the panel believes they make a valuable contribution to the literature on sentencing research.

The report of the panel is presented in this volume. It is the result of vigorous debates and some compromises. Although some members of the panel would have preferred greater emphasis given to certain issues or arguments, the report represents the collective views of the panel.

The panel appreciates the constructive criticism and review the report has received from others. A draft of the panel's report was sent for review to all participants at the Woods Hole conference and to all members of the Committee on Research on Law Enforcement and the Administration of Justice.

The panel would like to express its deep appreciation for the extensive contributions by its staff. Susan Martin of the National Research Council served as study director and, as such, managed the affairs of the panel

and addressed many of the sociological issues involved in the work of the panel. As a consultant, Jacqueline Cohen of Carnegie-Mellon University had a primary responsibility for addressing the analytical issues in the research reviewed, but her skills and commitment resulted in many important contributions throughout the report. Michael Tonry of the University of Maryland School of Law, also as a consultant, contributed valuable perspectives on the many legal and philosophical considerations involved throughout the work of the panel. A final editing of the panel's report and the papers in Volume II was undertaken by Eugenia Grohman and Christine McShane, respectively, of the Commission on Behavioral and Social Sciences and Education, and their editorial skills are much appreciated. Diane Goldman at the National Research Council provided major administrative and secretarial support throughout the work of the panel, and her dedication was notable. Jane Beltz provided comparable support at Carnegie-Mellon University.

We would also like to express our appreciation to the National Institute of Justice. Robert Burkhart and Cheryl Martorana of the institute attended most of the meetings of the panel and were most helpful in providing advice and information on the institute's program on sentencing research.

ALFRED BLUMSTEIN, *Chair*
Panel on Sentencing Research

Research on Sentencing: The Search for Reform

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Summary

INTRODUCTION

The sentencing decision is the symbolic keystone of the criminal justice system: in it, the conflicts between the goals of equal justice under the law and individualized justice with punishment tailored to the offender are played out, and society's moral principles and highest values—life and liberty—are interpreted and applied. Therefore, it is not surprising that as crime increased and questions about the criminal justice system's fairness and effectiveness grew pressing in the early 1970s, reformers began reexamining the courts and their sentencing practices.

BACKGROUND

The decade of the 1970s was characterized by a variety of efforts to modify sentencing practices, to establish more detailed criteria for sentencing, and to establish new sentencing institutions and procedures. These reforms have included:

- Abolition of plea bargaining
- Plea-bargaining rules and guidelines
- Mandatory minimum sentences
- Statutory determinate sentencing
- Voluntary/descriptive sentencing guidelines
- Presumptive/prescriptive sentencing guidelines

- Sentencing councils
- Requiring judges to provide reasons for sentences
- Parole guidelines
- Abolition of parole
- Adoption or modification of good time procedures
- Appellate review of sentences

Most states have given serious consideration to at least one of these reforms, and many have adopted one or more of them.

The rapid alteration of American sentencing laws and practices during the 1970s followed a fairly long period of relative inactivity on sentencing policy. Indeterminate sentencing systems were in widespread use until the 1970s and had not changed materially for 50 years: plea negotiation was the predominant but little acknowledged mode of disposition of criminal cases; statutes set upper limits on the sentences to be imposed for each offense, but judges rarely invoked those limits and had no other guidance when setting sentences; most sentences were indeterminate; and the decisions of parole boards were immune from review or appeal.

By 1982, however, most jurisdictions had made dramatic changes in their sentencing practices and institutions. Parole release had been abolished for the majority of prisoners in as many as 10 states, and parole guidelines had been established in at least 8 others. Determinate sentencing statutes, under which prisoners could predict their release dates at the time of sentencing assuming good behavior in prison, were in effect in more than 10 states, and mandatory minimum sentence laws were in effect for some offenses in more than 30 states. Several states had adopted statewide sentencing guidelines, and local sentencing guidelines had been established in more than 50 jurisdictions.

This period of rapid change was associated with widespread dissatisfaction with indeterminate sentences, precipitated by six major factors:

1. *Prison uprisings.* The prison uprisings (e.g., at Attica in New York, the Tombs in New York City, and at other prisons in California, Florida, and Indiana) of the late 1960s demonstrated that prisoners were deeply discontented and that "rehabilitation" was little more than rhetoric in many prisons.

2. *Concern about individual rights and the control of discretion.* Utilitarian practices and their effectiveness were questioned by those concerned with individual rights and with arbitrary uses of discretion. Immune from review, judges and parole boards had broad discretion to decide who went to prison and how long they stayed there, and both became the objects of reform proposals.

3. *Demand for accountability.* Throughout the legal system there was a movement for increased accountability in official decision making. Courts began to require public officials to indicate the bases of their decisions and to give the individuals affected by them the opportunity to dispute material allegations and present evidence, and prisons began to be required to publish their disciplinary rules and to give prisoners an opportunity to defend themselves against charges of rule violation.

4. *Disillusionment with rehabilitation.* After dominating thinking in corrections for more than a century, the rehabilitative ideal was challenged on both empirical and ideological grounds. This challenge undermined the credibility of the argument for indeterminate sentences that permitted release of prisoners when they had been rehabilitated.

5. *Disparity and discrimination.* A number of statistical and experimental studies of judicial sentencing suggested that sentencing displayed substantial disparity and racial and class discrimination. Findings of widespread inconsistencies both within and between jurisdictions contributed to a belief that sentencing practices were unfair.

6. *Crime control.* Official rates of reported crime had increased almost steadily since the early 1960s, and political candidates, public officials, and others were repeatedly expressing frustration at the criminal justice system's inability to control crime. Among the targets of public frustration were "lenient" judges and parole boards that were said to release dangerous people into the community without adequate concern for public safety.

These factors, among others, coalesced into a compelling case against indeterminate sentencing. The indeterminate sentencing system that was all but universally supported in the 1950s had few defenders by the late 1970s. A remarkable consensus emerged among left and right, law enforcement officials and prisoners' groups, reformers and bureaucrats that the indeterminate sentencing era was at its end. Rather less clear was what should replace it.

The Sentencing Reform Movement

A substantial number of structural innovations were proposed and adopted in various jurisdictions. Some attempted to provide unambiguous guidance on sentencing in critical cases (e.g., mandatory minimum sentence laws for drug, firearms, and repeated violent offenses). Some attempted to create decision rules for cases involving relatively harsh sentences (e.g., parole guidelines that set standards for prison release decisions—but necessarily left untouched judges' decisions about whom to im-