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Minnesota Sentencing Guidelines Commission: An analysis of sentence fairness and prison population

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Abstract

This article observes the success of the Minnesota Sentencing Guidelines Commission by viewing the consistency of prison sentences and rate of prison population growth after implementation. I hypothesize that the sentencing guidelines allow for fairer sentences and manageable prison capacities. Prior research has shown the success of the determinate sentencing system. The research begins in 1979 with the Commission's conception. The results of research demonstrates that the Guidelines do in fact achieve consistency in sentencing and manageability in prison capacities.

Introduction

The Minnesota Sentencing Guidelines Commission was conceived by the 1978 Minnesota Legislature and implemented in 1979. This innovative approach allows for a structured and fair approach to sentencing. The Guidelines are a grid system, similar to a multiplication table, where the specified sentence is found by weighing the Criminal History Score on the x-axis and the Severity Level of Conviction Offense on the y-axis. The Minnesota Sentencing Guidelines Commission is a national leader in its category (Dailey, 1993). The panel's mission is to alleviate prevalent sentencing disparity and allow for equilibrium in prison capacities. Unlike the Federal Sentencing Guidelines where the federal commission determines needed prison space and Congress is required to provide funding, the Minnesota Legislature decides prison funding and the Minnesota panel works to find a manageable population. Different representatives from all aspects of the law work together to improve the Guidelines Grid on a yearly basis. The current grid is available for the public to view in the yearly "Minnesota Sentencing Guidelines Commission Report to the Legislature." This report not only allows for accountability, but also for fluidity. As time passes, sentencing structure can become archaic, just like laws and regulations. The Yearly Report is used by the Minnesota Legislature to view how their passage of law is implemented by the Commission. Three governmental players in the arena of policy climate are examined in the following article: The Minnesota Department of Corrections, the Minnesota Legislature, and the Minnesota Sentencing Guidelines Commission. With implementation of the Guidelines, there have been fairer sentences and more manageable incarceration rates. An innovative approach to sentencing, the Minnesota Sentencing Guidelines Commission is a successful means to providing fair and determinate sentencing. This

paper proves that states with Sentencing Guidelines in place allow for more manageable prison capacities and fairer sentences than states without a guidelines system.

The history of the Minnesota Sentencing Guidelines Commission stems from a solution to a problem. Indeterminate sentencing Minnesota previously had in place allowed for broad penalty ranges from the legislature, a release system determined by a parole board, and incarceration decisions rested squarely on the shoulders of the judges (Dailey, 1998). Policymakers longed for a system that allowed for greater uniformity and predictability in sentencing. Furthermore, legislators felt as if the parole board disparaged the seriousness of committed offenses by releasing convicts sooner than anticipated. At this point, determinate sentencing was already on the agenda of the Minnesota Legislature. Critics of a fundamental determinate sentencing system argued that the prosecution would have too much discretion when deciding sentences because judges would have their hands tied with statutory penalties. Therefore, policymakers sought to “preserve a greater balance between judicial and prosecutorial discretion” (Dailey, 1998). Under Minnesota § 244.09, the original Minnesota Sentencing Guidelines Commission was established in 1979.

The Commission is comprised of eleven members appointed by the Governor: A state Supreme Court Justice, two trial court judges, a prosecuting attorney; a defense attorney; the commissioner of Corrections; the Parole Board chair; and three citizen members, one of whom must be the victim of a felonious crime (Dailey, 1998). There is a chair and a vice chair. Originally, only two citizen members were required. The statute was later revised to include input from a victim. The current chair is the Isanti County Prosecutor Jeffrey R. Edblad. Edblad was an appointee from the Tim Pawlenty gubernatorial era. The Honorable Christopher Dietzen is a delegate from the Minnesota Supreme Court. The two trial court judges come from the

Minnesota Court of Appeals and the First Judicial District in Minnesota. The former is the Honorable Heidi Schellhas and the district court judge is the Honorable Caroline Lennon. John Stuart, the State Public Defender, represents the defense on the panel. Tom Roy, the Commissioner of Corrections, represents his agency. Sergeant Paul Ford from the St. Paul Police Department leads input from law enforcement. Jason Anderson of Itasca County speaks for the State Parole Board. Yamy Vang, Sarah Walker and vice-chair Connie Larson embody the constituency (MSGC, 2014). Larson, appointed in 2000 by Governor Jessie Ventura, is the mother of Cally Jo Larson, who was infamously murdered in Waseca, Minnesota by an illegal alien in 1999. Cally's sister Jayme came home to find her twelve-year-old sister brutally raped, stabbed, and hanged by Lorenzo Sanchez of Texas; Sanchez was burglarizing the Larson home at the time. Connie Larson's impact on the Minnesota Sentencing Guidelines Commission clearly embodies the viewpoint of victimhood. All eleven members have valuable input from their respective sides of the law. The differing standpoints satisfies the arguments of sentencing discretion being placed solely in the hands of the prosecution by those critical of determinate sentencing. The voice of each representative is heard loud and clear at a small U-shaped table in an office suite on Battery Park Drive in St. Paul, Minnesota.

Literature Review

The earliest research found was in 1981 and the most recent is the 2014 Minnesota Sentencing Guidelines Commission Yearly report to the Legislature. Dailey (1998) speaks to the fluidity leading to the success of the Guidelines twenty years after their establishment, stating that: "While political and practical forces continue to evolve the sentencing guidelines policy, it is structure itself that provides the essential rational framework for decision making." This

fluidity is important because it illustrates the guidelines' success in sentence fairness and prison manageability through differing political climates.

The body of research dealing with the Minnesota Sentencing Guidelines Commission typically uses comparison to before and after Guideline reform. This is most prevalent when commenting on sentence disparity. Goodstein (1983) proves that the Guidelines led to higher equity and a more predictable release date by highlighting statistics from the indeterminate sentencing era up until 1983.

Knapp (1982) highlights further research proving the regression of sentence disparity under Guidelines implementation. She examines the impact of guideline policy on sentencing practices, uniformity in sentencing, proportionality in sentencing, and severity of sentences and the neutrality of social factors in sentencing. This article also articulates the importance of judicial discretion in departure on the Guidelines system. Knapp's description of political solutions to prosecutorial power remain invaluable because the prior lack of sentencing power is indicated.

Frase (1981) evaluates research on alleviation of prison capacity. He highlights Minnesota's strict 95% prison capacity constraint: "Using a commission to set presumptive sentences maximizes the potential to avoid prison overcrowding" (Frase, 1991). Marvell (1995) uses a very statistical approach in his work. He offers stirring number evaluations that compare the Minnesota Sentencing Guidelines to other states with a similar system and the Federal Sentencing Guidelines. His use of clear variables with prison admissions and population in each state offers comparisons highlighting the effectiveness of the Minnesota Sentencing Guidelines.

Research Design

This research design seeks to find if the Minnesota Sentencing Guidelines Commission is effective in providing fairer sentences to convicts and if the prison populations are more manageable following implementation. The effectiveness of the prior indeterminate sentencing system can be understood by viewing the differences in sentence disparity and altered incarceration rates. The independent variable is the presence of the guidelines. The dependent variables are sentence fairness and incarceration rates. Because sentence fairness is a difficult idea to conceptualize, it is broken down into four key concepts. Equity is consistency in sentence specification. Between-group equity is the parity between those that were sentenced prior to guidelines implementation and those sentenced after. Within-group equity is the measure of parity existing between those sentenced at the same time. Uniformity is the idea that lawbreakers with similar offenses receive similar sentences. Proportionality is the correlation of sentence severity with the sanction assigned to the offender. Certainty of Release measures the sureness of the incarceration expiration date.

Prison dynamics in Minnesota are directly affected by the Sentencing Guidelines Commission. Because Minnesota's Commission is the first of its kind, there is substantially more information available than in other states with a similar system. There are a number of techniques employed by the Commission in the arena of detention. One such issue is certainty of release. Sentencing reform provided for a high degree of release certainty (Goodstein, 1983). Under determinate sentencing, each inmate receives a statement from the prison specifying two dates: the expiration date, or the entirety of their sentence; and the Supervised Release Date (SRD), which is the date of expected release under good behavior. Because Minnesota awards one day of good time for every two days, (Minn § 1980 244.04, subd 1), the SRD is found by subtracting one-third from the original sentence (Goodstein, 1983). This contrasts with the

indeterminate system in place before 1978. Before, the Minnesota Corrections Board (MCB) had a parole guidelines system in place referred to as the “Matrix.” This system established a Target Release Date (TRD) that was used as a measuring stick by the inmate to anticipate release. The Matrix’s intent was to provide a more determinate sentence for the inmate and offered incentives such as treatment programs and an unspecified good behavior policy to lessen their sentence (Goodstein, 1983). However, the Minnesota Corrections Board could advance an inmate’s TRD at parole hearings, which effectively provides ambiguity when pinpointing release: “Sentence durations which will be served by offenders sentenced in fiscal year 1978 cannot be determined until those prisoners are actually released” (Knapp, 1982). Therefore, the Supervised Release Date provided by the Sentencing Guidelines Commission’s grid system allows for significantly greater certainty than the antiquated Target Release Date provided by the corrections board. Certainty of release is just one example of improvement by the Minnesota Sentencing Guidelines Commission.

Equity, or consistency in sentence specification, is necessary for all inmates. Determinate sentencing provides needed equity. The concept of equity in the political arena of corrections can be broken down into two distinct types: within and between-group equity (Goodstein, 1983). A convict’s group placement depends on whether or not their sentence took place under prior sentencing or following the 1978 Guidelines reform. Of all states with determinate sentencing, Minnesota has best operationalized its use of Guidelines to decrease inequity in sentencing (Goodstein, 1983). Sentencing practices in 1981 to 1982, only two to three years following Guidelines implementation, has illustrated more uniformity. Offenses such as aggravated robbery and first degree assault saw more convictions sent to prison than under the indeterminate system (Goodstein, 1983). Also, offenders convicted of less serious crimes such as possession of

marijuana or theft under \$25,001 are less likely to be sentenced to prison (Goodstein, 1983). Therefore, reform is operating as intended by establishing strong within-group equity.

Between-group equity is more difficult to achieve. An issue that arose following sentencing reform took place within the confines of prison. Inmates with sentences established by the MCB's Matrix naturally mingled with inmates incarcerated under reformed Guidelines. Inmates assigned a TRD with less serious offenses realized their incarceration could have been lesser, and felt as if they were treated unfairly. Thus, the Inmate Guidelines Committee was established (Goodstein, 1983). Their goal was difficult: lobby the legislature to allow for retroactive resentencing. The legislature and the Sentencing Guidelines Commission were wary of retroactive resentencing for two reasons: First, application to the new policy would be a cumbersome and costly process. Second, upholding the deterrent effect of criminal sanctions stimulates concern (Goodstein, 1983). "The link between the criminal act and the sanction breaks down, thus preventing the deterrent effect from operating as intended" (Goodstein, 1983). Legislation enabling determinate sentencing did not include any section allowing retroactivity. "The Minnesota Corrections Board shall take into consideration, *but not be bound by*, the sentence terms embodied in the sentencing guidelines" (Minn. Statute 244.08). The state legislature and the Minnesota Sentencing Guidelines Commission faced their first major hurdle when dealing with between-group equity.

The Inmate Guidelines Committee was spawned west of the Twin Cities at the Minnesota State Prison at Stillwater. The Committee of resolute inmates met with visiting legislators, administered surveys to over 700 Stillwater prisoners, and encouraged friends and family to lobby at the capitol. Following a telethon held over Stillwater's closed circuit television station, the Inmate Guidelines Committee raised \$15,000 to fund a professional lobbying effort

(Goodstein, 1983). The lobbyists' primary argument was that the application of sentencing guidelines to inmates under the Matrix system was inherently fairer, due to the nature of the Guidelines. Their first move was to amend the determinate sentencing law to allow for retroactive sentencing for prisoners, parolees, and probationers. The Senate Judiciary Committee met the effort with strong opposition due to state legislators viewing the proposal to be "soft on crime," and wanted to distance themselves politically from such an incendiary concept (Goodstein, 1983). The lobbying team soon realized that new legislation featuring automatic retroactivity had no traction, and decided to alter their focus onto the Post-Conviction Remedy Act. Originally, the lobbyists wished for the bill to have a provision containing no justifiable judicial denial, but was later amended to provide judges with considerable discretion to reject petitions after compromising with House Republicans (Goodstein, 1983). Out of over 1,000 eligible inmates, 267 petitions were granted. Although retroactivity was not completely successful, a legislative provision to the Minnesota Sentencing Guidelines Commission's original charter allowed for a 27% reform rate of sentences created by the disparaging indeterminate sentencing. Prisoners sentenced under the MCB's Matrix worked to achieve equity with those sentenced by the determinate Guidelines. After significant organization, an amendment allowed for more than a quarter of petitioned inmates to be granted retroactive sentencing and between-group equity was achieved.

Along with inmate equity, the Minnesota Sentencing Guidelines Commission strives towards uniformity and proportionality. Uniformity is the idea that lawbreakers with similar offenses receive a similar sentence (Knapp, 1982). In theory, the Guidelines should find the perfect sentence every time because of the simplicity of locating the offender's prior criminal history score and the severity of offense. However, judicial departure rates cause a variance. The

Guidelines are determinate presumptive sentencing. The recommended sentence crosses the judge's desk, and the judge has the ability to either mitigate or aggravate the sentence (Dailey, 1998). This is a necessary function. Not every criminal is exactly the same. Cultural differences such as marital status, employment, and stability disallows for perfect uniformity. Should there be no judicious discretion to alter a sentence, prosecutors would have significant power and incarceration would skyrocket. Even with the presence of departure rates, state imprisonment is more uniform after Guideline implementation (Knapp, 1982). According to a study done by Kay Knapp, departure rates in the last year before the Guidelines would've yielded to an incredible 19.4% under Guideline policy. In the first three years under the Guidelines, departure rates stood at a meager 6.2% (Knapp, 1982). Uniformity under the Minnesota Sentencing Guidelines Commission has clearly seen a significant increase.

Sentence proportionality is the idea that sanction severity correlates with serious offenses and offenders. The Sentencing Guidelines Grid with its departure system allow for the perfect mechanism for proportionality (Knapp, 1982). Again, cultural characteristics of the accused affect proportionality. An example is employment. A comparison of two simple robberies can help to illustrate. One individual is unemployed and the other has a steady job. The presumptive sentence length, according to the grid, is eighteen months. A judge can provide a dispositional mitigation to the employed felon's sentence, allowing work release. The unemployed felon does not have that option because there is no job to be released to (Knapp, 1982). This substantial circumstance allows for normative proportionality; judicial discretion under the Minnesota Sentencing Guidelines Commission works towards fairness and betterment of convicts.

From 1968 to 1993, United States prison populations have increased nearly 400% (Marvell, 1995). There are a multitude of reasons behind this disturbing trend, but the most

explainable stems from the politics of the legislature. “Legislators have continuously responded to constituent fears by establishing longer sentences or mandatory minimum sentences for wide varieties of crimes and criminals” (Marvell, 1995). No politician wants to be viewed as soft on crime. Legislating determinate sentencing must overcome the politics of crime control (Frase, 1991). The clear solution is delegation. Delegating sentencing to a commission is more than just a means to fixing political disparity; they can be used to alleviate prison population growth by tailoring sentences to prison capacity (Marvell, 1995). Minnesota took this concept one step further: the Commission set a goal of never exceeding 95% prison capacity (Frase, 1991). This was also a win for politicking lawmakers. They could retain their tough-on-crime stance and still allow for manageable prison populations through delegation to the Commission. “This procedure allows the non-elective commissions to serve as buffers, allowing legislators to avoid public clamor for stiffer sentences” (Marvell, 1995). The effectiveness is undeniable; Minnesota exceeded national trends. From 1980 to 1984, Minnesota’s prison population rose 8%, whereas the total United States prison population spiked 41% in that time span (Frase, 1991). Another national correlation continued as well. Before 1990, nine more states had followed Minnesota’s suit, six of which featured sentencing delegation from the legislature to a sentencing commission. “Minnesota’s model of sentencing reform was largely successful in reducing guidelines disparities in those decisions that fall within the scope of the guidelines” (Miethe and Moore, 1985). Thomas Marvell’s data shows that these six specific states featured prison population decline in relation to nation-wide trends (Marvell, 1995). Another contrast is that of the Federal Sentencing Commission’s relationship to federal lawmakers. Congress’s role in federal sentencing is to provide prison beds for the Commission, while Minnesota and five other states are mandated by their respective state legislatures to take prison population into account

(Marvell, 1995). Delegating to the Minnesota Sentencing Guidelines Commission allows for both the removal of political red tape and an alleviation of prison capacities.

Conclusion

Since 1978, the Minnesota Sentencing Guidelines Commission has become an example of success. The revolutionary determinate grid system is a solution to many problems caused by indeterminate sentencing. Its implementation has led to fairness in sentencing by establishing equity both within and between groups, utilizing judicial departure to create stronger uniformity, and viewing a proportional correlation between sanction severity and offense seriousness. The Guidelines have also succeeded in alleviating prison capacity through legislative mandate. Because of enabling legislation to the Commission, politics in St. Paul do not stand in the way of reducing prison population. Research has demonstrated that implementation of the Minnesota Sentencing Guidelines Commission has provided more fairness in sentencing and has led to more manageable prison capacities than prior indeterminate sentencing.

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