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Determinate Sentencing of Drug Offenders: Assessing the Influence of Legally Relevant and Legally Irrelevant Variables on Sentence Outcome

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DETERMINE SENTENCING OF DRUG OFFENDERS:
ASSESSING THE INFLUENCE OF LEGALLY RELEVANT AND LEGALLY
IRRELEVANT VARIABLES ON SENTENCE OUTCOME

A Dissertation

Submitted to the School of Graduate Studies and Research

In Partial Fulfillment of the

Requirements for the Degree

Doctor of Philosophy

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Title: Determinate Sentencing of Drug Offenders: Assessing the Influence of Legally Relevant and Legally Irrelevant Variables on Sentence Outcome

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ABSTRACT: This study assessed the effectiveness of the determinate sentencing movement for drug offenders in a southwestern county in Pennsylvania. Determinate sentencing practices seek to reduce unwarranted, unwanted disparity and punish like offenders similarly. According to state and federal legislation, factors such as seriousness of present offense and prior record are variables that are considered in order to achieve uniformity and consistency when administering punishments. Factors such as age, race, and gender should not influence sentence outcome with the determinate sentencing practices in place. If it was discovered that legally irrelevant variables significantly influence sentence outcomes, then it might suggest bias or discrimination is taking place, despite efforts to control for these injustices.

To assess the efficacy of the determinate sentencing philosophy and the sentencing structure to follow, this study employed both quantitative and qualitative methodologies for purposes of analysis and discussion. Using logistical regression and ordinary least squares (OLS) regression, legally relevant and legally irrelevant variables were analyzed to determine their effects on the dependent variables (decision to incarcerate and sentence length). In addition to a quantitative analysis, a qualitative

approach was utilized in order to assess professional accounts and opinions pertaining to the strengths and limitations of a determinate sentencing philosophy and approach in their respective daily routines. A dual methodology complimented this study by building upon the existing research concerning determinate sentencing practices and drug offenses and by filling in potential gaps in the literature not previously considered.

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DEDICATION

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CHAPTER 1

INTRODUCTION

The historical roots of determinate sentencing date back hundreds, perhaps thousands, of years. For example, mandatory punishments can be traced back to Moses and Old Testament times where the Bible provides examples of incidents where official sentences, such as an “eye for an eye” or “a tooth for a tooth”, left little or no room for debate among the convicted (The Catholic Living Bible, 1971).

The penalty for injuring anyone is to be injured in exactly the same way: fracture for fracture, eye for eye, tooth for tooth. Whatever anyone does to another shall be done to him. You shall have the same law for the foreigner as for the home-born citizen, for I am Jehovah your God. (Old Testament, Leviticus, 24: 19-20; 22 found in The Catholic Living Bible, 1971, p. 93)

The Babylonian Code of Hammurabi, whose origins date back to approximately 1700 B.C., regulates the organization of societal order (Halwani & Takroui, 2007).

Hammurabi sought to protect human rights with his laws governing the people to allow justice to prevail and so that the strong would not oppress the weak. Statutes existed in order to expel and heavily fine judges who made an error in a legal case (Halwani & Takroui).

In the cases of Moses and Hammurabi, society at that time had precise penalties and punishments for transgressions and deviant behaviors among the people. If the letter of the law was fulfilled to the fullest and followed accordingly, disparity and variation in punishment remained obsolete. In the most simplistic terms, if someone committed a

certain violation, a specific punishment would follow. This approach to justice is at the heart of a determinate sentencing philosophy.

Determinate sentencing is a relatively new approach to dealing with convicted offenders in the United States. Determinate sentencing refers to a sentence of imprisonment in which a convicted defendant is given a fixed term of punishment for a criminal offense (Bureau of Justice Assistance, 1996). Determinate sentencing practices usually contain specific standards and guidelines for administering justice without review by administrative agencies, such as a parole board. Mandatory minimums, or “a minimum sentence that is specified by statute and that may be applied for all convictions of a particular crime or a particular crime with special circumstances” (Bureau of Justice Assistance, 1996, p. 2), have been discussed with regard to current determinate sentencing practices. In addition to mandatory minimums, sentencing guidelines operate within the context of the administration of justice process in courtrooms throughout the nation. Sentencing guidelines serve as a type of recommendation range for judges where the punishment for guilty offenders falls within a specific range (Bureau of Justice Assistance).

Both sentencing guidelines and mandatory sentencing statutes, when introduced into legislation, sought to establish a more uniformed and predictable system of justice, while decreasing unwarranted disparity. The determinate sentencing movement was brought about by dissatisfaction and perceived ineffectiveness of the indeterminate sentencing philosophy that American justice relied upon. The indeterminate sentencing philosophy that was employed throughout the nation was such that an administrative agency, usually a parole board, had the power and authority to determine when to release

an offender from an incarceration institution after being sentenced by a judge (Bureau of Justice Assistance, 1996). Distribution of justice, and the actual amount of time a convicted offender would serve, was arbitrary and unpredictable (Koh, 1992).

This manner of justice administration resulted in sentence differential between similar offenders from one jurisdiction to another. Excessive sentence disparities and differential treatment under indeterminate sentencing protocols were discovered (Petersilia & Greenwood, 1978). The variations in sentence outcomes suggested discrimination and unpredictability, and caused civil unrest. Under this model, sentence imposition rested entirely in the hands of judges, and decisions concerning punishments could be influenced by any information about the offender or the offense, with varying degrees of importance (Yellen, 2005). As a result, the tradition of indeterminate sentencing with the use of parole made it nearly impossible for defendants, lawyers, members of society, or legislators to calculate, with any degree of certainty or accuracy, a reliable estimate of an actual sentence when it was imposed (Reinganum, 2000). It also led defendants, and the general public, to not necessarily know or understand the rationale behind a sentence imposition (Koh, 1992).

As a result of the many deficiencies recognized, frustrations voiced, and case examples of judicial disparity cited, the indeterminate sentencing philosophy and practices were called into question. In 1984, Congress answered this call for philosophical and systematic change by enacting the Sentencing Reform Act (SRA), as part of the Comprehensive Crime Control Act. As part of the Comprehensive Crime Control Act, typical parole practices were phased out, and mandatory sentences were established for certain crimes (Koh, 1992; United States Sentencing Commission 1991).

Additional goals included the idea of properly addressing the problems associated with crime in America and achieving a higher level of certainty and fairness in the sentencing process for federal offenses.

The end result, based on the efforts of all factions at play, was a call for a more systematic and comprehensive approach to justice, where sentence variation for like offenders would be reduced and violent crimes would not be tolerated (LaCasse & Payne, 1999). In short, indeterminate sentencing and the discretionary use of parole were replaced with a determinant sentencing philosophy.

Proponents of sentencing guidelines and mandatory minimum sentences argue that legislation such as mandatory minimum sentencing serve as both a general and specific deterrent from offending and re-offending and also as a phenomenal form of incapacitation because it removes the offender from society (Gabor & Crutcher, 2002). Opponents, on the other hand, argue that the sentences imposed are too severe and costly to the taxpaying citizens of the United States and that this new trend in the distribution of justice does not work (Hansen, 1999).

Deterrence theory is at the heart of the determinate sentencing movement and is believed to be the keystone for the goals of the Sentence Reform Act. Research continually has demonstrated that the criminal justice system, as a whole, provides a significant deterrent effect (Hofer & Allenbaugh, 2003). Discussions about deterrence theory, both general and specific, remain the primary and strongest arguments for mandatory punishments, because it is believed these penalties deter potential offenders from violating the law.

Specific or special deterrence refers to the application of some form of certain punishment that is swift and severe in nature where the offender is dissuaded from engaging in that behavior again based on the perception that a punishment of similar nature will follow every time he chooses to engage in that unwanted behavior (Akers, 2000; Gabor & Crutcher, 2002). General deterrence refers to the punished offender serving as an example to the rest of society where they opt not to engage in a similar-type behavior as the punished offender in fear of similar type repercussions for their behavior (Akers; Gabor and Crutcher). In deterring these would-be offenders, crime and victimization rates are expected to be reduced (Tonry, 1996).

Efforts towards determinate sentencing at the federal level were mirrored by those at the state level, as evidenced by the fact that by 1983, 49 states had passed mandatory minimum sentencing provisions (United States Sentencing Commission, 1991). In Pennsylvania for example, The Pennsylvania Commission was created in 1978 with the purpose of ensuring a consistent and rational sentencing policy for the entire state, in order to create a fairer and more uniformed system of justice (2008). The Pennsylvania guidelines were enacted to ensure that criminal sentences would be more rational and consistent, through eliminating unwarranted disparity and restricting judicial discretion (Pennsylvania Commission on Sentencing, Sentencing Guideline Standards, 6th edition, 2005). The Pennsylvania Guidelines went into effect on July 22, 1982 for individuals convicted of or pleading guilty or nolo contendere to felony and misdemeanor offenses in the state (Pennsylvania Commission on Sentencing, Adoption of Guidelines Statutes, 2005).

Determinate sentencing practices seek to reduce unwarranted, unwanted disparity and punish like offenders similarly. Factors such as seriousness of present offense and prior record are tangibles that the guidelines proclaim to significantly weigh in order to achieve their stated objective of uniformity when administering punishments. Irrelevant factors, such as race and gender, are such that they should not influence sentence outcome with the determinate sentencing practices in place. If it was discovered that these variables significantly influence sentence outcomes, then it might suggest bias or discrimination is taking place, despite efforts to control for these injustices.

The question that sparked interest in this topic area is one that asks whether determinate sentencing practices (in the form of mandatory minimums and sentencing guidelines) are working as they were intended. Critiquing the effectiveness of the determinate sentencing philosophy and practice in terms of sentence outcome for every type of infraction is far too immense and arduous task to conceive and/or construct at this point in time. A number of legal, social, and experimental obstacles exist that potentially threaten empirical validity, reliability, and generalizability when considering such a study because of the many different types of crimes, offenders, and outcomes. In order to produce a more sound and reliable study, a specific type of offense should be the focus of study to determine the effectiveness and efficiency of determinate sentencing legislation for that specific offense.

A Special Report to Congress indicated that 91% of the people sentenced under statutes with mandatory minimum provisions from 1984 to 1990 were convicted for drug offenses (Vincent & Hofer, 1994). Several other studies have been conducted to determine if there is a relationship between drug offenders, legally relevant and irrelevant

variables, and sentence outcome (Albonetti, 1997; Bickle & Peterson, 1991; Daly & Bordt, 1995; Klein, Petersilia, & Turner, 1990; Souryal & Wellford, 1999; Steffensmeier & Demuth, 2000; Steffensmeier, Kramer, & Streifel, 1993; Steffensmeier, Ulmer, & Kramer, 1998; Ulmer & Kramer, 1996). Having noted such and acknowledging that the majority of determinate sentencing statutes are aimed at drug offenses, this study assessed the effectiveness of determinate sentencing in terms of drug offenders and sentence outcomes. It assessed the impact of variables defined as legally relevant (prior record score and offense severity) and also assessed the impact of variables defined as legally irrelevant (race, gender, age, etc.).

Unwarranted sentence disparity arises when these legally irrelevant variables influence the sentence outcome (Souryal & Wellford, 1999). Race, age, and gender are examples of variables deemed legally irrelevant in the eyes of the court. Unfortunately, after carefully reviewing the empirical literature concerning race, age, and gender, there is not a clear-cut, definitive answer concerning the effects of these variables on sentencing outcomes. The reason a straightforward conclusion has escaped this discipline of study thus far is because the research generated has produced inconsistent and contradictory findings. The conclusions surrounding the independent variable, race, are such that some researchers argue the effects of race on sentence outcome are minimal when legally relevant variables are taken into consideration (Kramer & Steffensmeier, 1993). Others contend that conclusion is inaccurate because they believe race interacts with other variables and, in turn, affects sentence outcomes for certain cases or for certain types of offenders (Peterson & Hagan, 1994; Spohn, 1994). The present study assists in determining what role these variables had in sentence outcome for the sample selected.

If sentence outcome is based exclusively on legally relevant variables, such as prior record and offense severity, and not on variables deemed legally irrelevant, then it would suggest mandatory minimum penalties and sentence guidelines are working in the manner prescribed by treating like offenders in a similar fashion. If, however, legally irrelevant variables are significantly influencing sentence outcomes for certain types of offenders, then it would suggest sentence disparity and discrimination persist throughout the justice system. These ideas revolve around the status characteristics hypothesis of labeling theory.

The status characteristics hypothesis of labeling theory assumed that people with less power and prestige in society are more likely to be officially processed (labeled according to the theory) than those in positions of power and influence (Paternoster & Iovanni, 1989). Determining who is labeled, therefore, is partially related to “extralegal” variables.

Given the occurrence of a deviant action (delinquency), the decision of organizational agents to sanction officially (to label) an actor is *in part* determined by the social attributes (race, sex, social class) of the offender and/or of the offended party. (Paternoster & Iovanni, 1989, p. 364)

When reviewing the research surrounding the status characteristics hypothesis of labeling theory, a fundamental assumption persists that revolves around the idea that a more severe sanction or sentence outcome carries with it a harsher label than does a less severe sanction (Paternoster & Iovanni, 1989). As stated earlier, the current study sought to uncover the effect, if any, of extralegal (legally irrelevant) variables on sentence outcome.

In spite of the previous work done on determinate sentencing practices with drug offenses, the interplay and importance of legally relevant and irrelevant variables on sentence outcomes, and the likelihood of disparity being the product of discrimination, there is not a clear cut, undisputed answer as to whether or not justice is being administered as prescribed. The question to be answered in this study was whether certain defendants are treated differently for drug offenses in a southwestern county in Pennsylvania. If so, what were the factors that determined case outcomes and were legally-irrelevant variables at play?

The Present Study

The purpose of this study was to examine the effectiveness of determinate sentencing for drug offenders in a southwestern county in Pennsylvania. To assess the efficacy of this sentencing structure, this study employed both quantitative and qualitative methodologies for purposes of analysis and discussion. This study relied upon concepts and notions of deterrence theory and the status characteristics hypothesis of labeling theory, while utilizing relevant prior research about the subject as a guide to minimize empirical weaknesses and maximize strengths.

The current study adds to the limited body of existing research concerning this phenomenon in American courts. To do so, Chapter 2 of the study was organized in a manner that carefully reviews the history of the determinate sentencing movement at both the federal level and Pennsylvania state level in order to better illustrate the forces and opinions that helped transform protocol and procedure from an indeterminate structure to a determinate one. As part of the discussion concerning the shift towards a determinate

sentencing style, an in-depth look at some unintended consequences of this movement are discussed as well as the ramifications on the court and justice process.

Furthermore, Chapter 2 examines the brief history of legislative responses to illegal drugs and narcotics in America to better familiarize the reader with societal reactions to concerns and fears over time. Additionally, Chapter 2 offers a detailed summary of how state courts operate under sentencing guideline statutes and minimum sentencing requirements. The potential benefits and limitations of such decrees are included as well. Chapter 2 concludes with philosophical goals of sentencing guidelines and the rationale behind these goals.

Chapter 3 provides a review of the existing empirical studies and findings of research dealing with sentence disparity, judicial departures, mandatory minimum sentencing, and variables that may influence sentence outcomes. As expected, greater attention and detail are given to research that deals with drug crimes in the United States and sentence outcome variables after mandatory minimum statutes were enacted into legislation.

Reviewing and critiquing prior research assisted tremendously in outlining the present study, as is discussed in Chapter 4. The methodologies are outlined with justification for selection as well as the stated hypotheses for analysis and discussion. The research plan, sampling procedures, and human subject protections are described in great detail as well as the analysis plan (Chapter 5). Chapter 6 will include discussions, conclusions, and recommendations for future research.

CHAPTER 2

DETERMINATE SENTENCING AND THEORETICAL SUPPORT

Boulton, Kennedy, and Verhey (1994, p. 428) note that on April 16, 1963, Martin Luther King, Jr. stated, “Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network or mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.” Criminal sentence disparities in United States courtrooms prior to the mid 1980’s produced many sentiments, responses, and opinions that suggested injustice and inequality had, much like a cancer, invaded the justice system. As problematic practices, such as inconsistent and disproportionate sentences, unwarranted partiality for certain defendants, inefficiency of court and administrative personnel, and haphazard parole practices persisted, it seemed as though this “cancer” of sorts was metastasizing into multiple forms of prejudice, indecency, and inequality. Justice, as proudly proclaimed in law books and lecture halls throughout the nation, was not blind, but instead looked onward with biased eyes and without uniformity from one court to another. If the system, as a whole, was going to survive, then sweeping changes were required that would result in a greater sense of justice and equality in every court in the land.

Calls for justice and uniformity were such that minor adjustments to the existing structure and system would not suffice. The reason that drastic reforms were being sought by both the conservative and liberal ends of the political spectrum was that long-term judicial, correctional, and parole practices seemed to be failing miserably. The questions that revolved around indeterminate sentencing and the rehabilitation model

fueled a movement where the administration of justice in America underwent a transformation resulting in a completely new style of law and order.

The purpose of this chapter is to outline the history and philosophical rationale of determinate sentencing in America. In doing so, the chapter addresses the impetus for change that sought to eliminate indeterminate sentencing and parole practices throughout the nation, along with the effects these changes had on systematic practices and procedures. A brief historical narrative provides an understanding of how drug crimes were handled in the past and why they remain a target offense for the determinate sentencing movement. A majority of the discussion focuses on federal sentencing guidelines and how they were implemented to work in cooperation with mandatory minimum sentence statutes. Discussion then shifts toward Pennsylvania law and procedure, as the focus for the current study deals with offenders in this state. There is a great deal more literature concerning the determinate sentencing movement at the federal level than at the state level. While variations exist between federal and state procedures, the rationale and philosophical justifications for more determinate sentencing practices are similar.

Following this discussion, the chapter shifts focus to the theoretical components of deterrence and incapacitation, followed by the empirical research about sentencing practices that is more recent and relevant to this study. Finally, the chapter concludes with a consideration of whether the proposed changes that took place at the federal and state level with regard to court procedures and practices are succeeding in the manner described and anticipated.

Judicial Discretion and “Truth in Sentencing”

Into the early 1980s, processing of criminal cases in federal courts was characterized in a manner suggesting a more individualized approach, where judicial prudence and the decision-making behaviors by those presiding over cases were not reviewable (Weinstein, 2003). Judges, prosecutors, defense attorneys, probation officers, and parole advisors all took part in shaping and determining the amount of time and way in which a convicted offender would be punished (Koh, 1992). Length of incarceration, monetary fines, and/or any other restrictions on personal liberties and freedom remained areas of great flexibility and ambiguity for judges (Caulkins, Rydell, Schwabe, & Chiesa, 1997; Secunda, 1997; Weinstein). In short, their determinations could not be reviewed, and their decisions could not be reversed, if the sentence imposed fell within statutory limits (Weinstein).

In conjunction with this judicial discretion, statutory limits have existed since 1790 for capital offenses, and provisions requiring definitive prison terms for a number of other crimes have been a part of federal edict since the 19th century (United States Sentencing Commission, 1991). These stipulations were not aimed at whole classes of offenses, but instead were somewhat limited until the passage of the Narcotic Control Act of 1956, which ordered minimum sentences of significant length for drug trafficking and distribution. These sentences could not be suspended or reduced, nor was parole an option for such offenses (Vincent & Hofer, 1994; United States Sentencing Commission, 1991).

By 1970, the mandatory minimum sentencing provisions resulting from the Narcotic Control Act of 1956 were being vilified, after research findings indicated that

increases in sentence length had not elicited the reductions in drug offenses that proponents had expected (Vincent & Hofer, 1994; United States Sentencing Commission, 1991). This led Congress to pass the Comprehensive Drug Abuse Prevention and Control Act of 1970, which repealed mandatory minimum sentences for many drug violations, except for a special class of professional criminals (United States Sentencing Commission).

For the most part, despite early statutory limits written into American law in the latter parts of the 18th century and early parts of the 19th century, criminal court judges were in positions of power, authority, and prestige. For much of the 20th century, their rulings were such that no one was permitted to legitimately question their professional rationale concerning any imposition of punishment (Yellen, 2005). In essence, a judge in one court could sentence a particular defendant found guilty of a specific crime to a lengthy prison term, while another judge in a neighboring district might sentence a similar type offender with much more leniency, such as through a suspended sentence or probation (Secunda, 1997; Yellen). Distribution of justice in such an arbitrary and unpredictable manner resulted in defendants not necessarily knowing the rationale behind their sentences, since explanations were not required of judges (Koh, 1992).

Under this model, sentence imposition rested entirely in the hands of judges and decisions concerning punishments could be influenced by any information about the offender or the offense, with varying degrees of importance (Yellen, 2005). As a result, the tradition of indeterminate sentencing with the use of parole made it nearly impossible for defendants, lawyers, members of society, or legislators to calculate, with any degree

of certainty or accuracy, a reliable estimate of an actual sentence when it was imposed (Reinganum, 2000).

A judge, under this system of justice, could earn a reputation for being “tough” on defendants, in much the same way a judge could earn a reputation as being more “compassionate.” These perceptions may have led to judges administering justice in a certain way in order to establish or maintain their identity for purposes of prestige and influence, as well as to achieve promotion to a better position in the judicial system (Levy, 2005). In essence, a judge’s personal preference could, and in many ways did, influence the sentence delivered to a defendant (Secunda, 1997). While the rulings, decisions, and professional opinions expressed by presiding judges were considered permanent and not open to rebuttal or dispute, it should be noted that “truth in sentencing” was not something that any judge had control over once a case was adjourned and the offender was remanded to the custody of the correctional system (United States Sentencing Commission, 1991; Weinstein, 2003).

Before sentencing guidelines and mandatory-minimum measures were introduced into the American justice system, parole boards (which acted under the authority and with the powers of the executive branch of government) could release inmates after a portion of their sentences were served (Weinstein, 2003). Prisons were not so much considered institutions of punishment, but instead were facilities where individuals could receive the necessary therapeutic interventions required to ensure appropriate, law-abiding behavior following release. The overwhelming consensus at the time revolved around the idea that prisons were there to “cure” and rehabilitate, and not so much to punish the guilty. In sum, the courts were expected to use their discretion to assess an offender’s potential for

rehabilitation; parole authorities were to use their discretion to evaluate the progress the offender actually made; and correctional authorities dictated the amount of sentence reduction an offender might receive due to “good” behavior while in prison (United States Sentencing Commission, 1991, p. 8).

In much the same way that a pendulum swings back and forth, responses and ideological approaches to dealing with delinquent and criminal behaviors typically swing from a more punitive approach, where severity of punishment and deterrence principles are strongly emphasized, to a more rehabilitative approach, where therapeutic intervention and individualization is preferred (Schmallegger & Bartollos, 2008; Krisberg, 2005). The model of judicial discretion in which defendants received more individualized sanctioning followed along the lines of a rehabilitative approach. From this perspective, individualization would be better able to address specific sources of the problem(s) and the needs and background of each offender. This course of action was anticipated to produce more positive, secure, and long-lasting results that would benefit the convicted offender and the rest of society as well (Stith & Koh, 1993).

Those in favor of a system of more individualized justice and rehabilitation generally contend sentencing variations are both essential and proper in recognizing mitigating circumstances and individual differences among offenders, while those opposing a rehabilitative model in favor of a more punitive system argue that these same variations lead to disparity throughout the system (Koh, 1992). Through most of the 1970s, the American court system favored a more rehabilitative manner of justice, where individuality was strongly emphasized.

As the 1970s gave way to the 1980s, legislators, courts, and the general public began to abandon the rehabilitative model of justice for a more punitive system that focused on a “just deserts” approach (Koh, 1992). While universal agreement on a philosophical foundation for punishment at the federal level could not be reached at the time, a sentencing philosophy did emerge that rested on four cornerstones of justice. According to 18 U.S.C. 3533(a)(2)(1988), sentences should exist in order:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

(Koh, p. 1116)

Overall, Congress recognized the need for carefully defining both the purposes of sentencing and the influence these purposes had on the severity of actual punishments to be imposed (Koh).

As judicial disparities, early release of convicted offenders, and a lack of systematic homogeneity persisted throughout the country, the idea that there was a need for more fundamental change began to materialize at both ends of the political spectrum. The reasons for this desired change in the administration of justice revolved around frustrations over a number of issues. Inconsistent and disproportionate sentences being levied by judges suggested discrimination was taking place throughout various courtrooms. Unwarranted partiality for certain defendants echoed and supported these

suspensions, and when coupled with inefficiency of court and administrative personnel and haphazard parole practices, reformers were led to seek more drastic change (Koh, 1992; Levy, 2005; Weinstein, 2003; United States Sentencing Commission, 1991).

Different Approaches, Same Destination

This impending desire for change was due in no small part to both liberal and conservative interests focusing their efforts toward changing different parts of the system, which they independently believed were defective and detrimental to their political interests.

The movement criticized the standardless, unreviewable sentencing regime under the authority of federal judges as lawless and subject to the prejudices and whims of individual judges. Critics focused on extremely harsh sentences for relatively minor offenses and the probability of race and class discrimination in sentencing. They urged an increase in the use of alternatives to incarceration, the development of sentencing standards, and appellate review to remedy these problems.

(Weinstein, 2003, p. 91)

While liberal attention focused on discrimination, disparity, and the call for judicial review; conservative efforts revolved around ways of increasing criminal sentences and swinging the pendulum away from a rehabilitative approach toward a more punitive one (Weinstein, 2003). Momentum to help swing the pendulum away from a rehabilitative model also came from Robert Martinson's 1974 assertion "nothing works". Martinson argued, with few and isolated exceptions, correctional treatment and rehabilitation efforts are ineffective at reducing recidivism rates (Schmallegger & Bartollas, 2008). The end result, based on the efforts of all factions at play, was a call for

a more systematic and comprehensive approach to justice, where sentence variation for like offenders would be reduced and violent crimes would not be tolerated (LaCasse & Payne, 1999).

In 1984, Congress answered this call for philosophical and systematic change by enacting the Sentencing Reform Act (SRA), as part of the Comprehensive Crime Control Act, with the goals of properly addressing the problems associated with crime in America and achieving a higher level of certainty and fairness in the sentencing process for federal offenses. As part of the Comprehensive Crime Control Act, typical parole practices were phased out, and mandatory sentences were established for certain crimes (Koh, 1992; United States Sentencing Commission, 1991). Congress passed this legislation in order to impose rationality and reduce discrimination and other disparities in criminal sentencing (Klein & Steiker, 2002). The “judicial-discretion” paradigm previously discussed was being replaced with an administrative-sentencing system in order to determine severity of punishment.

The Sentencing Reform Act of 1984 was aimed at, among other things, eliminating unwarranted sentencing disparity by establishing a “comprehensive and consistent statement of the federal law of sentencing, setting forth the purposes to be served” (Hofer & Allenbaugh, 2003, p. 20). Sentence disparity was thought to exist because judges were influenced and persuaded by different facts about the offender or the offense, and they administered punishment based on those factors (Yellen, 2005). With this in mind, the Sentence Reform Act identified three main objectives.

The first dealt with certainty and honesty in sentencing, by seeking to eradicate the use of parole and indeterminate sentences by judges so that the sentence imposed

would represent the sentence the convicted offender would serve (United States Sentencing Commission, 1991). Appellate review also would be available to both the prosecution representing the interests of the government and the defendant, including when a judge departed from the recommended range (Koh, 1992).

The second objective dealt with greater uniformity in sentences for like offenders. Sentence uniformity was a concept that appeared obsolete (due to sentence disparity) prior to the Sentence Reform Act. Increased uniformity coupled with greater consistency were anticipated to lead to better predictability and more accurate assessments with regard to sentencing outcomes and correctional costs (Lubitz & Ross, 2001).

The third objective revolved around the idea of Congress seeking proportionality and just punishments in sentencing, by fostering a system of justice that would allow courts to recognize differing levels of involvement in a specific crime and then rule accordingly. For example, drug couriers and higher level masterminds within an illegal organization would not receive the same sentence, because the tangible rewards during the commission of their crimes would not be equal (Klein & Steiker, 2002; United States Sentencing Commission, 1991).

In order to ensure the objectives of The Sentence Reform Act were met, The United States Sentencing Commission took on the great responsibility of developing an unprecedented manifesto of rules to better regulate and standardize federal sentencing practices, especially for violent crimes and drug crimes (Reinganum, 2000; United States Sentencing Commission, 1991). The United States Sentencing Commission's main objective was to create and develop sentencing guidelines to ensure a more uniform system of justice throughout the country. This would be accomplished, in part, by basing

sentences on legally relevant characteristics of the offender and the offense in order to help eliminate unwarranted disparity in the justice system (Savelsberg, 1992).

Before these guidelines were in place, mandatory sentences were utilized in courtrooms throughout the nation (Hofer & Allenbaugh, 2003; Koh, 1992; Reinganum, 2000; United States Sentencing Commission, 1991). Mandatory sentences, from a philosophical standpoint, appear to be based on two primary goals. Specific and general deterrence serve as building blocks for the first goal, while incapacitation constitutes the second goal (Parent, Dunworth, McDonald, & Rhodes, 1997). Proponents of mandatory minimum sentencing contend there exists a substantial specific and general deterrent effect, in that these sentences dissuade both potential and sentenced offenders from criminal behaviors, thus reducing crime. For those who do engage in certain behaviors or illegal activities, mandatory minimum sentencing also prevents future crime by incapacitating or removing the law-breaker from the rest of the general public (Gabor & Crutcher, 2002). “By passing mandatory minimum sentencing laws, legislators convey the message that certain crimes are deemed especially grave and that people who commit them deserve, and may expect, harsh sanctions” (Parent et al., 1997, p. 2). The components of deterrence and the relevant research are discussed in greater detail later in this chapter.

Both sentencing guidelines and mandatory sentencing statutes, when introduced into legislation, sought to establish a more uniformed and predictable system of justice while decreasing unwarranted disparity. Perhaps the biggest difference between the two approaches rests in the fact that sentencing guidelines take more factors into consideration when attempting to establish an appropriate punishment for the offender,

while mandatory sentences remain more rigid and not as much concerned with individual considerations (Pennsylvania Commission on Sentencing, Sentencing Guideline Standards, 6th edition, 2005).

Prior Responses to Drugs

America's war on drugs is a crusade whose origins date back to the early 1880's, where public trepidation about drug consumption and distribution fluctuate with the times (Myers, 1989). It appears as though when societal fear and outrage peak, it leads to a knee-jerk reaction where more punitive sanctions are the result and where legislation remains long after public sentiment subsides. The Harrison Act of 1914, for example, was America's first legislative response to dealing with illegal drugs known at the time (Vago, 2006). Some argue the Harrison Act was a direct result of an American working class fear of opium smoking among Chinese workers in America (Helmer, 1975; Musto, 1973; Peterson, 1985; Reasons & Purdue, 1981). Musto suggests the passage of the Harrison Act also was correlated with African Americans using cocaine in southern states and the fear that existed over an attack on white society that may result if drug consumption persisted. When discussing the legislative responses to illegal drugs in America, however, the discussion tends to focus on the policies and practices of the last forty years.

President Nixon's "law and order" agenda in 1971, for example, was one that imposed a stalwart campaign against drug offenders based on the public's concern over these offenses (Epstein, 1977; Myers, 1989). The Comprehensive Drug Abuse Prevention and Control Act under Nixon's administration made widespread changes in the federal approach to dealing with illegal and dangerous drugs (Peterson, 1985).

President Nixon took the stance that stopping the epidemic of drug use and abuse among the “cream of American youth” was the highest priority (Peterson). Societal outrage over the drug problem subsided less than four years after President Nixon responded with his broad and offensive agenda. In addition to societal outrage subsiding, there also seemed to be a backlash against the punitive approach and punishment model the nation had adopted (Benoit, 2003). As discussed earlier, this may be a result of the “pendulum” swinging back and forth on the issue of how to respond to drugs and dangerous narcotics of the time where public sentiment fluctuates over time.

In the early 1980’s, President Reagan declared an official “war on drugs” by directing law enforcement attention toward the drug kingpins and financiers (Myers, 1989; Trebach, 1987; Wisotsky, 1983). President Reagan requested and received financial and communal support for added law enforcement personnel, more aggressive strategies, extra prison space, harsher penalties for convicted offenders, and greater efficiency with inter-agency cooperation. As a result of these changes, the arrest rate skyrocketed, especially when dealing with the more serious drug offenses of trafficking and distribution (Myers).

In much the same way all elements must come together for the perfect storm to take place, it seemed as though the same phenomenon was taking place with the determinate sentencing movement and drug offenses in America in the 1980’s. First, as indicated earlier, it was during this time period that sentence guidelines and mandatory minimum sentencing were starting to take root in the legislative and judicial cornerstones of American policy, at both the federal and state levels. Secondly, drugs seemed to be invading all spheres of American life and society was starting to become outraged. A

statistic that supports this argument is one that noted sixty-four percent of Americans believed drugs represented the leading problem in the country in 1989 (Hillier, 1991).

Part of this societal outrage may have been caused by juvenile gangs experiencing a shift in leadership and in activities as members were engaging in violence, robberies, and drug trafficking as opposed to more childish behaviors and less serious activities members were once engaging in (Schmallegger & Bartollas, 2008). This was a direct result of gang leadership now being assumed by adults whose focus was on making money from drugs (Schmallegger & Bartollas). Last, but certainly not least, America was engaged and committed to the “war on drugs” to the extent they were financially, politically, philosophically, and socially invested like never before. With these three elements coming together in time and space, it is understandable why the determinate sentencing movement was aimed at violent crime and drug offenses and why public sentiment supported the changes in justice administration. The question that remains, however, is one that asks, “Was the determinate sentencing movement just another knee-jerk reaction to an American epidemic and if so, what are the consequences?”

Shift in Discretionary Power

As stated earlier, the United States Sentencing Commission was created out of need for a more uniformed system of justice by establishing parameters on judicial discretion, where the likelihood of resolution through a plea agreement would remain unfettered (Reinganum, 2000). Kenneth Culp Davis, an authority on administrative law, argued fervently against the practice of discretion when he stated the following:

I think the greatest and most frequent injustice occurs at the discretion end of the scale, where rules and principles provide little or no guidance, where emotions of

deciding officers may affect what they do, where political or other favoritism may influence decisions, and where the imperfections of human nature are often reflected in the choices made. (Poulin, 1997, p. 1071)

While some like Davis argue that discretion leads to injustice and discrimination at various levels of law enforcement and adjudication, others contend that discretion remains an invaluable tool to the system of justice at all levels of government (Vago, 2006), and that it is an unavoidable characteristic of our justice system (Poulin, 1997).

Those who design a sentencing process must recognize that discretion is not an evil per se. Rather, discretion should be viewed as an inevitable component of the criminal justice system that, when exercised properly, permits consideration of the myriad individual characteristics unaccounted for in a guidelines matrix. (Koh, 1992, p.1126-1127)

As dictated in the Constitution of the United States, the Executive Branch (the governmental entity responsible for enforcement of the law) must be afforded considerable latitude in devising and executing the enforcement strategies of the nation (Loewenstein, 2001). The safeguards in place to protect society from injustices and indecencies at various levels include, but are not limited to, statutes and articles (such as Equal Protection clauses and Due Process rights) designed to minimize the opportunity for discrimination to pervade the system at certain levels (Poulin, 1997).

The Federal Guidelines, which officially went into effect on November 1, 1987, were imposed for reasons that are three-fold. The rationale for these Guidelines being introduced was to (1) combat crime with an effective, fair system of justice for all; (2) to institute greater uniformity by limiting the discretion of judges, by narrowing the range of

sentence lengths; and (3) to pursue a certain level of proportionality in the delivery of punishment, by imposing different sanctions for criminal behaviors of different types and levels of severity (Secunda, 1997).

While the demand and systematic need for greater uniformity, sustained equity, undisputed impartiality, and warranted proportionality based on criminal behavior fueled the good faith efforts of those seeking to minimize judicial discretion and discrimination, an unintended consequence was discovered in the aftermath of these sweeping reforms (Reitz, 2005). The existing discretion, as well as somewhat arbitrary administration of professional responsibilities and duties, shifted away from judges and toward prosecuting attorneys, and unforeseen consequences quickly came to fruition (Secunda, 1997; Standen, 1993; Tonry, 1996; Weinstein, 2003).

Prior to sentencing guidelines taking root in legislation, prosecutors generally determined who should be charged and what that initial charge should be (Poulin, 1997; Koh, 1992). Under the sentencing guidelines, prosecutors gained additional discretion in their daily duties by having the opportunity to emphasize particular factors of the case (such as whether or not the individual was armed with a firearm) or dismiss relevant facts altogether with no justification for their actions. Each charge, then, had the potential to increase a defendant's sentence if found guilty (Secunda, 1997). It stands to reason that factors like political pressures, personal preferences, and individual characteristics of prosecutors vary from state to state and even from one jurisdiction to the next within states. The charge a prosecutor brings forward on a defendant and the manner in which charges are pursued essentially determine the sentence (Secunda).

Sentencing guidelines and mandatory minimum sentences have been criticized further on the basis of being too complex, too harsh on minor offenders, ineffective, too general for individual reform to take place, and limiting necessary judicial discretion while promoting prosecutorial disparity (Tonry, 1993). Evaluations and present day debates about mandatory minimum sentences and sentencing guidelines typically focus on two types of crime; those related to drugs and those committed with a firearm, both of which are commonly subjected to mandatory minimum penalties in state and federal courts throughout the United States (Parent et al., 1997). The following sections discuss various aspects of sentencing guidelines and mandatory sentences that help clarify and illustrate their use.

Upward and Downward Departures from Guidelines

The U.S. Sentencing Commission, in their policy enactments, wanted to create guidelines that consider both offense seriousness (including relevant characteristics of the offense) and information about the offender, such as prior record and level of involvement in the crime (United States Sentencing Commission, 1991). According to the federal sentencing guidelines, when dealing with defendants to be sentenced, judges are to first identify the base offense level. This is a starting point of sorts, where the guidelines group any one of over 2,000 criminal offenses into severity categories varying from a score of 4 to 43 (Albonetti, 1997; United States Sentencing Commission, 1991).

Steps two and three involve the court determining if specific commonalities of the crime-type were present in the case at hand. For example, was there a weapon involved? Was there serious bodily injury inflicted upon another person? Was the victim a law enforcement or corrections officer? Did the defendant knowingly and willfully obstruct

justice? Once these questions have been answered, calculated enhancements are added to the base level score in order to provide greater punishment for those defendants who engage in more harmful and detrimental acts (United States Sentencing Commission, 1991).

It also should be recognized that these adjustments consider whether the defendant played an intricate role in the offense, or if he or she was involved in more of a diminished capacity, such as a drug-courier or mule as opposed to the head of an illegal organization or enterprise. In situations where the defendant played a limited role in the offense there is a potential decrease of up to four levels (Klein and Steiker, 2002; United States Sentencing Commission, 1991).

Step four deals with the protocol for handling cases where multiple counts and several harms are involved with one specific incident or, in the case of drug prosecutions, the quantity and type of drug(s) involved. The guidelines mandate that in these situations, incremental amounts for each infraction involving an injury or harm should be added to the base offense level that relates to the most serious offense of the group (United States Sentencing Commission, 1991). By the guidelines coupling counts in the manner prescribed, the result is an increased punishment for additional harm and culpability, while avoiding disproportionate punishment when more than one count has been charged (United States Sentencing Commission).

Step five deals with the acceptance of responsibility and serves to credit the offender for post-apprehension behavior that demonstrates the recognition of guilt and culpability, as well as the acceptance of ramifications that may ensue for illegal

behavior(s). The guidelines outline potential ways an individual may express acceptance of responsibility, as determined by the discretion of the presiding judge, including:

- (a) voluntary termination or withdrawal from criminal conduct or associations;
- (b) voluntary payment or restitution prior to adjudication of guilt;
- (c) voluntary and truthful admission to authorities of involvement in the offense and related conduct;
- (d) voluntary surrender to authorities promptly after commission of the offense;
- (e) voluntary assistance to authorities in the recovery of the fruits and instrumentalities of the offense; voluntary resignation from the office or position held during the commission of the offense;
- (f) and the timeliness of the defendant's conduct in the manifesting acceptance of responsibility.

(United States Sentencing Commission, 1991, p. 22)

This step is one that seems to allow for a great deal of judicial discretion, but it stands to reason that information concerning these behaviors may come from the prosecuting attorney, again pointing to the fact that the prosecutor possesses a great deal of additional power and control under this system of justice. Evidence to this point is found in the fact that only a prosecutor can initiate these departures (Weinstein, 2003).

(United States Sentencing Commission, 1991, p. 22)

Step six deals with assessment of the defendant's prior criminal history, and does so in a manner that carefully assigns points for the severity of past criminal behaviors.

Smaller point totals are added for minor offenses and/or for crimes committed under the age of 18, while greater point increments are added in instances where the offenses occurred shortly after being released from prison or while under criminal justice supervision (United States Sentencing Commission, 1991). After the defendant's entire criminal history has been examined, the point totals are systematically converted into criminal history categories ranging from I to VI, with VI being the highest category and indicating a career offender (United States Sentencing Commission, 1991).

Step seven involves bringing the previous six steps together and referring to a sentencing table, where an acceptable (yet narrow) sentence range is determined for the individual offender by the court. The recommended range is such that the maximum term may not exceed the minimum term by more than 25%. The court subsequently can select any sentence within that range (United States Sentencing Commission, 1991).

According to the United States Sentencing Commission's Report, in the unlikely event the presiding judge does find an unusual or mitigating circumstance not previously considered in the guidelines, he or she may venture away from the stated guidelines. The judge, however, must give a valid explanation in open court, where the decision is open to judicial review on appeal (United States Sentencing Commission, 1991).

In addition to the judicial focal points of blameworthiness, protection of the public, and the practical implications of sentence determination for each defendant, judges also may consider things like the likelihood of rehabilitation, whether the defendant is deserving of serious punishment, and what the repercussions would be as far as judicial reputation if an unpopular sentence was imposed on a defendant (Steffensmeier & Demuth, 2000). These aspects all play into potential reasons sentence

disparity may flourish, but existing research focuses primarily on male, African American offenders which makes it very difficult to assess the effects across other ethnicities and defendants. This assessment difficulty is discussed in the next chapter.

State Law and Sentencing Guidelines

Efforts towards determinate sentencing at the federal level were mirrored by those at the state level, as evidenced by the fact that by 1983, 49 states had passed mandatory minimum sentencing provisions (United States Sentencing Commission, 1991). Mandatory minimum sentencing began on the state level in New York in 1973, with Massachusetts and California following right behind (United States Sentencing Commission, 1991). By 1994, every state had enacted at least one mandatory sentencing law (Parent et al., 1997). While discussion about other states, their guidelines, and mandatory sentencing statutes is relevant from a historical perspective, for purposes of this study, a more in-depth and comprehensive view of Pennsylvania history, protocol, and practice concerning sentencing guidelines seems most appropriate.

In much the same way the Sentencing Reform Act, as outlined by the United States Sentencing Commission, sought to reduce disparity while increasing uniformity and certainty on the federal level, the General Assembly empowered the Pennsylvania Commission on Sentencing to establish state sentencing guidelines (Pennsylvania Commission on Sentencing, *Sentencing Guideline Standards*, 6th edition, 2005). The Pennsylvania Commission was created in 1978 with the purpose of ensuring a consistent and rational sentencing policy for the entire state, in order to create a fairer and more uniformed system of justice (2008).

The Pennsylvania guidelines were enacted to ensure that criminal sentences would be more rational and consistent, through eliminating unwarranted disparity and restricting judicial discretion (Pennsylvania Commission on Sentencing, Sentencing Guideline Standards, 6th edition, 2005). The Pennsylvania Guidelines went into effect on July 22, 1982 for individuals convicted of, or pleading guilty or nolo contendere to, felony and misdemeanor offenses in the state (Pennsylvania Commission on Sentencing, Adoption of Guidelines Statutes, 2005). In order to accomplish the objectives of rational, uniformed, and consistent sentencing practices, the guidelines take into consideration a number of factors (Pennsylvania Commission on Sentencing, Title 204, 6th edition, 2005). The procedure for determining the guideline sentence for each conviction involves determining the offense gravity score, the prior record score, the guideline sentence recommendation including deadly weapon and youth/school enhancements, and aggravating and mitigating circumstances.

When considering the offense gravity score, it should be noted that a numeric value is given for each offense in the state of Pennsylvania, with higher numeric values constituting more serious offenses and lower numeric values constituting less serious offenses (Pennsylvania Commission on Sentencing, Title 204, 6th edition, 2005). Offense gravity scores also are based on a provision that states if any mixture or compound contains any amount of a controlled substance, the entire mixture or compound shall be considered to be composed of a controlled substance. Furthermore, if more than one controlled substance is detected in a mixture or compound, the entire mixture or compound will be deemed to be composed entirely of the controlled substance that

carries the highest offense gravity score (Pennsylvania Commission on Sentencing, Title 204, 6th edition, 2005).

The prior record score is based on the number of prior convictions and prior juvenile adjudications of a defendant. There are currently eight prior record score categories arranged from most criminal to least criminal that include: Repeat Violent Offender (REVOC), Repeat Felony 1 (RFEL1) and Felony 2 Offender (RFEL2), and point-based categories of 5, 4, 3, 2, 1, and 0. Offenders with two or more convictions for 4-point offenses and whose current conviction carries an Offense Gravity Score of 9 or more shall be classified as a Repeat Violent Offender (REVOC). Repeat Felony 1 and Felony 2 offenders with previous convictions for Felony 1 and/or Felony 2 offenses that total 6 or more in the prior record, and who are not categorized in the REVOC, shall be classified in the Repeat Felony 1 and Felony 2 Offender Category (RFEL). Offenders who do not fall in the REVOC or RFEL categories are classified with a point-based category, where the prior record score equals the sum of the points accrued based on previous convictions up to a maximum of five points (Pennsylvania Commission on Sentencing, Title 204, 6th edition, 2005).

Basic sentence recommendations are based on the Offense Gravity Score (OGS) and the Prior Record Score (PRS) where, in most cases, a sentence recommendation can be established by looking at the Basic Sentencing Matrix (Pennsylvania Commission on Sentencing, Title 204, 6th edition, 2005). The Basic Sentencing Matrix contains a range of sentences that are considered by the court for a combination of an OGS coupled with a PRS (Pennsylvania Commission on Sentencing, Title 204, 6th edition, 2005).

Sentencing recommendations also include two possible Deadly Weapon Enhancement provisions. First, if an offender possessed a deadly weapon, the court will refer to the Deadly Weapon Enhancement/Possessed Matrix (DWE/Possessed Matrix) to calculate the sentence recommendation (Pennsylvania Commission on Sentencing, Title 204, 6th edition, 2005). Second, if it is determined that the defendant used a deadly weapon in the commission of a crime, the court will refer instead to the Deadly Weapon Enhancement/Used Matrix (DWE/Used Matrix) to calculate the sentence recommendation. A deadly weapon includes any firearm, dangerous weapon, or device designed as a weapon or capable of producing death or serious bodily injury. Both the DWE/Possessed and DWE/Used matrices specify a standard range that should be considered by the court for every possible combination of OGS and PRS (Pennsylvania Commission on Sentencing, Title 204, 6th edition, 2005).

The deadly weapon enhancement modifies the guidelines ranges for a case. It is not an “add on” to the sentence itself nor should it be considered a separate sentence (Pennsylvania Commission on Sentencing, Title 204, 6th edition, 2005). For example, for the DWE/Possessed Matrix, an enhancement of three months is added when the OGS for the present offense is a 1-4. Six months are added when the OGS ranges from 5-8. Nine months are added when the OGS ranges from 9-14 (Pennsylvania Commission on Sentencing, Title 204, 6th edition, 2005). The DWE/Used Matrix provides longer enhancements for these category offenses, since the weapon actually was used.

As is the case with federal guidelines, aggravating and mitigating circumstances also are considered when establishing the sentencing guideline. The court, in the case of an aggravated or mitigated sentence, is required to state the reasons for imposing the

provision, on the record and on the Guideline Sentence Form that is transferred to the Pennsylvania Commission on Sentencing for purposes of evaluation (Pennsylvania Commission on Sentencing, Title 204, 6th edition, 2005).

Mandatory minimum sentencing requirements supersede any state sentencing guideline recommendations. For example, in the event that the guideline range is lower than what is required by a minimum sentencing statute, the mandatory minimum is considered instead of the guideline range. Conversely, however, when the sentence recommendation is higher than what is required by a mandatory sentence, the court uses the guideline sentencing recommendation (Pennsylvania Commission on Sentencing, Title 204, 6th edition, 2005).

In addition, in Pennsylvania, the decision to incarcerate a guilty defendant in a county jail versus a state prison has profound effects on the amount of time to be served and the type of treatment an individual is eligible to receive during confinement. Those receiving a minimum sentence of two years or more are directed to state prisons, where there is no early release for “good behavior” (Ulmer & Kramer, 1996). State prisoners in Pennsylvania have been found to serve 120% of their minimum sentence (Steffensmeier, 1992).

For county jail inmates, on the other hand, the parole decision lies with the county court rather than the state parole board (Ulmer & Kramer, 1996). Offenders sentenced to county jail typically have received a sentence of less than two years, and because of county jail protocols and procedures, are eligible for work release programs and rehabilitation programs. From a convenience standpoint, county inmates (compared to

state prison inmates) are geographically better off, as they usually are closer to their family and other members of the community (Ulmer & Kramer).

In general, the distribution of justice and sentencing in the manner outlined to this point has resulted in significantly longer sentences, as was the intent of the reforms (Weinstein, 2003). Research findings also indicate that there has been an increase in the number of offenders serving their sentences in state correctional facilities as opposed to county jails, because of the length of their confinement (Bureau of Statistics and Policy Research, 1995). On both the federal and state levels, differences in sentences are now a result of relevant factors, such as prior record offense severity, leading to a reduction in sentence disparity (Klein & Steiker, 2002).

In 1994, Pennsylvania adopted revisions to their guidelines that created zones of discretion for judges to utilize, depending on the type of criminal infraction the defendant committed (Tonry, 1998). Four levels assist in ensuring violent offenders are dealt with most severely, and nonviolent offenders are dealt with more leniently. For example, cells in level 1 allow for restorative sanctions that include probation, community service, and restitution. Level 2 allows judges to consider restorative sanctions, restrictive intermediate punishments (RIPs), and short-term jail sentences. RIPs may involve full or partial confinement and can include such impositions as inpatient drug treatment and halfway houses. Level 2 also deals primarily with nonviolent crimes and a few less serious, violent crimes. Level 3 allows judges to consider full or partial confinement or RIPs. Judges are encouraged to consider restoration to the victim injured and rehabilitation for the offender as primary goals of the sanctions imposed. Partial confinement and work release or inpatient drug treatment are acceptable and are

authorized means to those goals aforementioned. Finally, Level 4 deals with those individuals who are convicted of major drug offenses and who possess prior records with a history of violence. For individuals who fall into this category, some minimum prison confinement is mandatory before parole eligibility.

When the Pennsylvania guidelines are compared with the federal guidelines, it appears as though the Pennsylvania guidelines permit greater discretion by judges with regard to choosing the type of sentence an offender will serve, because confinement is not the only punishment available (Tonry, 1998). This approach seems to reconcile some of the major criticisms of the determinate sentencing movement at the federal level, because it provides judges in Pennsylvania with some flexibility and latitude with regard to individual sentence distribution.

From a fiscal standpoint, determinate sentencing practices are a major concern for state representatives and officials. Legislators in many states are concerned about the financial repercussions of mandatory sentencing laws and the potential for increased incarceration for certain offenses. In response to this fiscal threat to budgetary resources, policy-makers in states like North Carolina, Ohio, and Pennsylvania have attempted to enact laws that would ensure longer prison terms for violent offenders and shorter terms or diversionary practices for nonviolent offenders (Kempinen, 1997; Rauschenberg, 1997; Tonry, 1998; Wright, 1997). In these states, funding has been allocated for prison construction, but also for community-based programs (Tonry).

Philosophical Harmony and Dissonance

Opponents of sentencing guidelines and mandatory minimum sentences argue that the sentences imposed are too severe and costly to taxpaying citizens. They contend that

the new approach, in the distribution of justice for offenders, simply does not work (Hansen, 1999).

Proponents of the determinate sentencing movement, on the other hand, argue that legislation, such as mandatory minimum sentencing, serves as both a general and specific deterrent from offending and re-offending, and also as a strong form of incapacitation, because it removes the offender from society (Gabor & Crutcher, 2002). Specific or special deterrence refers to the application of some form of punishment, whereby the offender is dissuaded from engaging in that behavior again because of the perception that a punishment similar in nature will follow (Akers, 2000; Gabor & Crutcher). General deterrence refers to laws and punished offenders serving as examples to the rest of society, whereby others opt not to engage in a similar-type behavior because of fear of similar type repercussions for their behavior (Akers, 2000; Gabor & Crutcher).

The question that beseeches policy makers, social science researchers, political figureheads, and concerned members of the general public is one that asks whether sentencing guidelines, while keeping in mind the role of mandatory sentences, are working as they were intended, by removing violent, dangerous, and repeat offenders from the streets in a manner that is consistent and cost-effective to society. In short, who is getting locked up and for what offenses?

After examining the broad history of the justice system and the manner in which cases are processed, perhaps the next area of concern and most logical progression would be to consider the theoretical cornerstones from which this legislation has been built, in order to better understand the purpose and function of sentencing guidelines and mandatory minimum statutes.

Classical Criminology and Theoretical Support

Classical Criminology is primarily founded upon the writings and works of eighteenth century scholar Cesare Beccaria and nineteenth century scholar Jeremy Bentham, revolving around the central premise that individuals engage in a rational exercise of free will with regard to decisions for their behavior (Akers, 2000). According to this school of thought, human beings are guided by their own free will, and decisions for law abiding behaviors and law violations are the result of personal choice (Beccaria 1764/1986; Myers, 1999). Crime occurs when the perceived benefits or pleasures of a certain act or behavior outweigh the perceived costs, or when people pursue their own self-interests because effective punishment is lacking (Cullen & Agnew, 2003). “All individuals choose to obey or violate the law by a rational calculation of the risk of pain versus potential pleasure derived from an act. In contemplating a criminal act, they take into account the probable legal penalties and the likelihood they will be caught” (Akers, 2000, p. 16).

Since crime is a result of choice and individuals exercising their free will to engage in such behaviors, Beccaria stressed the idea of deterrence through punishment in order to decrease criminal and delinquent behaviors. This calculation is rooted in the individual’s prior experience with punishment, their limited or expansive knowledge of the specific punishment imposed for certain law violation, and their awareness of the punishment given to similar-type offenders in the past (Akers, 2000). Crime, according to this line of thinking, essentially would be controlled by the law if the perceived “cost” or punishment for a violation of a behavior outweighed the perceived reward, and if that “cost” to the individual was guaranteed. This also has been referred to as the felicific

calculus principle, which discusses a human orientation whereby people seek to obtain a pleasurable balance of pleasure and pain (Schmallegger & Bartollos, 2008).

As stated earlier, according to Beccaria, the main objective of punishment should be deterrence. “To be deterred, offenders must stop to weigh the costs and benefits, be aware of the penalties, find those penalties intolerable, and have other more attractive options” (Vincent & Hofer, 1994, p. 11). In order to achieve maximum deterrence, punishment should be based on the principles of celerity, certainty, and proportional severity (Akers, 2000; Beccaria, 1764/1986; Cullen & Agnew, 2003; Myers, 1999).

Celerity, or swiftness, refers to the amount of time that passes between the commission of an illegal act and the implementation of punishment on that individual. The more immediate or “swift” a punishment follows an unwanted behavior, the more meaningful and useful the punishment will be to the individual and perhaps society as a whole (Akers, 2000). Beccaria stated in his book, *On Crimes and Punishments*, “the more prompt the punishment is and the sooner it follows the crime, the more just and useful it will be”(1764/1986, p. 36).

Certainty deals with the chances that an individual will be punished for an illegal or unwanted behavior, or the probability that an aversive response is imposed when a specific behavior occurs (Gray, Miranne, Ward, Menke, 1982). Increasing the certainty of punishment if someone engages in an illegal behavior is believed to decrease the probability that the individual will continue to engage in illegal behavior because of the perceived likelihood of being punished (Akers, 2000; Beccaria, 1764/1986).

The proportional severity of punishment deals with the strength or intensity of an imposed punishment when a specific behavior has occurred (Gray et al., 1982).

Moreover, severity concerns fitting the amount of punishment in proportion to the damage the crime had on society. The punishment remanded to the offender should be tailored such that it is severe enough to outweigh the benefits of the crime, but not overly severe, as unjust punishments will not deter (Akers, 2000; Beccaria, 1764/1986).

The certainty and proportional severity aspects of deterrence theory are considered by some to be additive factors. “That is, when punishments are severe and administered with certainty, maximum deterrence results. Inversely, when punishments are slight and uncertain, deterrence will be minimal” (Bailey & Smith, 1972, p. 531). When considering the elements of effective deterrence as previously outlined, the next logical question is one that asks if the essential components of deterrence exist and are working in cooperation with the administration of justice in America.

Deterrence and Determinate Sentencing

Deterrence is believed to be grounded in the goals of the Sentence Reform Act, and research continually has demonstrated that the criminal justice system provides a significant deterrent effect (Hofer & Allenbaugh, 2003). Deterrence remains the primary and strongest argument for mandatory punishments, because it is believed these penalties deter potential offenders from violating the law. In deterring these would-be offenders, crime and victimization rates are expected to be reduced (Tonry, 1996). The element of “crime control” also fits into this conceptualization of deterrence. By incarcerating guilty, like-offenders for a pre-determined, substantial amount of time, both the culpable individual and other potential lawbreakers will be persuaded away from future crimes based on the principles of deterrence (Cassell, 2004).

For many years, scholars have argued about the effects of official sanctions on deterrence, but empirical support for these claims did not exist until the 1960's (Tonry, 1998). Much of the early empirical deterrence research suggested only "very modest support" for the hypothesis that punishment enhances the ability to prevent crime and/or delinquency (Nagin, 1998; Thomas & Bilchik, 1985). Others suggested that the criminal justice system, although ineffective in certain areas and times, does have an overall deterrent effect (Cook, 1980; Nagin, 1998). In general, while early, modest support was found, the empirical evidence was not solid enough to suggest that a strong deterrent effect existed in the criminal justice system (Nagin, 1978; Tonry, 1996).

Some early deterrence research looked at the effects of specific policy interventions and suggested that there is only a temporary deterrent effect, with the potential for these effects to decay or erode over time (Nagin, 1998; Sherman, 1990). Other studies found a negative correlation between crime rates and sanction levels, which was interpreted as showing a general deterrent effect (Kagan, 1989; Levitt, 1996; Nagin, 1998; Sampson & Cohen, 1988). These studies, for the most part, tended to rely on places and official records as the unit of observation and the source of data (Nagin, 1998).

Empirical evidence of a substantial deterrent effect appears more substantiated today than it was decades ago, as a result of an evolution of sorts in deterrence research (Nagin, 1998). Some more recent studies have examined the links between the perceptions of punishment and severity to self-reported crime and delinquency. Individuals and surveys became the unit of observation and the source of data used to draw conclusions concerning the overall deterrent effect (Nagin, 1998). The results of

these studies generally indicate that people who perceive the sanctions and costs of criminal behavior to be high also self-report lower criminal behavior (Bachman, Paternoster, & Ward, 1992; Grasmick & Bursick, 1990; Nagin, 1998; Paternoster & Simpson, 1997).

Horney and Marshall (1992) also found evidence suggesting active offenders learn from their offending experiences, as individuals with higher arrest ratios possessed higher risk perceptions. Preventing crime through deterrence requires the potential offender to weigh the perceived rewards and perceived costs, where the perceived cost is fundamentally rooted in legitimate sanction policy (Tonry, 1998). Would-be offenders must be aware of the policy sanctions or the deterrent effect interpretation would be seriously weakened.

The challenge for policymakers, based on these findings, would be to incorporate sanctioned policy decisions in a manner that people would come to learn of the new policy, perceive that violation of the law is too costly to them and the perceived rewards are not worth the risk, and therefore they choose not to violate the law (Nagin, 1998). Gabor and Crutcher (2002) discuss numerous studies that look at the cumulative effects of criminal sanctions and sentences on deterrence and also on the individual components of punishment. For example, when focusing on *certainty* of punishment, some studies suggest a significant decrease in crime rates with an increase in the likelihood of an arrest (Marvell & Moody, 1996; Tittle & Rowe, 1974). More recent research about the topic of deterrence suggests that, for some people, the perceived threat of punishment serves as a useful deterrent (Myers, 1999). Other research that looks at *severity* of punishment indicates harsh sanctions provide a deterrent effect for offenses (Green, 1986). When

comparing the *certainty* and *severity* components of punishment to each other, research suggests *certainty* of punishment is more critical in deterring crime than *severity* of punishment (Gabor & Crutcher; Miller & Anderson, 1986).

Incapacitation and Retribution

Incapacitation and changes in incapacitation practices are crucial components of determinate sentencing legislation at both the state and federal levels. Increasing incarceration, and thereby incapacitation, aims to protect the public by removing guilty offenders for a substantially long and definitive time period (United States Sentencing Commission, 1991). “Perhaps the most commonly-voiced goal of mandatory minimum penalties is the ‘justness’ of long prison terms for particular serious offenses” (United States Sentencing Commission, 1991, p. 13). Prison sentences remove offenders from society and, in the process of so doing, deprive the individual of freedom and opportunity to engage in a number of behaviors (Cassell, 2004).

Retribution refers to the distribution of punishments where offenders receive their “just deserts” (LaFave, 2003). The concept of retribution emphasizes the offender getting what he or she deserves for the violation of some law or behavior. In criminological practice, the goal of retribution should not be about revenge, but should be about reestablishing the balance of society through certain elements of deterrence, incapacitation, and rehabilitation (Bradley, 2003).

Sentencing guidelines attempt to match the severity of punishment with the seriousness of the crime, while accounting for prior record and the likelihood the accused will re-offend if released. This “hybrid” methodology of sorts often is referred to as a “modified just desert,” and it has been praised for limiting retribution principles while

maintaining the integrity and purpose of punishment (including but not limited to) deterrence (Hofer & Allenbaugh, 2003). As cited in Hoffer and Allenbaugh, the United States Sentencing Commission defended their rationale for adopting this modified just desert model by noting that it incorporates not just one single approach, but instead attempts to balance all the objectives of sentencing and crime-control, and that deterrence and rehabilitation are accounted for in this just desert model.

A few studies have estimated the number of crimes prevented in a year due to incapacitation. Some estimate that the number of crimes prevented in any given year range from 3 to 187 per offender incarcerated (Zimring & Hawkins, 1995). Another interesting statistic suggested that in 1975, 32.9% of potential violent crimes in the United States were prevented due to incapacitation efforts (Cohen & Canela-Cacho, 1994). Statistics also reveal that in the year 2002, America experienced the lowest rate of victimization in recent history. This year also represented the highest number of people imprisoned (Cassell, 2004). The findings of these studies give some credence to the idea that incapacitation, especially for chronic violent offenders, may be associated with reductions in crime (Gabor & Crutcher, 2002). It should be noted, however, that correlation does not imply causation.

Rehabilitation

For many years, scholarly journals, policy recommendations, and commentaries in criminology have been unkind to the rehabilitative ideal (Wright, 1995).

Rehabilitation programs, theoretically, involve therapeutic interventions that focus on transforming individuals into more desirable, better functioning human beings, thus reducing criminal and/or antisocial behaviors in society (Wright, 1995). As touched upon

earlier, support for rehabilitation versus a more punitive system of justice experiences change throughout time, where support for either position is never stable.

Rehabilitation is not a point of interest that was clearly identified in the 1991 Special Report to Congress by the United States Sentencing Commission. Rather, rehabilitation is considered an additional aim of determinate sentencing, but the system and structure of the sentencing protocols dismiss the notion that rehabilitation itself should influence or determine the amount of time served for a law violation (Cassell, 2004). The Sentence Reform Act, despite not having a clear and definitive statement concerning the philosophical viewpoint about the issue of rehabilitation, does require the defendant to be provided with educational or vocational training, medical assistance and care, and/or other correctional treatment in an efficient and effective manner (Hofer & Allenbaugh, 2003).

Rehabilitation, based on this evidence, seems to be an unstated component of the Federal Sentencing Guidelines. The tenets of rehabilitation (education and vocation training, for example), however, seem to persist throughout. As stated earlier, rehabilitation on the state level, especially in Pennsylvania, appears to have greater emphasis in the state guidelines and is considered in much greater specificity as was illustrated when discussing incarceration in a county jail versus incarceration in a state prison.

Conclusion

Despite the U.S. Sentencing Commission's inability and/or unwillingness to identify an undisputed moral or philosophical foundational approach to the sentencing guidelines on the federal level, based on the preceding analyses and commentaries, there

seems to be a number of constructs, opinions, and criminological tenets that suggest purpose and significance were at the heart of guideline construction. These same components and foundations also resonate at the state level, oftentimes in a manner more clearly identified and stated.

Determinate sentencing practices seek to reduce unwarranted, unwanted disparity and punish similarly like offenders. Factors such as seriousness of present offense and prior record are tangibles that the guidelines proclaim to significantly weigh in order to achieve their stated objective of uniformity when administering punishments. Irrelevant factors, such as race and gender, are such that they should not influence sentence outcome with the determinate sentencing practices in place. If it was discovered that these variables significantly influence sentence outcomes, then it might suggest bias or discrimination is taking place, despite efforts to control for these injustices.

Thus far, an outline about the history and philosophical rationale for determinant sentencing in America has been provided, along with the many different constructs associated with this movement. A majority of that discussion focused on the Federal Guidelines, how they were implemented, and how they work in cooperation with mandatory minimum sentence statutes, as well as how things are done at the state level in Pennsylvania. Focus then was shifted to the theoretical tenants of deterrence, incapacitation, retribution, and rehabilitation, and the relevant empirical research dealing with these topics.

Based on all that has been provided and suggested, the questions that seem to flourish and resonate now are, “Who is most affected by the guidelines, and is justice being delivered in a more efficient, uniformed, and unbiased manner?” In order to begin

to answer such questions, Chapter 3 provides a review of the existing studies and findings of research dealing with sentence disparity, judicial departures, mandatory minimum sentencing, and variables that may influence sentence outcomes. Particular attention is given to research that deals with drug crimes in the United States. With the conclusion of Chapter 3, it is expected that the path of this study has become more visible and clear, as specific research questions are considered with the hopes of filling in gaps in the existing literature.

CHAPTER 3

EMPIRICAL RESEARCH ON DETERMINATE SENTENCING

As we have seen, indeterminate sentencing and the practice of parole were reformed at both the state and federal levels because of inconsistencies and widespread dissatisfaction. Indeterminate sentencing and the discretionary use of parole were replaced with determinate sentencing, where those convicted would serve a sentence more closely matched to that which the judge imposed. Parole boards were eliminated and judicial discretion was restricted. At the same time, and as an unintended result, prosecutors experienced a greater sense of decision-making responsibility with regard to specific charges filed, which led to a different set of concerns revolving around discrimination and discretion.

The shift from a rehabilitative approach to a more punitive one is connected to the tenets of deterrence theory, specifically the concepts of certainty and severity of punishment. As a result, several studies have examined the effectiveness of determinate sentencing reform. Some discussed in this section deal with issues of severity, while others focus on potential systematic practices that could result in discrimination against particular individuals.

The purpose of this chapter is to carefully review past studies about the many aspects of determinate sentencing. The rationale for reviewing the previous work about this subject matter is two-pronged. First and foremost, discussing the previous work done in this area assisted in capturing and comprehending the critical issues, points, variables, and assumptions to be used in guiding the current study at hand. When dealing with mandatory minimum sentencing, guideline statutes, sentence outcomes,

enhancements and departures, and many other topics discussed previously, it should be noted that different studies examine a number of unique components of the justice system. From judicial and prosecutorial discretion to deterrence, there are many concepts and ideas that interact with each other. Proper dissection and analysis of the relevant studies and research is paramount in order to best capture all that is significantly important for this study. Secondly, and in cooperation with the first point, by analyzing prior research, significant gaps that may exist in the research and literature can be identified. By recognizing these potential gaps, the current research helps fill a void in this discipline and contributes to the overall understanding and effectiveness of the justice system in this country.

The majority of determinate sentencing statutes are aimed at drug offenses. Since the interest and focus of this research revolves around the idea of determinate sentencing for drug offenses, the bulk of this chapter deals with research that pays particular attention to drug offenders and sentence outcomes. After dissecting and interpreting the results of these studies, a more clear and concise picture concerning the effectiveness of the determinate sentencing movement is made visible; one that was used to guide the course of action for this research.

Prior Research on Determinate Sentencing

As stated in the previous chapter, the federal sentencing guidelines and mandatory sentencing statutes did not come into existence until the mid to late 1980s. When they went into effect, they were particularly aimed at drug offenses and violent crimes. While changes to the federal court system did not transpire until 1987, noteworthy and relevant research about mandatory prison sentences and their projected effects on crime began to

surface in the 1970s. The impetus for such studies can be traced back to discontent with excessive sentence disparities and differential treatment under indeterminate sentencing protocols (Petersilia & Greenwood, 1978).

Early studies dealing with determinate sentencing looked at potential disparities for crimes, like bank robberies, larceny, and a number of other infractions of the law, and compared imposed prison sentences to national averages and other court jurisdictions within the state (Petersilia & Greenwood, 1978). These studies all involved state-level data, since no mandatory sentence statutes existed at the federal level.

The Administration Office of the U.S. Courts in 1971 and Crime Control Digest in 1977 state that sentence disparities for like offenses committed by offenders with similar prior records were said to be the result of race, judicial discretion practices, and consideration of the age of the offender in differing states (as cited in Petersilia & Greenwood, 1978). While the independent variables used to test hypotheses and determine if discrimination existed are helpful in selecting the appropriate variables for future studies, early research dealing exclusively with drug offenses is limited. Drug offenses may have been included as part of the data when analyzing crime as a whole, but those drug offenses and the sentencing responses to them differed dramatically from the 1970s, 1980s, and today.

Dated research examining the influence of prior record and the seriousness of the offense on the sentence outcome suggest these factors (prior record and offense severity) were extremely influential in determining level of severity (Green, 1961; Hindelang, 1969; Unnever, 1982). According to one study, once prior record and offense severity were controlled for, the race effect on sentence severity became more pronounced

(Unnever, 1982). This suggests that blacks and whites were not being sentenced to prison for the same set of reasons. Crude measures of the seriousness of the offense across disparate types of crimes could underestimate the effect of the defendant's race on the severity of the sentencing decision (Unnever, 1982, p. 220).

As discussed in Chapter 2, when societal fear and outrage over drugs peaked, it led to a knee-jerk reaction where more punitive sanctions were the result. Studies from the 1980's in Washington, D.C. and New York help illustrate this claim (Nadelmann, 1989). In 1988, the Greater Washington Research Center in Washington, D.C., reported that in 1981, 13% of arrests were for drug law violations; in 1986, that number jumped to 52% (Nadelmann). The New York Times in 1987 indicated that 25% of felony indictments were for drug law violations in 1985 in New York; in 1987, the number was above 40% (Nadelmann). The United States Sentencing Commission, in the mid 1980's expected the number of drug arrests to continue to rise over the course of fifteen years to the point where half of the law violators would be incarcerated for drug violations (Nadelmann). As a result of these observations, comparing sentence outcomes for drug offenses from the 1970's or 1980's to sentence outcomes for more recent drug offenses is not prudent or justified because the time periods, policies, conceptions, and practices are distinctive to those eras.

When looking at the more recent research surrounding mandatory minimum sentencing, a number of studies look at the amount of time a specific type of offender may serve for an explicit offense. Some people suggest that because mandatory minimum statutes are written so broadly, and because certain mitigating circumstances may be overlooked, minor offenders who pose no serious threat to society are feeling the

brunt of this legislation (Vincent & Hofer, 1994). If this point is true, then it would suggest sentence reforms, on either the state or federal level, are not succeeding in the manner they were intended to, because the serious offenders the reforms targeted are not absorbing the brunt of increased uniform punishments.

While certain studies focus on offender characteristics and the potential impact these characteristics may have on case processing, other studies examine crime trends related to states enacting sentence guidelines and enhancements, and the effects these changes had on overall crime rates (Austin, 1993; Gabor & Crutcher, 2002). According to these studies, the changes in legislation had a minimal effect on the crime rate. Similar studies utilizing crime trend data and the impact on the overall crime rate suggest a modest increase in crime rates after the enhancements and guidelines were solidified into legislation (Wichiraya, 1996; Gabor & Crutcher). Still other studies claim there exists no evidence to support the idea that mandatory minimum sentencing laws deter others from engaging in criminal behaviors (Doob & Webster, 2003).

Certain studies suggest determinate sentencing practices are influential on incarceration rates. Sorensen and Stemen (2002) tested the impact of sentencing guidelines on incarceration rates. These authors claim that sentencing guidelines decreased a state's incarceration rate and found that sentence guidelines are associated with less punitive outcomes and that states with sentence guidelines experienced fewer people incarcerated per 100,000 people. Others have found similar type findings (Casper & Brereton, 1984; Hewitt & Clear, 1983; Lipson & Peterson, 1980).

Perhaps the reason why inconsistent, tentative results are found is because improper methodologies and incorrect designs are being utilized by some to address this

question (Cohen & Tonry, 1983; Nicholson-Crotty, 2004; Tonry, 1988). These authors argued cross-sectional designs made it impossible for researchers to recognize and differentiate the impact of sentencing policies and trends in crime and incarceration rates.

Lowenthal's (1993) study is unique in that, when compared to other studies that examine the effectiveness of determinate sentencing reforms, his looks at the consequences of coupling sentencing guidelines with mandatory sentencing statutes. His summation is that while consistent and uniformed punishment for like offenders is the ideological goal of the determinate sentencing movement, mandatory sentencing undermines these measures because mandatory penalties are applied unevenly and emphasize a single, aggravating factor. These protocols, along with the displacing of discretion, undermine the effectiveness of these reforms (Lowenthal).

Lowenthal's (1993) work is most-closely related to the existing research that examines discretion and the shift in decision-making responsibility from judges to prosecuting attorneys throughout the justice process. Revisions in philosophy, protocol, and procedure drastically reduced sentence disparities between judges at varying levels of government. At the same time, however, these revisions helped fashion disparity and inimitable differences in handling of cases by prosecuting attorneys (Koh, 1992). In a recent study examining sentence reform and the war on drugs, the findings indicated that it would be premature to conclude the sentencing reforms have produced greater uniformity for similarly situated offenders, because there is a displacement of discretion (Engan & Steen, 2000). This displacement of discretion appears to have resulted in different sentence outcomes for like offenders, and it could be a direct result of race, gender, and/or ethnicity of the defendant.

In a recent study by the General Accounting Office concerning departures, a discretionary option for prosecutors, 36% of all federal cases (44% for drug cases) involved a downward departure, mostly for reasons that revolved around the point of “substantial assistance” under the broad category of “accepting responsibility” (Cassell, 2004). According to Weinstein (2003), who looked at statistics concerning federal sentencing practices for the fiscal year of 2000, 17% of all federally sentenced cases involved a non-substantial assistance downward departure.

Critics and opponents of the determinate sentencing reform movement (and the organizational practices that ensued after this movement) could argue that discrimination, resulting from prosecutorial and limited judicial discretion, is a plausible and unintended consequence. To examine this issue further, a review of some of the empirical evidence dealing with defendant characteristics seems to be the next logical step to take in dealing with these many issues and questions.

Research Specific to Race, Age, and Gender

As stated earlier, the determinate sentencing movement sought to reduce unwarranted disparity in the legal process and produce sentence outcomes that were based on legally relevant variables and, therefore, were more predictable and uniformed throughout the court. Variables such as race, age, and gender are variables that are considered legally irrelevant. Unwarranted sentence disparity arises when these legally irrelevant variables influence the sentence outcome (Souryal & Wellford, 1999). After careful review of the empirical literature concerning race, age, and gender there is not a clear-cut, definitive answer concerning the effects of these variables on sentencing outcomes. The reason a straightforward conclusion has escaped this discipline of study

thus far is because the research generated has produced inconsistent and contradictory findings. Steffensmeier, Ulmer, and Kramer (1998) provide a summation of the previous work done in these areas that will be considered here as well.

Race

Some consider race to be a significant predictor in criminal behavior and offending (Russell, 1994). People identified as minorities are arrested more often than white people, regardless of the type of crime (Federal Bureau of Investigation, 1992). Research exploring the causal factors for this relationship is limited. Some argue the structure and function of law and the legal system place minorities at a disadvantage throughout the entire judicial process (Hans & Martinez, Jr., 1994). Merton (1938) contends educational and economic opportunities for minorities are limited which leads to increased criminal behaviors. Some claim that blacks are underrepresented in roles such as judges or jury members which may lead to discrimination throughout the system (Fukurai, Butler, & Krooth, 1993), while Crutchfield, Bridges, and Pritchford (1994) suggested that 90 percent of the racial disproportionality in prisons across the nation can be attributed to disproportional minority involvement with crime. Despite the many different approaches discussed and the research surrounding these claims, a definitive statement concerning race and criminal behavior cannot be reached with any degree of certainty.

When considering the effects of race on sentencing and severity of punishment, the research amassed has produced confusion and dissonance in the findings. For example, certain studies suggest black defendants receive more severe punishments than white defendants (Petersilia, 1983; Spohn, 1990; Spohn, Gruhl, & Welch, 1982). Some

studies examining the same variables and effects propose white defendants receive more severe punishments than black defendants (Bernstein, Nagal, & Doyle, 1977; Levin, 1972), and still other studies indicate that there are very few, if any, noticeable differences in sentencing based on race (Klein, Petersilia, & Turner, 1988; Wilbanks, 1987). Sampson and Lauritsen (1997) suggest race influences the decision to incarcerate where black defendants are more likely than white defendants to receive a jail or prison sentence. More recent literature suggests that variables such as race and economic inequality are not determinants of incarceration independent of the crime committed (Arvanites & Asher, 1998). The most recent studies produce findings that reveal sundry results when considering the effect of race on sentencing outcomes (Dixon, 1995; Kramer & Steffensmeier, 1993).

The conclusions surrounding the independent variable, race, are such that some researchers argue the effects of race on sentence outcome are minimal when legally relevant variables are taken into consideration (Kramer & Steffensmeier, 1993). Others contend that conclusion is inaccurate because they believe race interacts with other variables and, in turn, affects sentence outcomes for certain cases or for certain types of offenders (Peterson & Hagan, 1994; Spohn, 1994). A reason why these results may be mixed rests largely in the fact that many of the early studies failed to control for other variables related to the sentence outcome, such as prior record (Klein et al., 1990). Blumstein, Cohen, Martin, and Tonry (1983), on the other hand, as cited by Souryal & Wellford (1999), suggests research concerning race and sentence outcome suffers from omitted variable bias and/or measurement error.

A study that addressed some of the shortcomings mentioned earlier looked at race and its effect on sentence outcomes in California where data from 11,553 California offenders convicted of assault, robbery, burglary, theft, forgery, or drug crimes in 1980 were analyzed to determine what effect, if any, race had on sentence outcome (Klein et al., 1990). Sentence outcome, as is the case with this present study, referred to both decision to incarcerate versus probation and length of sentence imposed on those imprisoned. Racial discrimination would be present if disparities existed in the decision to incarcerate and/or in the length of sentence when comparing white offenders to nonwhite offenders while controlling for legally relevant variables variables.

The results were such that when making predictions about incarceration versus probation based on variables other than race, the model proved to be 80% accurate. Adding the variable, race, did not improve the accuracy rate by even 1% (Klein et al., 1990). Based on these findings, racial disparity in sentencing outcomes did not indicate racial discrimination. The best predictor for the decision to incarcerate was the number of conviction counts (the number of current separate charges the offender was convicted of). For all of the crimes considered, drug crimes were the only type of crime where race, by itself, explained more than 2% of the variance with regard to decision to incarcerate. Latinos had a higher probability of imprisonment when convicted for a drug crime (Klein et al., 1990). In addition to race not influencing the decision to incarcerate, race did not appear to influence the length of confinement. The results of this study would suggest the determinate sentencing movement is working in the manner prescribed by eliminating sentencing bias and disparity based on legally irrelevant variables, such as race.

Souryal and Wellford (1999) also examined unwarranted sentencing disparity using state level data in Maryland for people convicted between 1987 and 1996 to discover if race/ethnicity influenced the decision to incarcerate and length of confinement. Type of crime was broken down into the three categories of: property crime, drug crime, and violent crime. As was the case with Klein et al. (1990), seriousness of the offense and prior record had the most significant impact on the decision to incarcerate in Maryland. Disposition type (plea agreement versus a jury trial) also had a statistically significant effect, as would be expected. Unlike the results in the California study, race seemed to have a statistically significant impact on sentence length for people sentenced for drug offenses only. In addition, with matters concerning the option of probation or a short period of incarceration, nonwhite offenders were more likely to receive an incarceration sentence than similar white offenders, indicating race influenced the decision to incarcerate. The magnitude of this race effect was particularly strong for drug offenses. Race did not influence the incarceration decision for the total sample, only for drug offenses.

The results of this study suggests that race does influence the decision to incarcerate for drug offenses and seems to refute the findings of Klein et al. (1990), despite both studies employing very similar-type dependent and independent variables, methodologies, and analyses. Souryal and Wellford (1999) contend their results, coupled with the existing research previously discussed, suggest that the sentencing guidelines reduce sentence disparity, but do not eliminate it completely. The incompatibility of the results from these two studies suggest the need for more research in this area before a

definitive statement can be made concerning the effects of race on sentence outcome and sentence length.

Age

The research dealing with the effect of an offender's age on sentencing remains much more limited than research dealing with the effect of race. When considering the severity of punishment on age, more punitive sanctions are associated with older offenders than younger offenders (Wolfgang, Figlio & Selling, 1972). In addition, the research that currently exists may have methodological and/or measurement errors that may diminish or exacerbate the effects of age on sentencing outcomes (Steffensmeier et al., 1998). The reason for this is that a majority of this research considers age to be a continuous variable and assumes a linear effect, rather than a variable that potentially has a nonlinear or inverted U-shaped relationship, as suggested by some (Steffensmeier, Kramer, & Ulmer, 1995; Steffensmeier et al., 1998).

Curvilinearity is likely a result of more lenient sentences for younger adult offenders (18-20 years old) when compared to slightly older adult offenders (21-29 years old) (Steffensmeier et al., 1998). Those in the 21-29 year old age range typically receive the harshest sentences compared to any other age group. The age-sentencing association is downward linear from the age of 30 into old age, but 18-20 year olds receive punishments that mirror offenders in their 30s (Steffensmeier et al., 1998). One suggestion as to why this more lenient approach exists for offenders in the 18-20 year old range is that judges may view these defendants as more impressionable and more likely to suffer harm from older adult offenders. It also is theorized that judges may view older offenders as less dangerous and not as great a threat to the general population, and

therefore provide less harsh sentences for them. Earlier work on studies looking at sentencing and age may have shrouded these judicial preferences by treating age as a continuous and linear variable, thus flattening out its effect (Steffensmeier et al., 1998).

Gender

When considering the overall effects of gender on sentencing outcomes, the conclusions are much more consistent and accepted. Females, for the most part, are treated with greater benevolence than their male counterparts.

In general, these findings echo Steffensmeier, Kramer, and Streifel's (1993) and Bickle and Peterson's (1991) arguments that gender differences in incarceration decisions are conditioned by the consideration of intervening factors such as family status and responsibility for dependent children. These factors lead court actors to view female defendants as less blameworthy, less dangerous, better risks for rehabilitation, and thus candidates for leniency (Ulmer & Kramer, 1996, p. 401-402).

These findings are especially apparent with regards to confinement decisions and length of incarceration as opposed to case dismissals and convictions (Albonetti, 1997; Bickle & Peterson, 1991; Daly & Bordt, 1995; Steffensmeier et al., 1993; Steffensmeier et al., 1998). When examining the sentencing outcomes for drug offenses between males and female defendants, it is clear that males are treated more punitively than females (Engen, Gainey, Crutchfield, & Weis, 2003; Farrell, 2004; Souryal & Wellford, 1999; Spohn, 1999). As summarized by Demuth and Steffensmeier (2004), females are less likely to be detained before trial (Daly, 1987; Kruttschnitt, 1984), more likely to receive lower bail amounts than males (Kruttschnitt, 1984), and more likely to be released using nonfinancial means.

While the aforementioned may seem like disparity in sentencing outcomes as a direct result of gender discrimination, Daly (1987) suggests females may be treated with greater leniency because of their role as caretaker in the family and the potential social cost associated with removing them from their roles. This would suggest that the leniency described is a result of protecting the family and reducing the social cost instead and not protecting the female defendant (Daly).

Effects of Race, Age, and Gender

As previously discussed, the independent effects of each variable (race, age, and gender) can be analyzed and discussed to determine what influence, if any, these legally-irrelevant variables have on sentence outcomes. The overall results are more definitive for gender than for race and age. It is hypothesized, by some, that the age-gender restricted model effects of these three variables may be more pronounced and agreed upon when considered together than independent of one another (Klein & Kress, 1976; Steffensmeier et al., 1998).

These sentiments are at the heart of the study done by Steffensmeier et al., (1998), in that they examined the age-gender restricted model effect of race, gender, and age in criminal sentencing. This study looked at statewide sentencing outcomes in Pennsylvania from 1989-1992 and found that young, black males were sentenced more harshly than any other group. Among their findings was one that showed the importance of considering the joint effects of age, race, and gender on sentencing outcomes and the rationale for using age-gender restricted model models instead of additive (Steffensmeier, et al., 1998). This study offers credence to the notion of considering the age-gender

restricted model effects of the independent variables on sentence outcome and may serve as a framework for future study in this general area.

Competing Results and Methodological Flaws

Sentencing disparity and reductions therein using sentence guidelines and/or determinate sentencing have been examined in greater detail by using state level data (Dixon, 1995; Kramer & Ulmer, 1996; Moore & Miethe, 1986; Ulmer & Kramer, 1996; Zatz, 1984). The findings from these studies provide conclusions that are inconsistent across the board.

Some studies, for example, suggest that racial effects on sentencing are curtailed by the guideline system (Dixon, 1995; Zatz, 1984). Other studies conclude that black defendants receive harsher punishments than white defendants (Petersilia, 1985; Spohn, Gruhl, & Welch, 1982). There is research that indicates few, if any, racial differences exist with determinate sentencing practices and even some that suggest there are mixed results within the studies themselves (Klein, Petersilia, & Turner, 1988; Myers & Talarico, 1987; Wilbanks, 1987).

Steffensmeier and Demuth (2000) suggest the reason these studies do not provide definitive answers to questions surrounding disparity in the justice system is because there are various shortcomings in the scope and methodology of the previous research. They contend that shortcomings like failing to control for legally relevant variables, such as offense severity and prior record, small numbers of cases included in the study, failure to properly analyze the outcomes separately, and utilizing data that date back as early as the 1970's are examples of such flaws. In order to provide a more definitive statement

about this topic, the present study at hand needed to correct for these flaws and build upon more recent, sound research that considered and made adjustments for these issues.

For example, as previously stated, early studies on determinate sentencing failed to control for legally relevant variables, such as offense severity and prior record. As a result of this methodological design flaw, disparity resulting from discrimination was an accepted conclusion. However, as research about this topic evolved and matured, controlling for legally relevant variables was deemed logical and essential. By controlling for things like prior record and offense severity, a great deal of sentence disparity was explained. More serious offenders were receiving more severe sentences, as was one of the goals of sentence reform in America. Instead of discrimination taking place, as originally believed based on early studies, more recent studies give credence to the idea that the determinate sentencing practices are functioning accordingly and are serving defendants who commit serious crimes and have lengthy prior records with harsher sanctions.

If the previous research did not analyze sentence outcomes separately (decision to incarcerate and sentence length), as suggested, it would be virtually impossible to determine if sentence outcome and sentence length were related, were dependent, or were independent of one another (Steffensmeier & Demuth, 2000). Proclamations made without knowledge and consideration of this potential relationship are unfounded and not substantiated. If one were to consider only the decision to incarcerate or only the length of sentence as the only relevant dependent variable, then the conclusions drawn would be unreliable since it is possible for disparity to exist in either one of these components. For this study, it remains imperative to acknowledge both the decision to incarcerate and

sentence length when considering sentence outcome in order to properly analyze the results.

In addition to some of the methodological pitfalls some of the earlier studies failed to navigate, research employing data from the 1970's is problematic for a number of reasons. Simply stated, America's response to drug crimes has changed over the course of the last thirty years. Sentiments, legislation, enforcement, and judicial responses to the drug epidemic were very much different during the 1970's than they are today. Utilizing secondary data that dates back to the 1970's is problematic for the many reasons previously cited. These are very important issues to consider when analyzing the previous work done and also while organizing the methodology of the present study.

A Study in the Right Direction

Ulmer and Kramer (1996) used statistical and qualitative state-level data in Pennsylvania to analyze differences in three separate county courts concerning sentencing practices. They utilized data from three trial courts in Pennsylvania under the guidelines system implemented in 1982. Their study sought to uncover, among other things, if discrimination was visible when comparing and contrasting the outcomes from trial courts in a "Metro County," a "Rich County," and a "Southwestern County," where things like court size and urbanization could be considered, as well as some of the other variables previously discussed.

The study serves as a solid starting point and is of particular interest for this project for a number of reasons. First, this study utilized state-level data from trial courts in Pennsylvania and considered the sentence outcome and length of imprisonment as two separate dependent variables. This was one of the earliest and most carefully constructed

studies that sought to answer questions about discrimination and disparity in the courts under the determinate sentencing philosophy. As previously stated, many earlier studies were flawed in their approach to considering relevant dependent and independent variables and their relationship to one another.

Second, the current project employed quantitative and qualitative methods to learn more about the systematic working of the sentencing system in Pennsylvania. Much can be learned about the potential and intended direction of the present study by understanding and improving upon past research, while utilizing that which was successful in helping to understand this topic area.

Third, the current study produced valuable information about a trial court in southwestern Pennsylvania. While Ulmer and Kramer (1996) compared the variables and results of cases in different courts throughout the state of Pennsylvania, it is believed their analyses and results are relevant to the present study as well. Comparisons and contrasts are made to the products of Ulmer and Kramer's work, to determine if the methods and results were consistent and reliable over time. It also was possible to determine if the sentencing system has progressed or digressed over the course of time concerning a number of issues discussed.

Unfortunately, there are some dramatic weaknesses identified in Ulmer and Kramer's (1996) study that limits the usefulness of the research. Had the authors included certain variables that are missing, this study would have been more helpful in directing the present study. Ulmer and Kramer's work does not include information concerning the deposition of cases prior to the determinate sentencing movement. There was no information relating to original charges filed against a defendant and no mention

of potential variables such as whether or not bail was set, whether it was a private defense as opposed to a public defender, employment status, education level completed, or social class of the offender.

While some of these variables might be fruitful in explaining sentence outcome differences, it seems as though gathering such information is impractical. While this remains a limitation from a conceptual standpoint for this type of research, from a logistical standpoint, it is simply impossible to obtain such data on offenders at this time. For example, in the case files reviewed in Pennsylvania, educational level completed is not listed unless the individual has served time in a correctional facility. It would, therefore, be impossible to analyze the impact of educational achievement, for example, on sentence outcome due to lack of a consistent independent variable. The category of social class and employment status are other conceptual terms that do not have an official classification in Pennsylvania. Additional studies examining the effects of these variables on sentence outcome were evaluated to determine what impact they have on the dependent variables.

Ulmer and Kramer (1996) do address fruitful information about the type of conviction, meaning trial versus guilty or negotiated-style plea; type of institution, meaning county jail versus state prison; and length of incarceration that should be included in future studies. There is information about legally relevant variables such as prior record scale, offense type and severity, and number of conviction charges. There is information about the race, age, and gender of the offenders, which are considered to be legally-irrelevant variables. These variables aforementioned, in addition to type of legal

defense (public or private), were included in the current study as they seem to be extremely important, relevant, and explanatory.

The findings of Ulmer and Kramer's (1996) study suggested jury trials, for every type of offender, resulted in greater odds of incarceration in the Rich County when compared to the Metro County and the Southwestern County; blacks were more likely to receive a state prison term in the Rich County when compared to the Metro and Southwestern counties; blacks had a smaller likelihood of overall incarceration with shorter sentences in the Southwest county than they did in the other two counties; and women had a lesser chance of overall incarceration in the Rich County compared to the Metro County and Southwestern Counties. One major point of interest for the present study was the findings that indicated racial differences in incarceration, state prison, and sentence length were not statistically significant for the "Southwestern County" (Ulmer & Kramer). The county used in the current study is considered to be a "Southwestern County," and this previous research provides pertinent data for comparison purposes in this specific geographic area.

Offense type/severity and prior record were the greatest predictors of the decision to incarcerate (county jail versus state prison) and length of sentence (Ulmer and Kramer, 1996). These findings would suggest that the guidelines are functioning in the manner prescribed, in that they are punishing more serious and repeat offenders with longer sentences in state prison facilities. As outlined by the guidelines, type of offense and severity, coupled with prior record, are legally-relevant variables that should provide offenders with rationally-based decisions concerning punishment.

However, extralegal factors (that are prescribed to be legally irrelevant variables) also seemed to be at play in each county examined (Ulmer & Kramer, 1996). This would suggest that the guidelines are not functioning in the manner prescribed, since mode of conviction, race, and gender seemed to influence sentencing outcomes.

The strongest of these extralegal factors was mode of conviction. Trial by jury, in all three counties, meant a greater likelihood of incarceration at a state prison facility for a longer period of time (Ulmer & Kramer, 1996). This single, extralegal variable significantly influenced the three dependent variables in each of the counties examined.

While the fact remains that mode of conviction should be considered an extralegal variable, it stands to reason that guilty pleas versus guilty decisions by a jury trial are going to provide the offender with a harsher penalty. A guilty plea, according to Vago (2005), saves the court time, money, and effort, and is considered a win by the prosecution, while at the same time the defense receives a lighter sentence. In all three counties, individuals who pleaded guilty were rewarded with more lenient sentences, either by having their sentence outcome fall at the lower end of the sentence range, receiving a mitigated sentence outcome, or being granted a departure below the prescribed guideline recommendation (Ulmer & Kramer, 1996). As a result, and in conjunction with the wide latitude of the Pennsylvania guideline ranges, a guilty plea often was the difference between probation and incarceration, or between county jail and state prison. To illustrate, the odds for overall incarceration were 3.74 times greater for offenders in the “Rich County” found guilty by a jury trial as opposed to a guilty plea; 2.97 times greater for offenders in the “Southwest County”; and 2.85 times greater for offenders in the “Metro County” (Ulmer & Kramer).

Results of Ulmer & Kramer's (1996) study indicated that a guilty plea was viewed as an indication of remorse and/or an acceptance of responsibility. This provided some credible evidence that the offender would be a potentially good candidate for some type of rehabilitation, while at the same time assisted in generating efficiency and cooperation among those involved with the administration of justice. Defendants who opted for a trial by jury, by contrast, were not given the same opportunity to show remorse or acceptance of responsibility and therefore were treated in a manner more punitive and exacting.

The authors concluded that mode of conviction, race, and gender, in conjunction with other factors and issues, influence sentencing outcomes and ideas of just deserts and uniformity (Ulmer & Kramer, 1996). Furthermore, judges, and many others involved in the justice process, may make decisions concerning the perceived dangerousness of the offender, potential for rehabilitation, and expectations concerning the consequences of sentencing decisions, to help frame sentencing outcomes.

While Ulmer & Kramer's (1996) study served as a starting point for the present study, some major flaws can be identified that, if corrected, might help frame and guide future studies in this area. First, and most important, it is not possible to determine what year(s) the study employed trial court data for purposes of collection and analysis. If the authors utilized trial court data from the early 1980's, the relevance of that data may depreciate over time since policies have changed significantly and the practices and familiarity with the guidelines may have been refined over time with use. Second, the authors did not differentiate between drug crimes, violent crimes, and other types of crime as they should have. Many of the other articles and studies examined clearly

indicated the type of crime the defendant was being punished for, in order to examine disparities between offenders and types of crimes. This study did not do as such and there may be disparity between drug offenders and non-drug offenders. It is not possible to determine what specific offense a defendant is being sentenced for, and therefore, not possible to determine if disparity existed between certain offenders and certain types of crime. Third, this study only incorporates black and white defendants into the analysis of the effects of race on sentencing outcome. The authors indicate that Metro County was the only county that had enough Hispanic defendants for meaningful comparisons, and that the descriptive profiles of Hispanic defendants were quite different than those of white or black defendants.

Correcting Earlier Shortcomings

Perhaps one of the most relevant and important studies, for guidance purposes of the current study, is one that deals with federal sentencing guidelines and the effects of defendant characteristics, guilty pleas, and departures for drug offenses in 1991-1992 (Albonetti, 1997). In this study, Albonetti first examined variables that influenced sentence severity for drug offenders. She also looked at ethnicity (Black, White, or Hispanic) to determine if it influenced the effect of other variables, such as other defendant characteristics, legally relevant variables, and guilty pleas. She hypothesized that blacks and Hispanic defendants receive more severe sentencing outcomes when compared with white defendants, and that males and defendants with lower education levels (less than high school) receive harsher punishments than females and defendants with higher education levels (at least high school).

Steffensmeier and Demuth (2000) pointed out many shortcomings with the prior research about sentence outcome for drug offenders as indicated earlier in this chapter. By not controlling for legally relevant variables, accumulating a large sample size, separating the outcomes (in terms of the decision whether or not to imprison and sentence length), and using outdated data, prior research in this area was falling short of sound logic, reliable methodology, and good practice. By failing to attend to these issues properly, the results of these studies remain questionable. Albonetti's study addressed many of the shortcomings described by Steffensmeier and Demuth.

Albonetti sought to estimate the direct effect of defendant characteristics on sentence length. Independent variables such as gender, race, education level, and number of dependents are stated in the federal guidelines as legally "irrelevant" (Albonetti, 1997). They are variables or characteristics that should have no bearing or relevance on sentence outcomes, as our system of justice should not be considering such variables when determining guilt, innocence, or sentences.

As discussed earlier, the determinate sentencing movement came about as an attempt to stop unwarranted partiality and disparity in sentencing based on discriminatory factors and variables. If Albonetti's estimates are accurate and indicate that "irrelevant" variables or defendant characteristics are influencing length of imprisonment, then the federal guidelines are not operating in the manner proposed. This question was at the heart of the present study, which was conducted using data from a southwestern county in Pennsylvania to estimate variable effects discussed by Albonetti at the federal level.

In addition to the question of irrelevant variables and their effects on sentence outcomes, Albonetti was interested in the direct effects guilty pleas had on sentence

outcomes. This issue dealt more with the shifting of discretion from judges to prosecutors and the charges filed, guilty pleas negotiated, motions for substantial assistance, and whether or not discrimination existed in exercising these options.

Albonetti's last question involved the potential conditioning effect of a defendant's ethnicity on sentence outcome (Albonetti, 1997). Discrimination exists if sentence outcomes involving a guideline departure or negotiated plea vary between offenders for factors that are defined as "legally irrelevant," such as race or gender. For example, sentence departures for reasons involving acceptance of responsibility should result in similar sentences for similar defendants across the sample, since they claim to be based on legally relevant variables and not defendant characteristics.

Albonetti's findings indicated that sentence disparity is due to offense-related, relevant variables, as structured by the guidelines. Simple possession versus drug trafficking, a legally relevant variable as described in the federal guidelines, had the strongest effect on length of imprisonment, consistent with the offense-based philosophical foundation for the federal sentencing guidelines discussed in the previous chapter. This is a modest indication that the guidelines are succeeding as far as basing the sentence on type of crime committed.

Sentence disparity, however, also seemed to be caused by legally irrelevant variables, such as gender, ethnicity, education level, and citizenship (Albonetti, 1997). Specifically, the findings indicated ethnicity, education, gender, and citizenship had direct and significant effects on sentence outcomes for the population sampled, when controlling for legally relevant variables and when focusing on drug offenses. In summation, males received a harsher sentence than females; those with at least a high

school education received less time than those without a high school education; citizens of the United States were better off than noncitizens; and white defendants received more lenient sentences when compared to black or Hispanic defendants (Albonetti, 1997).

Finally, when comparing minority defendants (black or Hispanic) to white defendants, white defendants were differentially disadvantaged when criminal history points and offense-severity levels increased. When dealing with simple possession, on the other hand, minority defendants were differentially disadvantaged compared to white defendants (Albonetti, 1997). In interpreting these findings, it appears as though minority defendants receive harsher sentences for minor offenses and with shorter prior records, and white defendants receive harsher sentences for more serious offenses and with lengthier prior records.

Building It Better

Steffensmeier and Demuth (2000) extended Albonetti's work, which looked at drug offenses between 1991 and 1992, by using federal court data from 1993 to 1996. This is relevant because between 1991 and 1992, the guidelines monitoring system covered less than one half of the federal criminal cases, whereas during the period between 1993 and 1996, the data system became much more inclusive and comprehensive. These authors also point out an interpretation flaw in Albonetti's work; they asserted prior record and offense severity have "far stronger effects than any other variables in her models" (Steffensmeier & Demuth, 2000, p.708). Steffensmeier and Demuth (2000) make this assertion based on the fact that Albonetti interpreted prior record score and offense severity as overall effects rather than one-unit increases for each level of change in prior record score and/or offense severity.

Albonetti claimed prior record score and offense seriousness have weak effects (Albonetti, 1997; Steffensmeier & Demuth, 2000); the fact that her model produced stronger effects for these variables than first believed suggests that the guidelines were working in a manner more effective than first credited. Consequently, consistency and predictability of sentence outcomes for like offenders, with less disparity, discrimination, and effects from irrelevant variables, seems to be a result using Albonetti's data.

The focus of the Steffensmeier and Demuth (2000) study was aimed at the role of ethnicity with regard to sentencing outcomes and departures, and the possibility of ethnic differences in the application of sentencing criteria. They hypothesized Hispanic defendants would be treated more harshly than white and black defendants, as a result of their position in the social structure.

According to Steffensmeier and Demuth (2000), socially disadvantaged people, including minority offenders, are thought to be more susceptible to coercive treatment for a number of reasons. They cite numerous studies that support their notion from a number of different vantage points. For example, certain individuals may be more prone to coercive treatment because they lack the necessary resources to defend themselves adequately against the system categorizing them with negative labels (Turk, 1969). Others argue it is because their behavior threatens many interests of more powerful groups in society (Lofland, 1969; Myers, 1987). Still others maintain that these individuals are viewed as dissimilar, and therefore, more dangerous and unpredictable (Liska, Logan, & Bellair, 1998).

This assertion from Steffensmeier and Demuth (2000) is based on the status characteristics hypothesis of labeling theory which suggests "extralegal" attributes

influence the likelihood an individual is officially labeled (Paternoster & Iovanni, 1989). It is assumed that people with less power and prestige in society are more likely to be officially processed (labeled according to the theory) than those in positions of power and influence. Determining who is labeled, therefore, is partially related to “extralegal” variables.

Given the occurrence of a deviant action (delinquency), the decision of organizational agents to sanction officially (to label) an actor is *in part* determined by the social attributes (race, sex, social class) of the offender and/or of the offended party. (Paternoster & Iovanni, 1989, p. 364)

When reviewing the research surrounding the status characteristics hypothesis of labeling theory, a fundamental assumption persists that revolves around the idea that a more severe sanction or sentence outcome carries with it a harsher label than does a less severe sanction (Paternoster & Iovanni, 1989). If, after carefully critiquing the research surrounding this hypothesis, it was concluded that status characteristics (extralegal variables) had no significant effect on case outcomes among those who committed a similar type crime, the validity of this hypothesis would be compromised. For the most part, however, most labeling theorists contend that status characteristics will have at least some effect on labeling outcomes when all else is equal. The significance of the effect differs among theorists as Becker (1963), for example, contends it is the most important factor, while others (Lofland, 1969; Schur, 1971) contest it is important in facilitating or shaping outcomes.

A research question addressed in the current study was one that sought to uncover the effect, if any, of extralegal (legally irrelevant) variables on sentence outcome. The

status characteristics hypothesis would be supported by the current research if, after controlling for legally relevant variables (type of offense and prior record), the extralegal variables (social characteristics) of the offender appeared to significantly influence the outcome. However, if, after controlling for the legally relevant variables previously mentioned, extralegal variables (social characteristics) of the offender had no significant effect on the outcome, then this hypothesis would be deemed false for the specific data set (Paternoster & Iovanni, 1989). It should be noted that when dealing with a population selected at the end of the labeling process (court adjudication), the cumulative labeling effects taking place throughout the entire justice process are possibly minimized and unaccounted for (Liska & Tausig, 1979; McCarthy & Smith, 1986). Research, for the most part, dealing with the status characteristics hypothesis is somewhat scarce and according to Paternoster and Iovanni (1989), additional research is needed before a definitive conclusion of the status characteristic hypothesis can be reached. The current study adds to this limited body of literature about this subject matter in hopes of making a reasonable determination.

Their findings initially indicated that citizenship and ethnicity had significant effects on sentence outcome, where noncitizens receive more punitive sentences than do citizens across all ethnicities. Noncitizen Hispanics received harsher sentences than noncitizen white and/or black defendants (Steffensmeier & Demuth, 2000). White defendants were the least likely to be incarcerated, followed by white-Hispanic defendants, black-Hispanic defendants, and black defendants. Analysis of length of incarceration reveals precisely the same order for the four types of defendants, where white defendants, on average, received the shortest sentences, followed by white-

Hispanic defendants, black-Hispanic defendants, and black defendants. This was true for both nondrug offenses and for drug offenses, with the differences being more pronounced for drug offenses (Steffensmeier & Demuth, 2000).

Initially, it would appear that discrimination on the basis of ethnicity was the key finding of this study. However, Hispanics and blacks also had higher offense gravity scores, especially in drug offenses, than did whites, and blacks had lengthier prior records, on average, than did whites. Hispanic defendants and black defendants also were, for the most part, younger and less educated than white defendants in this data set. Having noted such, Steffensmeier and Demuth (2000) saw the need to statistically control for other variables in the model that could be correlated with ethnicity and sentence outcome severity, to understand better if ethnic disparities remained.

When controlling for other variables, the findings indicated that offense severity and defendant's prior record were the most strongly related to sentence outcome. Circumstances such as whether or not a firearm was used in the commission of the crime, if the defendant opted for trial as opposed to entered a guilty plea, age of the defendant, and education levels also tended to influence sentence outcome. Moreover, use of a firearm, adjudication at trial, "peak-age" defendants, and lower educational achievements produced longer sentences. This would suggest that the guidelines, as alluded to by Albonetti and other studies as well (Steffensmeier et al., 1995), were functioning in an effective and consistent manner as intended. These findings also provide guidance and support for the independent variables that were included in the present study.

Conclusion

In spite of the previous work done on determinate sentencing practices with drug offenses, the interplay and importance of legally relevant and irrelevant variables on sentence outcomes, and the likelihood of disparity being the product of discrimination, there is not a clear cut, undisputed answer as to whether or not justice is being administered as prescribed. The question asked in Chapter 2, “Who is most affected by the guidelines, and is justice being delivered in a more efficient, uniformed, and unbiased manner?” has not been answered with a high degree of certainty and satisfaction. It seems as though in many cases and situations, it depends on the person who is being asked the question. This uncertainty and inconsistency is the result of having relatively few studies that are sound in scope and methodology that address these questions.

What can be garnered from this research are important variables that need to be considered in future studies in this area. Offense severity, prior record, age, race, gender, and guilty plea versus jury decision seem to be relevant factors that should be present. The decision to incarcerate and length of confinement continue to remain dependent variables that seem worthy of attention. The impact of these independent variables on sentencing outcomes cannot be explained clearly with the research that presently exists. The findings from this study helps to better clarify this issue and fill in the vacant gaps.

With the exception of a few studies critiqued, there seems to be a limited body of studies looking at the effectiveness of determinate sentencing for drug offenses. The inadequate body of literature dealing with determinate sentencing and drug offenses assisted in directing this present study to take a closer look at this phenomenon in hopes of providing a deeper understanding of the interplay of variables and concepts. At

present, it is impossible to determine how often mandatory sentences are imposed for drug offenders, and when and why those sentences are imposed. From a philosophical standpoint, the answer is one that suggests those defendants who commit serious crimes and/or possess long prior records are the ones most likely to receive harsher punishments and sanctions. This, as learned from the literature review, is not always the case. Oftentimes legally-irrelevant variables may influence sentence outcomes.

The question to be answered in this study was whether certain defendants are treated differently for drug offenses in a southwestern county in Pennsylvania. If so, what were the factors that determined case outcomes? Were there legally-relevant variables at play? If so, this would suggest the determinate sentencing movement and practices in Pennsylvania are working in the manner prescribed. However, if legally-irrelevant variables were factoring into sentence outcomes, then the results would suggest certain reforms or alterations need to be considered to ensure equality is taking place in courtrooms throughout the nation. These questions posed cannot be answered with any degree of certainty using past research as a guide, because the empirical literature about determinate sentencing and drug crimes is not sufficient. In short, there is a need for greater investigation into this research question concerning sentence outcomes and drug offenses.

CHAPTER 4

RESEARCH AGENDA

Overview

The purpose of this study was to examine the effectiveness of determinate sentencing for drug offenders in a southwestern county in Pennsylvania. To assess the efficacy of this sentencing structure, this study incorporated both quantitative and qualitative research components. The quantitative component employed official case files from a District Attorney's Office in a southwestern Pennsylvania county dealing with violations of Section 30 of the Pennsylvania Criminal Codes. Section 30 deals with mandatory minimum sentencing for drug offenses, such as the delivery or the intent to deliver illegal drugs, as opposed to starting with violations for simple possession. These files were used to obtain data that are considered legally-relevant in the eyes of the court, such as prior record, drug-type, and amount of drug. Data that are considered legally-irrelevant, such as race, gender, and age also were collected from these files in order to assess the impact, if any, that these variables had on sentence outcome. To analyze the effect of these two sets of variables, this study focused on two components of sentence outcome:

- (1) the type of sentence imposed (probation versus incarceration) and
- (2) sentence length for incarcerated or convicted offenders.

In short, an ex-post-facto design (casual comparative) was used to investigate whether sentence outcome, as measured by sentence type and sentence length, was the result of legally-relevant variables, as is the intention with determinate sentencing philosophy and mission, or if legally-irrelevant variables play a significant role in

determining sentence outcome. By definition, ex-post-facto research models lack random assignment and the researcher must enumerate alternative explanations or hypotheses by using logic, design, and measurement to assess and explain the observed effect (Shadish, Cook, & Campbell, 2002). While making conclusions and generalizations based on the output of the current research at hand remains difficult with ex-post-facto models, it is the most logical design strategy to employ based on the nature of the available data.

The research agenda was guided by the components of the status characteristics hypothesis of labeling theory (Paternoster & Iovanni, 1989) that suggests certain “less desirable” people are more likely to be labeled than others. Those considered “less desirable”, in expanding the theory to the present study, would have received harsher sentence outcomes (i.e., longer prison sentences). The research agenda also accounts for tenants of classical criminology, specifically deterrence theory, as this school of thought was paramount in the construction and philosophical rationale for the determinate sentencing movement. As discussed in Chapter 2, in order to achieve maximum deterrence, punishment should be based on the principles of celerity, certainty, and proportional severity.

The qualitative component of this study involved interviews with prosecuting attorneys, public defense attorneys, narcotics detectives, probation officers, and judges. It was expected that the thoughts and insights of professionals who work with and are affected by determinate sentencing statutes would provide specific information about the determinate sentencing style utilized by the justice system. Their expertise in their given area helped provide a more collaborated and clearer picture of the effectiveness and usefulness of the determinate sentencing philosophy and practice at the state level.

Adding a qualitative component to the research plan helped in filling in some of the potential gaps in the existing research and assisted in the comprehension of how professionals in the field deal with these sentencing protocols and procedures.

Research Hypotheses

Attempts to deal with defendants in a more uniformed, systematic, and algebraic manner came about as a result of unfettered discretion and disproportionate sentencing practices persisting throughout the justice system as a result of an indeterminate sentencing philosophy (Koh, 1992; Levy, 2005; United States Sentencing Commission, 1991; Weinstein, 2003). Determinate sentencing sought to make criminal sentences more rational and consistent by limiting judicial discretion and punishing like offenders similarly. As Chapter 3 indicates, the extent to which the determinate sentencing movement has succeeded depends on which study is examined. Some researchers suggest mandatory minimum sentencing provisions and sentencing guidelines are working in the manner prescribed (Dixon, 1995; Zatz, 1984), while others contend black and Hispanic defendants receive harsher sentences than white defendants as a result of legally-irrelevant variable interplay (Albonetti, 1997).

When examining the idea of the plea bargaining process in terms of sentencing outcomes for drug offenses, the previous studies examined did not indicate what impact, if any, an agreement between the defendant and the state had on sentence outcome. As discussed in Chapter 2, entering into a plea agreement has potential rewards for the defendant as far as the in/out decision and sentence length were concerned.

Although research findings about the impact of legally irrelevant variables in determining sentencing outcomes are mixed, the majority of current research suggests

legally relevant variables are considered most important. In Pennsylvania, the legally relevant variables would be defined as offense gravity score (OGS) and prior record score (PRS).

Despite other variables and factors influencing the sentence outcome for drug offenses, it was hypothesized that for the present study, (OGS) and (PRS) would have the greatest impact on sentence outcome. This statement is consistent with previous research done in this area pertaining to prior record and offense severity.

While research consistently suggests prior record score and offense severity influence sentence outcome, empirical literature concerning race, age, and gender effects on sentence outcome is not so definitive. A straightforward conclusion is not possible at this point in time because the research generated previously has produced inconsistent and contradictory findings.

When discussing race, some argue black defendants receive more severe sentences than white defendants (Petersilia, 1983; Spohn, 1990), others suggest white defendants receive more severe sentences than black defendants (Bernstein, Kelly, & Doyle, 1977; Levin, 1972), and still others contend that there are very few, if any, differences in sentencing based on race (Klein, Petersilia, & Turner, 1988; Wilbanks, 1987). Kramer and Steffensmeier (1993), advocate that when legally relevant variables are considered, the effects of race are minimal, but others argue this assertion is inaccurate because they believe race interacts with other variables and affects sentence outcomes for certain cases and types of offenders (Peterson & Hagan, 1984; Spohn, 1994).

For years, age was considered a continuous variable and assumed a linear effect on sentence outcome. As age increased, it was assumed the length of an individual sentence would increase as well. Steffensmeier et al. (1998) suggest that treating age as a continuous variable may disguise or confuse the impact of age by diminishing or exacerbating the actual effects an individual's age has on sentence outcome. They contend that by treating age in this manner, the effects were "flattened."

Instead, current research (Steffensmeier, et al., 1995; Steffensmeier et al., 1998) contends age should be treated as a curvilinear relationship since younger offenders (under the age of 20) and older offenders (30 and above) receive punishments that mirror each other and are more lenient when compared to offenders in their 20s. Those in the age range of 21-29 typically receive the harshest sanctions. The majority of existing studies treat age as a continuous variable, but the rationale for treating age as a curvilinear relationship with sentence outcome seems prudent and justified. Therefore, for this study, age was treated as a nonlinear, or inverted U shaped, relationship.

Gender, and the effects of this variable on sentence outcome, appear to be more consistent and accepted as females are believed to be treated with greater benevolence than males, especially with regards to the decision to incarcerate and length of confinement. There are several theories as to why this phenomenon may be occurring (Freiburger, 2007; Daly, 1987), but for purposes of this research agenda, those reasons are not as important as if disparity is taking place based on legally irrelevant variables.

A potential area of study that has been ignored by previous research is one that deals with a defendant's county of residence. Past studies have failed to recognize the defendant's county of residence with regard to whether or not there is a "home field

advantage” taking place in terms of sentence outcome. It is possible that defendants who reside outside of the county’s jurisdiction who are arrested and adjudicated are receiving different sanctions than individuals arrested and adjudicated from that specific county. The present study utilized county level arrest and sentencing data from the District Attorney’s Office and focused on drug crimes that took place within that county. It is plausible that a sentencing disparity exists for individuals arrested for like drug offenses, who have similar offense gravity scores and prior record scores, based on whether the individual is a resident of the county or normally resides outside the county’s geographical boundaries.

After initial discussions with the District Attorney, and based on his thoughts about this phenomenon, it was deemed plausible that out-of-county defendants could have been treated harsher than defendants residing within the county. The reverse, however, could be true where out-of-towners were treated more lenient as to not have the county incur the cost of incarcerating a non-county resident. Therefore, this study sought to determine if county of residence had a statistically significant impact on sentence outcome.

Having noted such, the first four hypotheses to be tested were:

- H₁: As legally relevant values increase (i.e., OGS, PRS), the likelihood of incarceration increases when controlling for legally irrelevant variables.
- H₂: Legally irrelevant variable values will have no statistically significant impact on the likelihood of incarceration when controlling for legally relevant variables.
- H₃: As legally relevant variable values increase, sentence lengths will increase even when controlling for legally irrelevant variables.
- H₄: Legally irrelevant values will have no statistically significant impact on sentence lengths when controlling for legally relevant variables.

Logistic regression models estimate the likelihood of an event occurring as a result of independent variables (Pohlmann & Leitner, 2003). When examining the “in/out decision” defined in hypotheses one and two, a logistic regression analysis was conducted to determine the likelihood a defendant would receive a jail/prison sentence based on the independent variables included in the model. Logistic regression determines the odds of a defendant receiving a jail/prison sentence for a one-unit increase in (PRS) and (OGS), while controlling for other independent variables. A more detailed explanation of logistical regression is included in Chapter 5.

Ordinary Least Squares (OLS) regression is used when the dependent variable is continuous, unbounded, and measured on an interval or ratio level and the independent variables are interval, ratio, or dichotomous in nature (Menard, 2002). Sentence length was considered to be a continuous variable as constructed in hypotheses three and four. An (OLS) regression analysis was used to assess the impact the independent variables included in the model had on sentence length for convicted offenders who were incarcerated. A more detailed explanation of this application is included in Chapter 5.

As discussed in Chapter 3, a recent study alluded to the importance of considering race, age, and gender as intertwined with each other whereby the effects of these variables on sentence outcome may not be independent of each other, but may be exacerbated when combined together (Steffensmeier et al., 1998). The study showed the importance of using an age-gender restricted model instead of an additive model. Using an age-gender restricted model for race, gender, and age, the research hypothesis for the effect is as follows:

- H₅: Nonwhite male defendants in the 21-29 age range will be treated more punitively with type of sentence imposed than other defendants, when controlling for legally relevant variables.
- H₆: Nonwhite male defendants in the 21-29 age range will receive greater incarceration lengths than other defendants, when controlling for legally relevant variables.

Hypothesis five employed a logistical regression analysis to determine if, for the sample selected, nonwhite male defendants between the ages of 21 and 29 were more likely to receive a period of incarceration for violations of Section 30 of the Pennsylvania Criminal Crimes Code when controlling for other independent variables. Hypothesis six also utilized an (OLS) regression analysis to determine if sentence length was greater for this population when controlling for other independent variables.

Quantitative Overview

Research data. Data for this study was obtained from the files of a southwestern Pennsylvania County District Attorney's Office (see Appendix A – Request for Consent). The request was for authorization to review conviction records for calendar year 2005. After permission by the County District Attorney's Office was granted (see Appendix B – District Attorney's Letter of Consent) every case initiated by the County District Attorney's Office for the 2005 calendar year involving a conviction for violation of Section 30 of the Criminal Crimes Code was reviewed, recorded, and analyzed. The decision to choose the 2005 case files was decided upon cooperatively by the researcher and the County District Attorney. The researcher sought case files that were relatively recent instead of acquiring data that might be outdated, which was a criticism of previous research about this topic (Steffensmeier & Demuth, 2000). The District Attorney concurred with the idea of gathering data that were more recent, but was adamant about

not choosing a more current calendar year to analyze because of the small, but possible, likelihood of dealing with a case that was still open or unresolved due to an appeal or some other legal condition.

Dependent Variables

As previously discussed, sentence outcome is best measured when it involves both the decision to incarcerate and also the length of time an individual is incarcerated. In Pennsylvania, the decision to incarcerate a guilty defendant in a county jail versus a state prison has profound effects on the amount of time to be served. Those receiving a minimum sentence of two years or more are directed to state prisons, where there is no early release for “good behavior” (Ulmer & Kramer, 1996). Offenders sentenced to county jail terms typically have received a sentence of less than two years, and because of county jail protocols and procedures, are eligible for work release programs and rehabilitation programs (as discussed in Chapter 2). In keeping with the recent tradition of treating sentence outcome as two separate factors, two dependent variables were addressed.

Type of sentence (prison/jail or probation). The in/out decision is the first dependent variable for this project. It considers whether the defendant was convicted to a term of incarceration (coded as 1) versus whether the defendant was convicted to some form of an alternative sanction (coded as 0). Probation often is considered more lenient punishment when compared to incarceration.

While Sentence type is considered a dependent variable, it should be understood that the length of sentence could depend on whether or not the defendant was sentenced to a period of confinement in prison versus a period of confinement in jail. Sentences

with maximum penalties of 24 months or greater are considered state prison sentences and are typically served in a state correctional institution (SCI). Sentences with maximum penalties less than 24 months are considered county-level sentences and are typically served in a county jail/prison. Alternative sanctions such as house arrest, probation, etc. are considered the most lenient sanction for a convicted offender.

Sentence length. Sentence length is a variable that took on a numeric value and measured the amount of time (in months) an individual was incarcerated for his or her offense. Sentence length was considered a continuous variable, as opposed to a dichotomous variable as was the in/out decision, and required a separate statistical analysis that is discussed in the next section. In assessing the impact of sentence length, the data set was restricted to only the convicted offenders who were sentenced to either jail or prison.

Independent Variables

The concepts labeled as independent variables are purported to be variables that remain independent and unaffected by other influences. For the present study, they are demographics, characteristics, qualities, histories, and classifications. History has shown, time and again, that it is rare and unlikely that predictors or independent characteristics for certain events or phenomena hold true under all conditions, with all peoples, at all times (Shadish et al., 2002). “All causal statements are inevitably contingent” (Shadish et al., p. xv). However, for the purposes of these ex-post-facto designs, the following served as a legend for the taxonomy of independent variables and what, if any, effect they had on the dependent variables.

Offense Gravity Score (OGS) and Prior Record Score (PRS) are numeric values that were noted and recorded in every case file. The mathematics needed to tabulate these values is done by trained professionals in the District Attorney's Office. In order to acquire these numeric values for purposes of research, the researcher needed not complete any additional statistical or mathematic calculations, but simply recorded the value of each individual score in numeric terms.

Type of adjudication was treated in much the same manner that OGS and PRS were treated. The researcher reviewed the case file to determine if the defendant entered into a plea agreement with the prosecutor or if the defendant opted for a trial by a jury of his peers. It should be noted that several defendants initially entered a plea of not guilty only to change that plea with the passage of time to a guilty plea. The reasons people change their plea can range anywhere from advice from counsel to fear of longer sentences if convicted at trial. For purposes of this research, guilty pleas were treated similarly regardless of whether they were made at the initial arraignment or at some other point prior to trial. Those defendants opting to enter into a plea agreement were coded as "0" and those whose adjudication is determined by a trial were coded as "1".

The State of Pennsylvania provides for two possible Deadly Weapon Enhancement provisions (as discussed in Chapter 2). Both the DWE/Possessed and DWE/Used Matrices specify a standard range that should be considered by the court for every possible combination of OGS and PRS (Pennsylvania Commission on Sentencing, Title 204, 6th edition, 2005). The DWE/Used Matrix provides longer enhancements than the DWE/Possessed Matrix for these category offenses, since the weapon actually was used.

There is very little research concerning the Deadly Weapon Enhancement Matrices and the impact on sentence outcome. The Pennsylvania Commission on Sentencing would suggest that those in possession or who use a deadly weapon would receive more severe sentences than those offenders who do not have or use a weapon during the commission of a crime. While the Deadly Weapon Enhancement statute remains an important component of sentencing outcome and currently exists in Pennsylvania legislation, the data being utilized for the present study predates the statutes. Although considered to be a legally-relevant variable, the impact of firearms during the commission of a drug crime was not an area this study was able to address. For academic purposes, however, the researcher reviewed the file data and determined if a firearm was recovered from the offender and if a firearm was used during the commission of a crime. If no firearm charges were recorded following the arrest of a defendant, they were coded as “0”; those who were in possession of a firearm were coded as “1”; and those who were in possession and used a firearm were coded “2”.

Age, race, and gender are independent variables that were separately recorded in every case file. The age of the offender at time of arrest was the age used for purposes of interpretation and evaluation. This value was acquired by looking at the date of birth for the individual and simply subtracting it from the date of arrest in order to provide “age in years” for every person included in the study. Additionally, to test the plausibility that age is curvilinear in relation to sentencing decisions, the age variable also was dichotomized (ages 21 – 29 as “1” and all other ages as “0”). The dichotomous age variable and the linear age variable were interchanged in the various models to determine if they differentially impact the models.

Race was recorded in the arrest report and fell into one of four main categories: white, black, Hispanic, or other. The number of Hispanic defendants and defendants who would fit into the “other” category, however, was very limited. Initial coding for this variable was “Other” as 0, “Hispanic” as 1, “Black” as 2, and “White” as 3. While previous research suggests having defendants coded race specific, based on the sample available to the researcher there was a need to dichotomize this variable into either white or others based on the small category of offenders identified as either Hispanic or others. The decision to collapse Black, Hispanic, and others into a single category was based on an analysis of variance that suggested there were little difference between these offenders on the variables of interest used in this study.

When dealing with the variable gender, the researcher was optimistic before data collection that by utilizing the entire calendar year, a significant number of females would be included in the sample for purposes of evaluation; this assumption was supported by the data. Thus, female defendants were coded “0” and male defendants were coded “1”.

As discussed in the previous chapters, some researchers suggest there is an age-race-gender effect between the age, race, and gender variable that treats a certain type of defendant more punitively than others. Black males between the ages of 21-29 are thought to be treated more punitively than others. In order to test this occurrence, an age-gender variable was included. Those who do not possess the components of the age-gender restricted model effect variable will be coded as “0” and those with the age-gender restricted demographic variable (black males aging 21-29) will be coded as “1”.

County of residence has not been considered in analysis before now. County of residence was established by looking through the defendant's case and determining if the last known address is within the county's borders. It was suggested that perhaps defendants living in surrounding areas who enter the county to engage in drug activities were treated more severely than those who currently reside within the county's borders. In order to assess the significance of this independent variable on sentence outcome, defendants with a county residency were coded "0" and defendants with a residency outside of the county were coded "1" (see Appendix C – Variable Coding).

Qualitative Analysis Plan

Qualitative data. As discussed earlier, a qualitative component was part of this study in order to assess how trained professionals at various levels of government throughout the criminal justice process view and work with determinate sentencing policies and practices. This component assisted in the comprehension of the determinate sentencing philosophy and process with drug offenses and added a viable component to the literature about this topic that is limited. Further, although those interviewed were not granted access to the quantitative results of this study prior to the interviews; their insights about determinate sentencing assisted the researcher in interpreting the quantitative data (see Appendix D – Letter of Introduction).

Interviews were restricted to those individuals who work in the county for the criminal justice system, and voluntarily consented to be interviewed about mandatory sentencing and sentencing guidelines. The researcher interviewed the District Attorney, two attorneys responsible for prosecuting drug offenses, five public defenders and private attorneys, six narcotics detectives, and one probation officer. Although the researcher

had planned to introduce a judge to the research agenda and establish an agreement to meet with and discuss the judicial responsibilities and ideas concerning the determinate sentencing of drug offenders, this did not occur.

All individuals interviewed are identified by their job title in order to maintain confidentiality throughout the project and in order to protect their identity. The District Attorney was previously identified by the letter he submitted to the Indiana University of Pennsylvania granting formal permission to conduct this study, which will not remain as part of the research. The letter was necessary to support IRB protocol, but was omitted in the final product to assist in maintaining anonymity of both the county and the participants. Interviews were conducted face-to-face, but were not tape recorded based on the desires of the interviewee. Lacking detailed transcripts developed from taped conversations, detailed notes were taken during interviews for inclusion in the project.

The interview questions revolved around the usefulness and utility of determinate sentencing and drug offenses with particulars to the professional being interviewed. For example, the researcher asked the narcotic detective “Does mandatory minimum sentencing change your approach to an investigation or an arrest? If so, how does it change it?” As discussed earlier, the determinate sentencing movement affected many professionals at various levels of local, state, and federal government. Providing specific questions to these individuals offered more insight into this area of law and justice.

A letter of consent was signed by each interviewee prior to the interview (see Appendix E – Informed Consent Form). The letter of consent was read by the interviewer to the interviewee to ensure the interview process was clearly understood and that anything said during the interview could be restated in the research with the

interviewee's identification remaining unknown to anyone other than the researcher. Additionally, the letter of consent indicated whether the interviewee permitted the discussion to be recorded, with acknowledgement that once transcribed, the audio tape would be sanitized. Interviews were not conducted if the consent form was not signed, which never became an issue. Further, the interviewee was made aware that s/he could stop the interview at any time and that the information obtained to that point would not be used in the study; again, this was a non-issue for this study.

Risk To Participants

Risk to participants is minimal. The official police data were not removed from the current storage location and all arrest data were reported in aggregate form. Further, the interviewees were not asked any questions that would be considered outside their official capacity to respond to the public media.

Gaining access to official court documents and records in order to conduct this project involved numerous discussions with the county District Attorney's Office, including detectives, administrative personnel, and the District Attorney himself. Confidentiality of defendants, victims, witnesses, and law enforcement officers was promised by the researcher in order to protect and abide by human subject issues and policies. When dealing with the quantitative component of this study, the identities of the defendants and other distinguishing characteristics of the cases were known only by the researcher. Any data that are sensitive to these concerns were collected and coded on site by the researcher. All names, personal identifiers, and any case-sensitive material previously discussed did not leave the District Attorney's Office and were not viewed by anyone except the researcher himself.

Additionally, a letter from the District Attorney was provided ensuring formal access to the site had been granted (Appendix B – District Attorney Consent). Before receiving the letter from the District Attorney, the researcher spoke with Dr. Jennifer Roberts, a professor in the Criminology department, who is a member of the Indiana University of Pennsylvania IRB, concerning the methodology and human subject protection safeguards required of the researcher in order to abide by University standards.

In order to ensure human subject provisions with the qualitative portion of this project, the professionals interviewed were identified by their professional title only (i.e. prosecuting attorney, public defender, detective, etc.). While the researcher knows the identity of many of the people interviewed, confidentiality within the scope and methodology of this project was maintained. Further, once the research was approved by the IRB, all references to the county were removed from the final product to include those from appendices A and B.

Methodological Strengths and Limitations

Strengths. In addition to the idea of gaining a useful sample for purposes of analysis by using relatively recent case files and employing the entire compilation of drug offenses involving mandatory sentencing requirements for one calendar year, the design of this study was such that it can possibly safeguard itself from a few potential contaminants that could skew the results. To further explain, if this study sought to randomly select case files anywhere from 1998-2005 in order to acquire a representative sample for purposes of analysis, there exists the possibility that social, political, and/or legislative differences not related to the drug offense or the offender might influence the sentence outcome. For example, while the events and responses involving the tragedy of

September 11, 2001 seem completely unrelated to drug crimes and sentence outcome for drug offenders in our judicial system, one could make the argument that our governmental focus on drug crimes changed after this date for an undetermined period of time. If this were true, sentence outcomes would differ for defendants adjudicated pre-September 11th and post-September 11th and increase the unknown variance factor in statistical analyses.

Other events that potentially could interfere with sentence outcomes for offenders over a period of seven years would be political pressure from candidates involved in local, state, or national elections during that time period; social outrage concerning increases in drug overdoses; the passage of legislation requiring differences in the administration of justice; etc. Making use of data from one calendar year minimizes the influence from external forces such as the ones described.

Additionally, this study utilized official case files from the District Attorney's Office. The benefit of employing a sample such as this is the idea of having uniformity within the files and having access to them unconditionally. Items such as Prior Record Score and Offense Gravity Score were calculated as these files already have been adjudicated and processed. In the unlikely event that these items or any other important components were missing, the researcher was able to acquire the necessary information by asking those in the office for assistance, especially when it pertained to a prosecutorial issue.

The framework for this study was such that it continued along the path etched out by previous research on the subject. Collecting and analyzing studies similar to the present study allowed the researcher to identify and correct for methodological flaws and

interpretation errors in hopes of providing a more comprehensive and sound explanation as to the effectiveness of justice policies and practices for the sample.

It should be noted that a qualitative component was incorporated to provide deeper insight and a more comprehensive understanding of this phenomenon. Trained professionals who deal with determinate sentencing statutes and the effects are in a unique position for this study. These individuals are required, by their professional duties and responsibilities, to deal with ensuring that the wheels of justice continue to turn while at the same time adhering to legislative directives. Their testimonies about this subject, for the most part, have been ignored until now.

Limitations. In order to be granted permission, consent, and access from the District Attorney to conduct a study such as the one outlined where official court records would be examined required a great deal of networking, open and truthful communication, and a preexisting relationship where the integrity and motives of the researcher were understood to be good-natured, honest, and decent. Unfortunately, I do not have this type of professional or personal relationship with any other District Attorneys at this time. Therefore, it was necessary to restrict the data collection to one site for this study. This limitation should be noted as it affects the ability to generalize the results obtained from this county to other counties and courts throughout the state and country since the population sample is of only one county in southwestern Pennsylvania.

An unavoidable limitation is the researcher's reliance on secondary data. The county under review, for example, consists of many different municipal and city police departments, in addition to the Pennsylvania State Police, with potentially diverse ways of arresting and charging offenders and completing the necessary paperwork. The

researcher believes this limitation is balanced by the fact that every case included in the population has been prosecuted by a member of the County District Attorney's Office. All prosecutors in the office are under the direction and supervision of the District Attorney where potential differences in policing, such as adding unfounded charges against an uncooperative suspect, may be smoothed out and disregarded before the defendant was adjudicated. As stated earlier, these limitations are unavoidable, but were noted in the name of ethical research.

CHAPTER 5

DATA ANALYSIS

Achen (1982) suggested quantitative methods are no different than common sense in that: One must know something first in order to learn something else. Achen went on to argue that any statistical description must be assessed for accuracy. A primary goal of data analysis is to comprehend as much about a sample as possible in order to make statements and generalizations about the population from which the sample was derived (Hardy & Bryman, 2004). Descriptive statistics can be used to provide an accounting of what was observed with the sample taken (Hardy & Bryman).

Having noted such, the analysis plan for this study first consists of descriptive statistics in order to provide a clear understanding of the entire distribution. Descriptive statistics were developed so that certain features of the distribution could be analyzed and research questions could be properly addressed (Hardy & Bryman, 2004).

Since very few phenomena are the result of a single cause, and one of the dependent variables for this study is dichotomous in nature, a multivariate logistic regression analysis was employed. Multivariate logistic regression is most appropriate because it will ascertain the effects of numerous independent variables (both deemed legally relevant and legally irrelevant) on the dichotomous dependent variable (Menard, 2002). Logistic regression remains one of the most frequently used procedures for statistical analyses (King & Ryan, 2002). Logistic regression models estimate the likelihood of an event occurring as a result of independent variables (Pohlmann and Leitner, 2003). In short, it estimates the probability of an outcome. Logistic regression enabled the researcher to assess the odds of a phenomenon occurring due to a one-unit

increase in the independent variable while controlling for other independent variables. It determines the amount of variance in the dependent variable explained by the independent variables and the importance of the independent variables, but it does not assume the relationship to be linear between the independent and dependent variables. In the present study, for example, logistic regression was able to determine the odds of a defendant receiving a jail/prison sentence for a one-unit increase in prior record while controlling for other independent variables (e.g., offense severity, weapon present, race, etc.).

A multiple regression analysis was considered because it permits more than one independent variable to be incorporated into an equation where “the effect of a particular independent variable is made more certain, for the possibility of distorting influences from other independent variables is removed” (Lewis-Beck, 1980, p. 47). The dependent variables (sentence outcome and sentence length), are seen as a linear function of multiple independent variables and therefore do not violate the regression assumption dealing with normality and the error term being normally distributed (Lewis-Beck, 1980).

Ordinary least squares (OLS) regression, in its various forms, (i.e., correlation, multiple regression, ANOVA), is considered to be the most common linear model analysis in social science research (Pohlmann, 2003). It is used when the dependent variable is continuous, unbounded, and measured on an interval or ratio level and the independent variables are interval, ratio, or dichotomous in nature (Menard, 2002). The equation used in this research appears as: $\hat{y} = a_0 + b_1x_1 + b_2x_2 + b_3x_3 + \dots + b_kx_k + e$.

The \hat{y} represents the predicted value of the dependent variable, a_0 represents the constant, b represents the unstandardized slope estimate coefficient, and x represents the

numeric value of each independent variable in the equation (Lewis-Beck, 1980).

Ordinary least squares regression assumes a linear relationship between the independent and dependent variables and requires the error terms to be normally distributed (Stone and Rasp, 1991).

Multivariate analyses were employed to test each hypothesis model listed. A logistical regression analysis was utilized for the dichotomous dependent variable “sentencing decision” measured as probation (0) or incarceration (1). Ordinary least squares (OLS) regression was used for the continuous dependent variable “sentence length in months”. Each tested hypothesis was discussed in terms of the statistical method employed and the relevance to this study.

Current Study

There were over 700 recorded violations of Section 30 of the Pennsylvania Crimes Code in the selected data for 2005, which resulted in 243 convictions. Certain case files were not included in the data set because of restricted access (re-arrest, adjudication pending, death of the offender, and/or missing case files due to misfiling, reorganization of office records, courthouse personnel utilizing the case file, etc.). Case files that contained essential missing data were excluded after efforts to reproduce these missing variables were unsuccessful. This chapter delineates the results of the data set by first reviewing the frequencies and descriptive data.

Descriptive Statistics

Originally, the data set included 243 offenders. After running descriptive statistics and assessing the values of the variables of interest, a determination was made to omit an additional six cases which appeared to be extreme outliers. The legally

relevant variables in these six cases were very unique and were insufficient in quantity to run as a separate variable while keeping in mind the rules and assumptions for regression analyses. The descriptive statistics for the data set ($n = 237$) are presented in Table 1.

Table 1

Descriptive Statistics for Sample ($n = 237$)

Variable	Mean	SD	Minimum	Maximum
Incarcerated	.54	.499	0 (no)	1 (yes)
Mean Incarceration Length	12.16	16.813	0	90
Minimum Incarceration Length*	7.22	11.175	0	60
Maximum Incarceration Length*	17.11	22.743	0	120
Probation Length	10.89	13.324	0	60
Fined	.06	.228	0 (no)	1 (yes)
Fine Amount (dollars)	390.30	2492.062	0	25000
Offense Gravity Score	5.54	1.851	1	13
Prior Record Score	1.81	2.002	0	6
Number of Drug Incidents	1.46	.846	0	6
Age	30.19	9.962	18	58
County of Residence	.25	.436	0 (R)	1 (NR)
Weapons (Possessed/Used)	.03	.170	0 (no)	1 (yes)

* Per Pennsylvania Sentencing Guidelines

The data indicate that for this sample, 128 offenders (54%) received a sentence involving incarceration (jail or prison), while 109 offenders received only some form of probation. Twenty offenders received a blended sentence that consisted of both incarceration and probation. For classification purposes, those with blended sentences were included in the incarcerated category, since they received both incapacitation and probation.

Originally, this study was concerned only with the decision to incarcerate and length of confinement when discussing the dependent variables. Once the researcher was granted full access to the files, it became evident that both length of probation and monetary fines were points of interest that could be gathered for analytical purposes as

well. When assessing the frequency distribution for probation, 34.6% of the individuals placed only on probation received either a 12 month or a 24 month sentence.

Monetary fines were not a consideration previously discussed in the literature or thought about for this project until reviewing the case files. Thirteen individuals received a monetary fine ranging anywhere from \$500 to \$25,000 in addition to probation, incarceration, or both. The average fine imposed was just under \$400 (\$390.30). These fines were considered separate costs from the financial responsibilities defendants incurred for police laboratory costs for testing purposes. The modal category for fines was \$5,000 (6 of 13).

Offense Gravity Score (OGS) and Prior Record Score (PRS) are numeric values assigned to individuals based on the seriousness of the present offense and their criminal history, respectively. OGS ranged from 1, (least serious) to 13 (most serious). Two individuals received an OGS of 13 and in both cases they delivered, or conspired to deliver, a controlled substance that resulted in the death of another individual. The modal category for OGS was 6 (118 of 237).

Prior Record Scores in Pennsylvania typically range anywhere from zero (no prior record score) to five. Pennsylvania also has three additional categories that exceed this range. Repeat felony offender (RFEL) is the first category above level five. Two individuals in this sample had a PRS of RFEL. For purposes of statistical analysis, those individuals who were repeat felony offenders were given a value of six for this study. The majority of individuals in this sample had a PRS of zero (42.6%), while 18.6% had a PRS of five.

One interesting finding discovered while collecting data, which was not addressed in the previous research literature, was the number of drug incidents pending when the case finally was adjudicated. Number of drug incidents refers to the number of separate cases pending against one individual. Many offenders were arrested for a certain drug crime and prior to adjudication they were re-arrested for new, additional drug crimes. In each of these incidents of multiple offending, all pending charges were addressed at the first trial either through concurrent sentencing, consecutive sentencing, or dismissal of additional charges. More important, is that in handling these multiple offenses in this manner the prior record score was not elevated nor was the offense gravity score elevated due to multiple offenses. When multiple cases were pending against one offender, the court's focus was on the most serious offense with other offenses either being dismissed or fused together as one incident. Further, there were no additional penalties levied against the offender for crimes that took place between the original arrest and the court date if they pled guilty.

Offenders' ages ranged from 18 years-old to 58 years-old, with just over 60% of the offenders being between the ages of 18 and 30. These numbers seem consistent with prior research and researcher expectations in this area. When looking at the frequency distribution for age, there are more offenders in the 20-29 (n=106 or 44.7%) age range than there were in the 30-39 (64 people or 27.0%) age range. There were more offenders in the 30-39 age range than there were in the 40-49 age range (28 people or 11.8%) and so on. As age increased for this sample, the number of offenders decreased suggesting an aging out of crime.

The sample contained 177 individuals (74.7%) whose home of record address was within the county's geographical borders and 60 individuals (25.3%) whose home of record address was outside the county's boundaries. Prior research in this area of sentencing outcome for drug offenders did not address "county residence status", so there is no standard for comparison with previous studies.

Of the 237 individuals used in this study, no one used a weapon against law enforcement personnel during apprehension. Seven people (3%) possessed a weapon of some kind, but according to the case files no one in this study received a mandatory weapons enhancement charge. One individual received a longer sentence because of his drug activity in proximity to a school, but as far as automatic sentence enhancements for weapons charges, not one person received an additional five years as prescribed in the sentence guidelines for Pennsylvania.

Although omitted from Table 1, since the mean scores on race, gender, and drug possessed offer little insight into sample demographics, these three variables must be addressed. Originally, the race variable was to be coded into one of four categories (Black, Hispanic, White, or Other). All offenders in this data set fell into the Hispanic, Black, or White category, with only three offenders categorized as being Hispanic. Rather than omitting these three cases a determination was made, based on an analysis of variance on the variables of interest used in this study, to dichotomize the variable "race" into non-white (94) and white (143) for purposes of analysis.

The data included 49 females (20.7%) and 188 males (79.3%). It was anticipated from previous research that the gender ratio would be four or five male offenders per female offender. This study's data suggest that when considering the offender's gender,

the arrest rates in this geographical area in 2005 were similar to those reported in previous drug arrest research.

The drugs possessed category is used in descriptive analyses only because of the debate over seriousness of specific drugs and what drugs are considered more detrimental to the individual and/or society as a whole. Of the 237 cases included in this sample, 32 (13%) involved an arrest for marijuana, 151 (64.9%) involved an arrest for cocaine, 39 (16%) involved an arrest for heroin, and 15 (6%) involved an arrest for some other type of drug or controlled substance. The incarceration rate for the various drugs were 64.9% (98 individuals) for cocaine offenses, 41% (16 individuals) for heroin offenses, 31.3% (10 individuals) for marijuana offenses, and 26.7% (4 individuals) for other types of drugs.

In the rare circumstance where an individual was arrested and charged with possession of various illegal drugs, his or her “drug type” was coded depending on the final charges brought before the judge. It was the prosecutor, perhaps as a result of a plea agreement, who seemed to go forward with the “more serious drugs” (i.e., cocaine or heroin), while conceding “less serious drugs” (i.e., marijuana). This prosecutorial power to prefer certain charges while dismissing others was identified in previous research as one of the complaints about mandatory sentencing guidelines.

Table 2 displays the descriptive statistics for those individuals who received only incarceration or a blended sentence. Table 3 displays the descriptive statistics for those individuals who received only probation. The offenders who were sentenced to incarceration, on average received an incarceration period just under two years. The majority of those incarcerated were subjected only to incarceration. Only 20 individuals

received a blended sentence. There were 109 people who received probation only, with the mean length of probation for these individuals being 19.38 months.

Table 2

Descriptive Statistics for Incarcerated Offenders (n = 128)

Variable	Mean	SD	Minimum	Maximum
Mean of Incarceration Length	22.52	17.034	7	90
Minimum Prison/Jail Sentence*	13.36	12.220	1	60
Maximum Prison/Jail Sentence*	31.69	22.665	12	120
Probation Length	3.66	9.824	0	60
Fined	.08	.269	0	1
Fines Amount (dollars)	671.88	3341.129	0	25000
Offense Gravity Score	6.20	1.607	3	13
Prior Record Score	2.24	2.034	0	6
Number of Drug Incidents	1.52	.905	1	6
Age	31.31	9.748	18	56
County of Residence	.29	.455	0	1

* Per Pennsylvania Sentencing Guidelines

Table 3

Descriptive Statistics for Probation-Only Offenders (n =109)

Variable	Mean	SD	Minimum	Maximum
Probation Length	19.38	11.823	0	60
Fined	.03	.086	0	1
Fines Amount (dollars)	59.63	485.353	0	25000
Offense Gravity Score	4.77	1.829	1	8
Prior Record Score	1.31	1.849	0	5
Number of Drug Incidents	1.39	.769	0	4
Age	28.88	10.094	18	58
County of Residence	.21	.410	0	1

Table 2 and Table 3 indicate those individuals placed on probation received fewer fines (3) than those who received incarceration or a blended sentence (10). As expected, the OGS and the PRS average values for those incarcerated are higher than the average for those who received probation (OGS: 6.20 versus 4.77; PRS: 2.24 versus 1.31). The legally irrelevant variables in Table 2 and Table 3 have comparable values. Overall, the

data in Table 2 and Table 3 suggest that the sentencing guidelines and mandatory minimum sentencing are working as designed. Those with higher offense gravity scores and higher prior record scores received more punitive sentence outcomes.

When comparing the legally irrelevant variables between those who were incarcerated and those who received probation, it should be noted that those who were incarcerated were, on average, a few years older than those who received probation-only outcomes (31.31 years versus 28.88 years respectively). Of the 128 individuals who received jail or prison time, 64 were white offenders and 64 were nonwhite offenders. Of the 109 people who received only probation, 79 were white and 30 were nonwhite.

This sample included 49 females and 188 males arrested for violations of section 30 of the Pennsylvania Crimes Code. Of the 49 females, 19 were incarcerated (38.8%) and 30 were given probation only (61.2%). The number of males who received an incarceration sentence was 109 (58.0%) compared to 79 males (42.0%) receiving probation only.

The data were comprised of 177 county residents (75.6%) and 60 non-residents (25.4%). Of the 128 individuals who received a period of incarceration, 91 (71.1%) were county residents and 37 (28.9%) were non-residents. Those receiving “probation only” had similar results as 86 (78.9%) of the 109 individuals were county residents and 23 (21.1%) were non-residents. Incarceration rates for residents (51.4%) were lower than those for non-residents (61.7%).

Correlation Matrix

One standardized measure of covariance is Pearson’s product moment correlation coefficient (r), which is defined as the ratio of the covariance of the product of the

standard deviations. The r ranges between -1 and +1. In looking at the variable correlations, it should be noted that the values illustrate the statistical relationship between two variables and do not control for the impact of other variables.

Table 4

Correlations Matrix for Incarcerated Individuals (n=128)

Variable	1	2	3	4	5	6	7	8
(1) Length	1.00							
(2) OGS	.633**	1.00						
(3) PRS	.024	-.178*	1.00					
(4) Incidents	.296**	.184*	-.010	1.00				
(5) Age	.054	-.046	.308**	-.055	1.00			
(6) Race	.004	-.005	-.120	.199*	.246**	1.00		
(7) Gender	-.007	-.031	.039	-.001	-.140	-.198*	1.00	
(8) County	-.068	-.078	-.102	-.103	-.175*	-.293**	.121	1.00

* $p < .05$, ** $p < .01$ (one-tailed test)

As indicated earlier, the correlation matrix outlines the relationship between the variables of interest in the model. The correlation matrix suggests that there is no multicollinearity between the independent variables. An indicator of multicollinearity would be a correlation of .6 or higher between two independent variables or several independent variables with moderate correlations (.4 or higher).

When assessing the correlation between the independent variables and the dependent variable, all of the variables reacted as predicted. One might anticipate PRS would have a moderate or strong, positive relationship with the variable “length”, but 31% of the sample had no previous offenses when sentenced and 14% had only one previous offense. Older offenders were more likely to possess higher prior record scores than younger offenders. It is interesting OGS and PRS are statistically negatively correlated.

Logistic Regression Analysis

Logistic regression models, as stated earlier, estimate the likelihood of an event occurring as a result of independent variables (Pohlmann & Leitner, 2003). Examining the in/out decision defined in hypotheses one and two required a logistic regression analysis to determine the likelihood a defendant will receive a jail/prison sentence based on the independent variables included in the model. Logistic regression determines the odds of an individual in this sample receiving a jail/prison sentence based on the variables in the model.

Hypothesis one suggested that as legally relevant variables increase (i.e., OGS, PRS), the likelihood of incarceration will increase when controlling for legally irrelevant variables; this hypothesis is supported for this sample. Hypothesis two predicted legally irrelevant variable scores would have no statistically significant impact on the likelihood of incarceration when controlling for legally relevant variables; this hypothesis is not supported for this sample. Table 5 indicates the output for this logistical regression model.

Table 5

Logistic Regression Results for the Incarceration Decision (n = 237)

Variable	B	SE	Wald	Exp (B)
OGS	.496	.100	24.688***	1.642
PRS	.179	.084	4.567*	1.196
Drug Incidents	.199	.187	1.136	1.220
Age	.017	.016	1.193	1.018
Race (NonWhite/White)	-.789	.342	5.332*	.454
Gender	.657	.378	3.022	1.929
County of Residence	.275	.356	0.596	1.316
Constant	-3.835	.858	20.000***	.022

* p < .05, *** p < .001, Cox and Snell R Squared = .232

Nagelkerke R Squared = .311

When looking at the model summary, the Pseudo R^2 value indicates that there are relevant variables not included in this model. The Pseudo R Squared value is .232 for the Cox and Snell R Squared and .311 for the Nagelkerke R Squared, respectively. It is important to note that a pseudo R-squared statistic without another model for comparison has little meaning and can not be interpreted as variance explained by the model as would the coefficient of determination produced in an OLS model. Pseudo R-squared is used to assess model strengths when compared to similar models, using the same type pseudo R-squared, on the same data, while inserting and omitting various variables. The higher pseudo R-squared would indicate which model has the better predictive power.

Table 5 indicates that drug incidents, age, gender, and county residence were not identified as variables significantly related to the decision of incarceration or probation. The three independent variables (OGS, PRS, and Race) and the constant have a statistically significant relationship with whether a person would be incarcerated (versus receiving probation) for this sample. Each of these items is discussed separately.

For this model, the y-intercept, or constant, for the independent variables is - 3.853. The y-intercept gives the value for y when all x's are equal to zero. The constant is the log odds of incarceration when all independent variables are coded as zero. The slope indicates a positive or negative association between the independent variable and the dependent variable. It is important to note that the independent variable for age is causing the constant to have little interpretive value because there were no "zero year olds" in the data set. Therefore, the constant does not provide much practical interpretation even though the p value is less than .001.

For every one-unit increase in OGS, there is a 0.496 increase in the log-odds of incarceration, holding all other independent variables constant. For the variable OGS, the p-value is less than .001, so the null hypothesis that the coefficient equals 0 is rejected. A second interpretation using the exponentiation of the coefficients is that there is a 64% increase in the odds of getting incarcerated for each one-unit increase in OGS score.

Similar to the OGS variable in this model, the PRS variable also is significantly related to incarceration ($p < .05$). For every one-unit increase in PRS, there is a 0.179 increase in the log-odds of incarceration, holding all other independent variables constant. Since the p-value is less than .05, the null hypothesis that the coefficient equals 0 is rejected. A second interpretation using the exponentiation of the coefficients is that there is a 19.6% increase in the odds of getting incarcerated for each one-unit increase in PRS score.

Hypothesis two stated the legally irrelevant variables would not be significantly related to incarceration decisions; this held true for age, gender, and county, but not for race. For every one-unit increase in race, interpreted as moving from other to white, there is a 0.789 decrease in the log-odds of incarceration, holding all other independent variables constant. For the variable race, the p-value is less than .05, so the null hypothesis that the coefficient equals 0 is rejected. A second interpretation using the exponentiation of the coefficients is that there is a 54.6% decrease in the odds of getting incarcerated for whites when compared to non-whites.

Continuing with the logistical regression models, Table 6 contains the data output for hypothesis five. This hypothesis was developed and tested on the findings from previous literature that suggested nonwhite male defendants in the 21-29 year old age

range would be dealt with more punitively when it came to the decision of whether or not to incarcerate when controlling for legally relevant variables. The data contained 80 males in the 21-29 year old age range (35 others & 45 whites).

Table 6

Logistic Regression Results for the Incarceration Age 21 – 29 (n = 80)

Variable	B	SE	Wald	Exp (B)
OGS	.616	.178	11.896***	1.851
PRS	.419	.190	4.876*	1.521
Race (NonWhite/White)	-.907	.592	2.348	.404
Constant	-3.101	1.173	6.985**	.045

* p < .05, ** p < .01, *** p < .001, Cox and Snell R Square = .325 Nagelkerke R Square = .438

Table 6 indicates that race was not identified as a variable significantly related to the decision of incarceration or probation, which conflicts for the finding using the entire sample (Table 4). For this sample, the legally relevant variables (OGS & PRS) retain their statistically significant relationship with whether a person would be incarcerated (versus receiving probation).

For every one-unit increase in OGS, there is a 0.616 increase in the log-odds of incarceration, holding all other independent variables constant. For the variable OGS, the p-value is less than .001, so the null hypothesis that the coefficient equals 0 is rejected. A second interpretation using the exponentiation of the coefficients is that there is an 85% increase in the odds of getting incarcerated for each one-unit increase in OGS score.

In this model, the PRS variable also is significantly related to incarceration. For every one-unit increase in PRS, there is a 0.419 increase in the log-odds of incarceration, holding all other independent variables constant. For the variable PRS, the p-value is less than .05, so the null hypothesis that the coefficient equals 0 would be rejected. A second

interpretation using the exponentiation of the coefficients is that there is a 52.1% increase in the odds of getting incarcerated for each one-unit increase in PRS score.

There were 33 male defendants in the study who were in the 18-20 year old age range (20 others & 13 whites). When the age variable range is expanded from 21 – 29 to 18 – 29 the race variable again becomes statistically significant ($p < .05$). The variable OGS remains statistically significant ($p < .001$), but the PRS score is no longer statistically significant ($p = .057$). These findings suggest that race may be a factor.

Hypothesis five, as guided by prior research, established the parameters (21-29) for the age range. As written, hypothesis five is not supported by the present study. However, when expanding the age range to absorb 18-20 year olds, the results of the logistical regression analysis indicate that for every one-unit increase in race, interpreted as moving from other to white, there is a 1.023 decrease in the log-odds of incarceration, holding all other independent variables constant. For the variable race, the p-value is less than .05, so the null hypothesis that the coefficient equals 0 is rejected. A second interpretation using the exponentiation of the coefficients is that there is a 60% decrease in the odds of getting incarcerated for white males when compared to non-white males.

Ordinary Least Squares Regression Analysis

As stated earlier, Ordinary Least Squares (OLS) regression is used when the dependent variable is continuous, unbounded, and measured on an interval or ratio level and the independent variables are interval, ratio, or dichotomous in nature (Menard, 2002). Sentence length for this study is considered to be a continuous variable as constructed in hypotheses three, four, and six. An (OLS) regression analysis was used to

assess what impact the independent variables included in the model had on sentence length for convicted offenders who were incarcerated.

When dealing with incarceration length, it should be noted that the dependent variable outcomes were constructed in a manner where there was a minimum and maximum period of confinement associated with most offenders. Due to the sentence outcomes being constructed in terms of minimum and maximum confinement lengths, three separate OLS regression analyses were performed. Table 7 includes the data for the OLS regression using the mean incarceration length. Tables 8 and 9 include the data for the minimum incarceration length and the maximum incarceration length, respectively.

Tables 7 – 9 indicate that with one exception, the variable PRS in Table 8, there are only minor differences with how the independent variables impacted the dependent variable, regardless of which dependent variable (mean, minimum, maximum) was used in the model. Based on the three models indicating similar results, Table 7 (mean incarceration length) is used to address the findings.

Table 7

OLS Regression Results for the Mean Length of Incarceration (n = 128)

Variable	B	SE	Beta	t
Constant	-29.935	7.359		-4.068***
OGS	6.596	.744	.622	8.866***
PRS	.948	.624	.113	1.520
Drug Incidents	3.641	1.331	.193	2.735**
Age	.121	.132	.069	.921
Race (NonWhite/White)	-.967	2.603	-.029	-.372
Gender	.535	3.306	.011	.162
County of Residence	.535	3.306	.011	.199

$R^2 = .457$, $F = 14.406$ ($p < .001$)

** $p < .005$, *** $p < .0005$ (one-tailed test)

Table 8

OLS Regression Results for the Minimum Length of Incarceration (n = 128)

Variable	B	SE	Beta	t
Constant	-23.864	5.184		-4.603***
OGS	4.773	.524	.628	9.108***
PRS	.924	.440	.154	2.103*
Drug Incidents	2.792	.938	.207	2.978**
Age	.059	.093	.047	.640
Race (NonWhite/White)	-1.297	1.834	-.053	-.707
Gender	.164	2.329	.005	.070
County of Residence	-.089	1.895	-.003	-.047

$R^2 = .476$, $F = 15.579$ ($p < .001$)

* $p < .025$, ** $p < .005$, *** $p < .0005$ (one-tailed test)

Table 9

OLS Regression Results for the Maximum Length of Incarceration (n = 128)

Variable	B	SE	Beta	t
Constant	-36.006	9.839		-3.660***
OGS	8.419	.995	.608	8.464***
PRS	.972	.834	.089	1.165
Drug Incidents	4.489	1.779	.182	2.523*
Age	.183	.176	.080	1.040
Race (NonWhite/White)	-.638	3.480	-.014	-.183
Gender	.907	4.419	.015	.205
County of Residence	1.159	3.597	.024	.322

$R^2 = .432$, $F = 13.013$ ($p < .001$)

* $p < .025$, *** $p < .0005$ (one-tailed test)

Table 7 indicates that for this sample the seven variables in the model accounted for 45.7% of the variance in the dependent variable, which suggests the model has omitted relevant variables related to determining sentence length. For those variables in the model, two of the three legally relevant variables had a statistically significant relationship with sentence length (OGS & drug incidents), which supports research hypothesis three. Additionally, the four legally irrelevant variables were not identified as statistically significant predictors of sentence length, which supports research hypothesis four.

Of the variables in the model, OGS score is identified as having the greatest impact on determining mean sentence length. For this sample, a one unit increase in OGS score resulted in an additional 6.6 months being added to an individual's sentence length ($p < .001$). The other variable to significantly impact the model was drug incidents (the number of separate offenses before the judge during trial). For each offense an individual was charged with, while pending trial for a previous offense added 3.6 months to the sentence length ($p < .01$).

Prior record score (PRS) was statistically significant ($p < .05$) for determining minimum sentence length (Table 8), but was insignificant in the other two models (mean length and maximum length). Using stepwise regression on all three models, the three legally relevant variables were identified as having a statistically significant relationship with the various dependent variables, while the legally irrelevant variables remained statistically insignificant. This finding suggests that the .308 correlation between PRS and age might be sufficient to impact PRS when regressed against sentence length. Omitting the age variable from each of the three models does result in the three legally relevant variables maintaining a statistically significant relationship with the various dependent variables, while the legally irrelevant variables remain statistically insignificant.

The final OLS model is designed to test hypothesis six, which states that non-white males between the ages of 21 and 29 are sentenced more harshly when incarcerated. Table 10 indicates that the data do not support hypothesis six. There is no statistical difference in sentence length for offenders fitting this particular demographic profile when controlling for legally relevant variables. Even when the model is expanded

to include all incarcerated males age 29 and under ($n = 58$) the results of the model remain unchanged, suggesting that legally relevant variables are statistically significant indicators of incarceration length, while race is a poor indicator of sentence length.

Table 10

OLS Regression Results for Mean Sentence Length for Males Age 21 – 29 ($n = 44$)

Variable	B	SE	Beta	<i>t</i>
Constant	-21.216	10.336		-2.053*
OGS	5.980	1.409	.546	4.245***
PRS	3.130	1.246	.326	2.513*
Race (NonWhite/White)	-.772	4.599	-.022	.867

$R^2 = .359$, $F = 7.457$ ($p < .001$)

* $p < .025$, *** $p < .0005$ (one-tailed test)

Table 10 indicates that as OGS increases by one point, a 21 to 29 year old male's sentence length will increase by approximately six months. The six month increase is very similar to the results found in Table 7 which included both male and female offenders of all ages. The PRS slope in this model differs dramatically from the slopes in the other OLS models, since the variable "age" has been restricted in this model. For this sub-sample, as the PRS increased by one point, the length of incarceration increased by approximately three months.

Overall, the quantitative data identified legally relevant variables as being significantly related to both incarceration/probation decisions and incarceration lengths, while dismissing most of the legally irrelevant variables as being significant indicators of either of the dependent variables. These findings appear to hold true for this sample with the exception of sentencing decisions for the entire sample (Table 5), where the data suggest race was a factor in determining who received probation and who was incarcerated. The data suggest non-whites were at a statistically significant higher risk of being incarcerated when compared to whites. To enhance the validity of this research

and to better understand the quantitative findings, a qualitative component was designed into this study. It is important to understand that when interviewing the criminal justice professionals involved in the arrest and sentencing decisions of many of those in the sample, the interviewees were not informed of the quantitative findings although the findings were known to the researcher at the time of the interviews.

Qualitative Analysis

While the present study utilized a quantitative foundation in order to acquire the necessary data for purposes of interpretation and explanation, a qualitative component was added in order to better understand and explain the strengths and weaknesses of the determinate sentencing structure and to fill in missing gaps in research that could not be explained using quantitative analyses exclusively. Several professionals in the criminal justice field were interviewed in order to acquire their expertise and opinions about specific determinate sentencing issues. Included in the interviews were six law enforcement professionals, two prosecuting attorneys, and five private and public defense attorneys.

The first two questions dealt with what the interviewees believed the goals of the determinate sentencing movement were and if, from their vantage point, these goals were being achieved. The common theme that persisted in the answers from all parties interviewed revolved around the idea of punishment and incapacitation. While law enforcement personnel and prosecutors may have been in favor of this philosophy within our justice system when compared to defense attorneys, the consensus was that these laws are working as they were intended. People were being punished more severely for certain crimes.

The next several questions focused on how the determinate sentencing structure impacted investigations, prosecutions, plea bargaining, and other aspects of the justice system with particular attention given to the individual's position in the process. The law enforcement professionals and the prosecutors, including the District Attorney, agreed that the way investigations were conducted had certainly changed over the course of the past twenty years, but not one person credited mandatory minimum sentencing or sentence guidelines as the impetus for this change. Surprisingly, the influence of the media (from the news, to television shows, to movies) was thought to have a big influence on the thoroughness and the precision of an investigation. A narcotic detective suggested,

It is not so much a result of the mandatory minimum sentencing laws that has altered how investigations are conducted as much as it is jurors and their expectations. Jurors question why this wasn't included in the investigation, why this picture from this angle was not taken and they ask as much because of what they see on a television show or a movie. TV, in my opinion, has ruined the job. (Personal Interview conducted on January 8, 2010)

When defense attorneys were questioned about the potential change in law enforcement's investigative approach, one attorney felt that undercover police officers were making sure that when buying drugs from an individual, they would buy an amount that would qualify the defendant for a mandatory minimum sentence. When asked about this practice of buying amounts that would qualify a dealer for a mandatory sentence, the officers interviewed for this study acknowledged that some agencies and some officers/agents do engage in such a technique, but that it was their personal approach to

narcotics work. “If someone is an ounce dealer, I will buy an ounce from him. I don’t try and buy more than what he normally sells in order to get a mandatory minimum sentence to hold over his head.” (Personal Interview conducted on January 8, 2010)

When questioned as to why other agencies or officers would attempt to buy specific weights, this detective indicated it was to increase the likelihood that the alleged offender would cooperate later with law enforcement authorities.

When discussing how determinate sentencing has influenced plea bargains and court proceedings, it was the overwhelming consensus that plea bargaining was the norm. These sentiments were supported by the quantitative data for this project, where 237 of 243 Possession with the Intent to Distribute (PWID) drug cases occurring in 2005 were resolved with a plea bargaining agreement. One attorney, who had worked as a public defender before joining a private practice stated,

I have never had a drug case that went to trial. Every, single drug case that I have been involved with, both as a public defender and since then, has ended in a plea agreement. It makes it a lot easier to deal with my client. Clients will tell me that they know this person or have this relative who sold the same amount and they only got this sentence. The problem with some of these clients though is that they fail to understand that they may have a different prior record. I’ll tell them that they cannot do better than this plea agreement based on these numbers. It just can’t be done. It becomes a lot like an algebra equation and I will show it to them. It is easier to convince them, if that is the right word, to take the deal.

(Personal Interview conducted on January 12, 2010)

Additionally, this defense attorney also added that he believed police officers charge the defendant with everything imaginable in order to increase the likelihood of a plea agreement. “With the weapon’s enhancement, for example, it deals more with the power to charge and the ability to negotiate. No one wants that extra five year sentence hanging over their head, so they will negotiate a deal.” (Personal Interview conducted January 12, 2010)

When asked about the strengths and weaknesses of the determinate sentencing structure for drug offenses, discussions revolving around consistency and uniformity persisted throughout. The District Attorney probably summarized it the best when he said,

If the justice system treats defendants systematically different, we lose credibility with the public. We also lose credibility with the public when serious crime occurs and the sentence does not reflect that. Mandatory minimum sentences help resolve those issues. (Personal Interview conducted January 15, 2010)

Other professionals echoed similar type sentiments concerning the strengths of determinate sentencing that even focused on the idea that some people who cannot afford private attorneys and public defenders can oftentimes negotiate comparable agreements which, in their estimation, makes the system more equitable and fair.

The responses concerning the weaknesses of determinate sentencing oftentimes depended on who was answering the question. The District Attorney found no weaknesses from his vantage point, while defense attorneys felt that certain statutes “handcuffed” prosecutors from being able to negotiate certain deals. One narcotic

detective, when asked about the weaknesses of determinate sentencing, passionately argued,

They are out of whack. That is a big problem in my estimation. They are not consistent. It's like this, in order to meet the mandatory minimum requirement for marijuana, you need two pounds of marijuana. That weight carries a one year mandatory sentence. The cost of two pounds of marijuana is between \$7,000 and \$8,000. A one year mandatory sentence is given with two grams of powder cocaine. The cost of two grams of powder cocaine is between \$180 and \$200. With heroin, you need one gram to qualify for a mandatory one year sentence. The cost of one gram of heroin is approximately \$1,200. With pills, they look at the weight. It is all based on weight. If I am doing an investigation and I am buying two pounds of marijuana, I can't let \$7,000 from our drug fund go and I have to make the arrest right then and there. It's criminal or it's not. It should not so much be determined by weight as much as it should be determined by monetary value and devastating effects to the person. The mandatory minimums are just out of whack sometimes. (Personal Interview conducted January 8, 2010)

When asked who is to blame for the perceived imbalance of the mandatory minimums, this officer credited legislators.

When asked about the pros of determinate sentencing from a narcotic investigator standpoint, one detective argued his belief that dealers should be treated more harshly than users. His contention was that this was the intention of mandatory minimum sentences for drug offenders, to punish more severely those who were dealing and making a monetary profit as opposed to those who were using or were suffering from an

addiction. “In my mind, there are those who use, those who sell to support their habit, and those who have an enterprise. We should be punishing the people who are making a financial profit from their drug distribution.” (Personal Interview conducted January 8, 2010) However, in his estimation, the statutes were being “raped”, which was a con of determinate sentencing in his estimation. “Give the addicts a chance. Give small time dealers a chance along with a smack on the wrists, and whack the major players as was the original intention of these laws.” (Personal Interview conducted January 8, 2010)

A prosecuting attorney in the county echoed similar sentiments as the aforementioned detective and suggested that heroin is such an addictive drug that there was nothing, in his estimation, that could get an abuser to stop his or her addiction and the cycle of addiction continues to persist even after people are released from incarceration (Personal Interview conducted February 3, 2010). This individual discussed how frustrating and disheartening it can be at times to see people behave in such ways to support their habits. He stated that the mandatory minimum sentences were aimed at getting the drug dealers off the streets, but that the problem was when one dealer is taken off the streets, three were ready to take his place. When serious money is involved, in his estimation, people always will be willing to take that risk and continue business where the previous individual left off.

When discussing the pros and cons with other professionals, many of them indicated that one detriment was that these laws do not give judges enough credit or power or that people sometimes receive a mandatory sentence who do not necessarily deserve it. An interesting point of information, when dealing with these types of questions, was that many respondents in all areas of the justice process praised the judges

in the county as being competent. One attorney commented about the potential problems that could surface with determinate sentencing by stating,

The more we take out of their hands the ability to cater to a case, the greater likelihood we will have for problems and difficulties. We are lucky to have the type and quality of judges we have in the county. Perhaps the guidelines exist for the lowest judges, but I feel that it really takes the humanity out of everything.

We just plug it into a computer and get the results and that is the sentence. Where is the humanity in that? (Personal Interview conducted January 12, 2010)

Surprisingly, no one interviewed had anything negative to say about the judges and their interpretation and application of the law in administering sentences. However, every person interviewed acknowledged certain judges were more likely to give more lenient sentences for specific offenses when compared to other judges in the county. The names mentioned by the interviewees for “lenient judges” and “harsh judges” remained consistent throughout all interviews.

When comparing and contrasting all interviews and the responses given to the questions asked, the most interesting discovery was that everyone interviewed, whether they were more geared towards working for the defense of an offender or were more involved with the enforcement of laws and prosecution of an offender, cited the same basic answer concerning the goals of the determinate sentencing structure: to get serious offenders off the streets and punish them severely. Additionally, unexpectedly, all the people interviewed as part of this study felt that the determinate sentencing structure was achieving the stated goals. Some people responded more quickly when providing

shortcomings and frustrations with regards to systematic flaws, but in the end, everyone agreed the laws were working as intended.

To summarize, based on the quantitative analysis, OGS was the variable that was the most powerful and significant in determining who received a sentence outcome that included a period of confinement. As OGS scores increased, so did the likelihood that the individual would receive a period of incarceration as part of his or her punishment. Age, race, gender, and county of residence were variables that were considered extralegal. Logistical Regression indicated that legally irrelevant independent variables failed to reach statistical significance, except in the case of race of the offender (Nonwhite versus White), when assessing the decision to incarcerate. Race was significant and had the second most significant impact on incarceration decisions followed closely by PRS.

When discussing how discrimination may persist with the determinate sentencing structure when speaking with various professionals in the field, no one suggested police were targeting or only arresting the nonwhite offenders, nor did they feel nonwhite defendants were being treated any differently than white defendants. No one even mentioned the idea of discrimination or disparity in sentencing and for the most part, believed the laws were working as intended.

CHAPTER 6

DISCUSSION AND CONCLUSIONS

In 1978, Pennsylvania created a commission whose purpose was to ensure a consistent and rational sentencing policy for the entire state, in order to create a fairer and more uniformed system of justice (Kauder & Ostrom, 2008). The Pennsylvania Guidelines went into effect on July 22, 1982 for individuals convicted of or pleading guilty or nolo contendere to felony and misdemeanor offenses in the state (Pennsylvania Commission on Sentencing, Adoption of Guidelines Statutes, 2005). These guidelines were part of the determinate sentencing movement that hoped to reduce unwarranted, unwanted disparity and punish like offenders similarly.

Proponents of a determinate sentencing structure emphasize the ideas of uniformity, consistency, predictability, and severity of punishment in their justification for this style of justice. They contend that important variables such as prior record and offense severity determine the type and length of punishment without factoring in an offender's individual characteristics (i.e., age, race, gender, etc.). Unwarranted sentence disparity arises when these legally irrelevant variables influence the sentence outcome (Souryal & Wellford, 1999). Proponents also suggest that mandatory minimum sentencing serves as both a general and specific deterrent from offending and re-offending and also as a phenomenal form of incapacitation because it removes the worst offenders from society for longer periods of time (Gabor & Crutcher, 2002).

Those who oppose sentence guidelines and mandatory minimums argue that the court's discretion, compassion, and individualized treatment approach is taken away in exchange for an algebraic equation where humanity is sacrificed and where

discrimination continues to run rampant. Opponents argue that the sentences imposed are too severe and costly to the taxpaying citizens of the United States and that this new trend in the distribution of justice does not work (Hansen, 1999). Previous studies have raised questions concerning these claims and viewpoints with mixed findings, results, and conclusions (Albonetti, 1997; Bickle & Peterson, 1991; Daly & Bordt, 1995; Klein, Petersilia, & Turner, 1990; Souryal & Wellford, 1999; Steffensmeier & Demuth, 2000; Steffensmeier, Kramer, & Streifel, 1993; Steffensmeier, Ulmer, & Kramer, 1998; Ulmer & Kramer, 1996). Some studies suggest the effect of legally irrelevant variables, such as race, are minimal in determining sentence outcome (Kramer & Steffensmeier, 1993), while other studies contend there are age-gender restricted model effects of race on other variables that in turn significantly influence sentence outcome (Peterson & Hagan, 1994; Spohn, 1994).

The present study sought to determine the effectiveness of determinate sentencing (in the forms of mandatory minimum sentencing and sentence guidelines) to reveal if the legislation is working as intended when dealing with drug offenses in a southwestern Pennsylvania county by assessing the impact of legally relevant and legally irrelevant variables on sentence outcome. Sentence outcome was defined by the in/out decision and length of confinement for the offender.

Legally Relevant and Irrelevant Variables and the Incarceration Decision

OGS was the variable that was the most powerful and significant in determining who received a sentence outcome that included a period of confinement. As OGS scores increased, so did the likelihood that the individual would receive a period of incarceration as part of his or her punishment. The Wald score also indicates that the seriousness of the

offender's crime (OGS) had the most significant impact on the odds of receiving a sentence of incarceration. It was expected that OGS and PRS would have the greatest impact on likelihood of incarceration based on previous research and guideline construction.

Age, race, gender, and county of residence were variables that were considered extralegal in the eyes of the determinate sentencing movement and should not influence sentence outcome in terms of the in/out decision and/or sentence length and have been the subject of much research and debate. As discussed earlier, some claim that blacks are underrepresented in roles such as judges or jury members, which may lead to discrimination throughout the system (Fukurai, Butler, & Krooth, 1993); while Crutchfield, Bridges, and Pritchford (1994) suggested that 90 percent of the racial disproportionality in prisons across the nation can be attributed to disproportional minority involvement with crime. Certain studies suggest black defendants receive more severe punishments than white defendants (Petersilia, 1983; Spohn, 1990; Spohn, Gruhl, & Welch, 1982). Some studies examining the same variables and effects propose white defendants receive more severe punishments than black defendants (Bernstein, Nagal, & Doyle, 1977; Levin, 1972), and still other studies indicate that there are very few, if any, noticeable differences in sentencing based on race (Klein, Petersilia, & Turner, 1988; Wilbanks, 1987). Sampson and Lauritsen (1997) suggest race influences the decision to incarcerate where black defendants are more likely than white defendants to receive a jail or prison sentence. The conclusions surrounding the independent variable, race, are such that some researchers argue the effects of race on sentence outcome are minimal when legally relevant variables are taken into consideration (Kramer & Steffensmeier, 1993).

In short, the effect of race and other demographic qualities on sentence outcome is not fully understood and most certainly not agreed upon.

Logistical Regression analysis for this project indicated that legally irrelevant independent variables failed to reach statistical significance, except in the case of race of the offender (Nonwhite versus White), when assessing the decision to incarcerate. Race was significant and had the second most significant impact on incarceration decisions followed closely by PRS. For this study, a white defendant was less likely to receive a sentence outcome that included jail or prison time than was a nonwhite defendant when controlling for other legally relevant and legally irrelevant variables.

In this study, as in previously cited studies, the relationship between race and sentencing decisions appeared both statistically significant and statistically insignificant depending on the model design. The significance of race in the sentencing decision could not be disentangled in this study. A t-test for equality of means, using race as the grouping variables, identified a significant difference between groups ($p < .01$ or $p < .001$) on all of the independent variables except OGS. The same results occur when the data is restricted to males only.

It was expected that PRS variable would have the second largest impact on sentence outcome next to OGS in terms of the in/out decision since it was a legally relevant variable, which was not the case for this sample. The fact that race was a statistically significant indicator of incarceration (v. probation) suggests the guidelines and mandatory minimum sentencing structure are not eliminating all of the sentencing disparity goals for which they were designed. This study's findings suggest that disparity

in sentencing and certain forms of discrimination may be persisting, despite the sentence guidelines and mandatory minimums.

When discussing how any type of discrimination may persist with the determinate sentencing structure when speaking with various professionals in the field, no one suggested police were targeting or only arresting the nonwhite offenders, nor did they feel nonwhite defendants were being treated any differently than white defendants. In fact, no one mentioned discrimination or disparity in sentencing at all, regardless of their position within the field of criminal justice. Despite the expectations of the current study and the observations from trained professionals in the field at varying levels, the fact remains that for this study, race was a determining factor in who received a punishment that included incarceration. Based on the responses during the interviews, this finding might come as a shock to many of the people interviewed for this study.

When examining the age-gender restricted model effect on sentence outcome, it was assumed that a nonwhite male in the 21-29 year old age range would be dealt with more punitively when it came to the decision of whether or not to incarcerate when controlling for legally relevant variables based on the limited prior research with these specific variables. On the surface it appeared as though the findings were going to support the hypothesis that nonwhite male defendants in the 21-29 year old age range receive a more severe outcome in terms of the incarceration decision than other defendants. When controlling for other variables in the equation, however, like OGS and PRS, it was determined that nonwhite males in the 21-29 year old age range were treated no differently than anyone else. These findings would suggest that the age-gender

restricted model effect, as defined by prior research, is not supported by the current study and that there is no statistical difference between the two groups.

The findings of no difference between sentencing outcomes based on race changed when the 33 individuals who were in the 18-20 year old age range were included in the age-gender restricted model effect hypothesis testing. The results of expanding the age category to include younger offenders (age 18-29) impacted the results. There was a statistically significant difference between whether an individual would receive incarceration or probation based on race, while controlling for OGS and PRS. Very young, nonwhite defendants seem to receive a more punitive outcome with regard to the decision to incarcerate. OGS remained the biggest factor in determining sentence outcome for this group, but PRS, which was once significant, became insignificant ($p = .057$) and race became significant ($p = .027$). This would suggest that race, a legally irrelevant variable, and not PRS, a legally relevant variable, influenced the incarceration decision for this population.

One plausible explanation (of many) that would shed light on why PRS became insignificant once 18-20 year olds were included in the model might revolve around the idea that many individuals in this age range have a prior record score of zero (59.4%). These youthful offenders are too young to have been arrested, adjudicated, convicted, and rearrested. If prior record score does not have much variation, it loses explanatory power because the variable serves more as a constant in this model than a construct that varies.

While including 18-20 year olds in the age-gender restricted model effect hypothesis testing was not discussed in previous research or considered for this study until now, the fact remains that there is a discrepancy between the goals of determinate

sentencing and these findings. One plausible explanation for this could be traced back to the idea that an 18-20 year old would be more likely to have a public defender as opposed to a private attorney and this would influence the quality of legal defense for the individual. Another plausible explanation revolves around the idea that the county providing the data is afraid or outraged by young black males engaging in certain types of criminal behaviors.

As stated in the hypotheses, the age-gender restricted model variable dealt with nonwhite males in the 21-29 year old age range. Technically speaking, this hypothesis was not supported because nonwhite males in the 21-29 year old age range were not treated more punitively than others included in the sample; however, 18-20 year old nonwhite males were treated more punitively in terms of the incarceration decision. The difference in treatment of nonwhite males in the 18-20 year old age range could not be expanded in this study since there were only 33 in the sample, but does warrant future enquiry.

Legally Relevant and Irrelevant Variables and Incarceration Length

Hypotheses three, four, and six dealt with the impact of the independent variables on sentence length and they made use of OLS regression to produce the results. As theorized and mandated by the guidelines and mandatory minimum statutes, OGS had the greatest influence on sentence length for the variables utilized in this model. PRS and number of drug incidents also contributed, but not to the effect of OGS. As the crimes became more serious and the offenders had higher prior record scores and more drug incidents against them, there was a greater likelihood for longer sentences when controlling for all other variables. All extralegal variables (age, race, gender, county of

residence) were found to be not statistically significant for these models, indicating that the determinate sentencing movement was working as intended when dealing with length of confinement for those included in the study.

When looking at the age-gender restricted model effect variable discussed in hypothesis six, on the surface, it appeared as though nonwhite male defendants in the 21-29 year old age range were being treated more punitively with regard to length of confinement as the average sentence was 22 months when compared to white male defendants in the 21-29 year old age range whose average sentence was only 9 months. However, when controlling for the other variables in the model, OGS had the biggest impact on sentence length, followed closely by PRS and both were significant. No other variables were significant, including race. Having stated such, hypothesis six is not supported by the data, suggesting that for this sample there is no difference in sentence outcome for these two groups when controlling for other independent variables in the equation.

As previously discussed, when adding 18-20 year olds to the 21-29 year old age range and looking at the in/out decision, the results changed to the point where race played a significant role in determining who received a sentence of incarceration. When expanding hypothesis six to include the younger offenders (18-29), race did not become significant and did not influence the sentence length of offenders in this category, suggesting the extralegal variables had no significant impact on sentence length for offenders in this sample. Regardless of the age range selected (21-29 or 18-29) race was not a statistically significant indicator of incarceration length when controlling for other

legally relevant and legally irrelevant variables. These findings suggest the determinate sentencing structure is working as intended in regards to sentence length.

Sentence Outcome in the Present Data Set and Determinate Sentencing Objectives

As discussed in Chapter 2, the Sentencing Reform Act of 1984 was aimed at, among other things, eliminating unwarranted sentencing disparity by establishing a “comprehensive and consistent statement of the federal law of sentencing, setting forth the purposes to be served” (Hofer & Allenbaugh, 2003, p. 20). The Sentence Reform Act had several objectives that it hoped to achieve concerning sentence outcome in America. The first dealt with certainty and honesty in sentencing, by seeking to eradicate the use of parole and indeterminate sentences by judges so that the sentence imposed would represent the sentence the convicted offender would serve (United States Sentencing Commission, 1991).

While it is outside the scope and jurisdiction of the current research project to assess how much time convicted offenders served as part of their punishment, the fact remains that for the individuals included in this study, no one received a punishment that included parole or any type of confinement for an undetermined amount of time. All incarceration sentences were clearly defined and it was assumed that a convicted person would serve at least a certain percentage of that sentence.

When discussing the goals of determinate sentencing with prosecutors and defense attorneys, several people acknowledged this idea that more people were going to be serving time in jails or prisons for their transgressions without “getting out” early for good behavior. The district attorney, himself, suggested a general deterrent effect when it came to mandatory minimum sentencing and the fact that he believed offenders knew

when it came to charges that included PWID as opposed to simple possession, it was serious business.

Based on both the quantitative and qualitative components and findings of the present study and assessing how well the first objective of determinate sentencing was being achieved, the researcher contends that it is being achieved to the highest degree. Parole and indeterminate sentence lengths were virtually nonexistent for the 2005 calendar year used to compile this data set. This fact alone, albeit a matter of administrative practice and protocol, gives credence to the idea the first objective is being achieved. Assuming those convicted were, in fact, serving the appropriate percentage of their confinement (which could be perceived as indeterminate sentencing), the researcher believes the first objective of determinate sentencing is working as intended for the cases this study reviewed.

The second objective dealt with greater uniformity in sentences for like offenders. Increased uniformity coupled with greater consistency were anticipated to lead to better predictability and more accurate assessments with regard to sentencing outcomes and correctional costs (Lubitz & Ross, 2001).

When looking at the concepts of uniformity and consistency with regard to sentence outcome for this project, the results are ambiguous. Sentence outcome was broken down into two separate dependent variables: incarceration decision and sentence length. In order for this second objective of determinate sentencing to be achieved, uniformity and consistency would have to be present and paramount in both dependent variable outcomes. The in/out incarceration decision was such that race played a significant factor in some instances for who would receive a punishment that included

incarceration, especially when coupled with age and gender to complete the age-gender restricted model variable effect. Even though the 21-29 year old age range was not affected by race of the offender in terms of incarceration, the fact that 18-20 year olds were treated more punitively when controlling for other variables in the model suggests uniformity and consistency are not necessarily being met.

When looking at sentence length, the only significant variables were those that were legally relevant variables. No extralegal variables were significant in determining sentence length. Sentence length was strictly determined by legally relevant variables, which reverberates both uniformity and consistency for the calendar year used to compile the data set.

The third objective revolved around the idea of proportionality and just punishments in sentencing by fostering a system of justice that would allow courts to recognize differing levels of involvement in a specific crime and then rule accordingly. An example used in chapter two dealt with drug couriers and higher level masterminds within an illegal organization not receiving the same sentence due to the tangible rewards during the commission of their crimes not being equal (Klein & Steiker, 2002; United States Sentencing Commission, 1991).

Assessing the third objective was not possible without the qualitative component of this project as the researcher was restricted to that which was found in the files as oftentimes, it was not known what the exact role of the offender was during the commission of the recorded drug crime due to missing data, cooperation in order to reduce sentence outcome, and plea bargaining. After conversations with professionals at all levels of justice, regardless of their interests or expertise, there was a consensus that

certain types of offenders were getting caught in the net of mandatory sentences who in their estimation, were not intended to receive such severe sanctions. The best example to personify this point and the illustration that was discussed on several occasions revolved around the addict who was selling in order to support his or her addiction. These people oftentimes were finding themselves faced with serious punishments, despite their behaviors not producing the “tangible rewards” outlined in the third objective. It was understood that the people in this category were receiving something tangible (i.e., money or drugs) for their involvement in drug crimes, but not one person conceptualized and/or categorized this type of offender as someone for whom the determinate sentencing philosophy was targeted.

Those interviewed understood and expressed the idea of turn-style justice, suggesting that without some type of intervention or therapeutic component the cycle of drug use and PWIC to arrest and then recidivism was difficult if not impossible to break regardless of sanction severity. Prosecutors and narcotic investigators expressed sympathy and discussed the pros and cons of attempting to circumvent mandatory minimum charges in order to better assist the addict. Unfortunately, according to some, circumventing the mandatory minimum statutes always does not work because once adjudicated, there is nothing to ensure the addicted offender will seek out or remain in any type of treatment program or facility. It seems as though the individual who engages in drug distribution to support his or her habit will continue to be lumped in with those who partake in the production and distribution of illegal drugs as part of their “enterprise” and punished in similar fashion, despite the addict not receiving the “tangible benefits” outlined in the third objective. Prosecutors and narcotic investigators identified this net

widening component as the most difficult aspect to tolerate concerning the overall effectiveness of mandatory minimums and the main reason why some might argue the guideline's third objective is not working as efficiently and properly as intended.

Obstacles Not Previously Considered

As with any research project, there were some obstacles and difficulties that surfaced throughout the course of this study that should be considered and discussed in order to provide a clearer and more understandable synopsis of the determinate sentencing structure for drug crimes for the calendar year examined. Perhaps the most frustrating element that was not discussed in any of the previous literature reviewed revolves around those individuals who were arrested on multiple occasions for similar crimes while awaiting trial on the first offense for which they were charged.

Repeat Players

There were well over 700 docket numbers that were provided to the researcher for the 2005 calendar year that dealt with people who violated section 30 of the Pennsylvania Criminal Crimes Code which deals with the possession with intent to deliver a controlled substance. These docket numbers were numbered and arranged in chronological order beginning with arrests that took place in the early days of January and ran through December 31, 2005. Of those 700 plus docket numbers involving PWID a controlled substance, the actual number of convicted defendants was 243. Six of the 243 were very different from the others due to very unique legally relevant variables (i.e., jury trial) and were not considered as part of the sample population. Excluding those six individuals left 237 individuals, who still accounted for the 700 plus incidents involving violations of section 30 of the Pennsylvania Criminal Crimes Code.

In order for the researcher to collect the necessary data from the case files for purposes of research and analysis, the docket numbers on the sheets provided by the district attorney's office were matched with offender's names that corresponded to a particular docket number. After all the docket numbers were matched to names, the defendant's file (organized alphabetically, by year) was located and the data for a particular incident were recorded. Upon completing the recording of relevant information and variables of interest, assuming they were properly included in that particular file, the researcher would return the file and continue the process.

Although the process appeared as it would be uncomplicated, difficulties began to mount, not when an individual had several charges pending against him or her for one arrest or investigation, but when an individual was arrested for a violation of section 30 and then rearrested several days, weeks, or months later while awaiting trial on the original infraction. Even more disturbing from an equality or fairness rationale was the fact that many times, the extra violations and arrests aforementioned were subsumed under the initial arrest and plea bargained as one, single infraction. There were some individuals who the researcher began to recognize by name, who were continually arrested for the selling the same type of drug over and over again, while pending a judicial hearing for previous charges. The type of individual described might have four or five charges from separate arrests pending against him where the offense gravity score was calculated to be a 6 or 7 and his prior record score was 4 (prior record score would not increase until he was adjudicated, which is why the prior record score remained constant).

At trial, the offender would plead guilty to the first incident and as part of the plea agreement have the other incidents dismissed or adjudicated concurrently with his original offense without an increase in PRS score. It almost seemed as though many of these defendants were given a free pass to reoffend while awaiting trial on the initial charges. Ideally, the prosecutor should have awaited the outcome of the judge's first decision, re-tabulated the PRS score, and proceeded with the next offense as a separate incident. Although this process appears logical, practicality is necessary to ensure the court's docket continues to move forward.

When speaking to professionals in the field about this phenomenon, some noted that when rearrested, the offender's bail should have been revoked and he should have been held without bail instead of posting bail again and repeating the process. Others simply expressed their frustration and understood my questions and difficulty in understanding the logic behind such practices. Technically speaking, an individual could be arrested once for PWID a controlled substance and possess a prior record score of 6 and an offense gravity score of 4, post bail, and not reoffend while awaiting trial and receive the same sentence as someone who was arrested for PWID a controlled substance with the same PRS and OGS who also posts bail, but was rearrested multiple times for similar infractions while awaiting trial.

It was an arduous and daunting task to keep track of individual offenders who kept getting rearrested for the same type of offense for purposes of ensuring their sentence outcome was not recorded twice as two separate offenders. It also became apparent while recording data that after an individual was arrested for a violation of section 30 of the Pennsylvania Criminal Crimes Code, he might as well post bail and

continue on with his illegal activities. As the researcher identified (and plausibly also the offenders based on the prevalence of incidents) there is little likelihood that additional time will be added to the original sentence for re-offending prior to trial.

Having noted the previous, there were a few instances where sentences would be given that were not concurrent but were consecutive. When asked as to why the judge may have delivered the sentence in such a way, the professionals who work with sentence guidelines and compile the annual reports said that there is oftentimes no rhyme or reason and that it may be just a matter of who was the presiding judge over that particular case. While cases where an offender was sentenced consecutively and not concurrently were not the norm, the question that arises is one that asks what was different about this particular case or offender? Unfortunately, nothing in the case files that the researcher was permitted to include as a variable for the model gave the answer to this question.

Firearm Enhancements

As discussed in chapter 2, sentencing recommendations include two possible Deadly Weapon Enhancement provisions. First, if an offender possessed a deadly weapon, the court will refer to the Deadly Weapon Enhancement/Possessed Matrix (DWE/Possessed Matrix) to calculate the sentence recommendation (Pennsylvania Commission on Sentencing, Title 204, 6th edition, 2005). Second, if it is determined that the defendant used a deadly weapon in the commission of a crime, the court will refer instead to the Deadly Weapon Enhancement/Used Matrix (DWE/Used Matrix) to calculate the sentence recommendation. As previously stated, a deadly weapon includes any firearm, dangerous weapon, or device designed as a weapon or capable of producing death or serious bodily injury. The deadly weapon enhancement modifies the guidelines

ranges for a case. It is not an “add on” to the sentence itself nor should it be considered a separate sentence (Pennsylvania Commission on Sentencing, Title 204, 6th edition, 2005).

The Deadly Weapon Possessed/Used Enhancements were enacted into Pennsylvania in 2005. When reviewing the case files for 2005, not one included an enhancement for a deadly weapon, possessed or used. There were several instances where a weapons charge was included in the arrest report, but nowhere was there an additional five year term added to the punishment in the case where a weapon was present. When questioned about the weapons enhancement and the reason why no one received a more punitive sentence because of the weapon possessed, some suggested it may have been the result of new legislation and people not being familiar or comfortable with how to apply it properly. Others suggested it may have been part of the negotiated plea between the defense and prosecution to leave the weapon out of the equation as part of the deal between the two parties.

The incidents where the researcher observed a weapon present and no additional punishments because of it does not necessarily reflect a breakdown in the sentencing guidelines or mandatory minimum sentencing laws as much as it may indicate the reluctance of police or prosecutors to punish an offender who simply possessed, but did not use a weapon. The reluctance to prosecute might be due to the severity of the punishment the offender would incur if these types of charges and sentencing enhancements were pursued.

One narcotic detective indicated as much and echoed these sentiments during an interview and further stated that the weapons enhancements are there as a form of protection. He, personally, did not feel comfortable in some situations in seeking out the

enhancement for an individual when the weapon was clearly not a part of the drug operation. This detective also stated that since 2005, there has been a tremendous amount of discussion and debate about the weapon in proximity to the drugs and whether or not the weapon was actually used as a weapon as opposed to an ornament or decoration. He gave examples to illustrate his points like finding a firearm in a bedroom closet under dirty clothes when the drug operations were taking place in the basement of a three story house or recovering an old, rusted out rifle that looked as though it could be dated back to Civil War days. This detective commented further by suggesting the weapons enhancements were a good tool for law enforcement and prosecutors and that if he or others in the field started to abuse that tool by charging individuals with such enhancements then he could envision potentially losing that particular tool. Jokingly, he concluded by stating he would have no problem in using the enhancements if the weapons were used or if they were used as a paperweight to keep the drugs in place, but other than that, he was reluctant and could understand why no one received a weapons enhancement provision for the case files examined.

Unfortunately, due to the absence of weapons enhancement charges being filed against any offenders in the 2005 data set, closer examination into the manner in which the provision was administered was not possible. This does not weaken the current research project, but would be a point of consideration had the enhancement charges been used more frequently in determining sentence outcome for said offenders.

Type of Defense Variable

Originally, it was understood that type of defense, private or public, could be determined by examining the case files and including this variable as one of the

independent variables in the model, but this was not the case. The names of the defense attorneys were included in some of the case files and not others. For some of these names, the researcher knew the identity and in some cases whether or not the individual was employed as a public defender. For other files, no name was readily available and if it was included, it could not be determined with certainty that the individual was a private or public defense attorney.

Including type of criminal defense attorney is a variable that should be considered in the future as quality of defense and expertise with the law could influence the type of sentence and length an individual receives for violations of drug laws in the country. Perhaps the plea bargaining process would be different with more experienced, higher priced attorneys, which could result in different sentencing outcomes for convicted offenders, including differences in both incarceration decisions and sentence length. One private attorney, on the other hand, suggested the determinate sentencing movement established a more fair and just system of sentencing because even a lesser tenured or experienced public defender would benefit from having sentences that already were in place for violators who met certain criteria and they would not have to negotiate a plea agreement without margins to guide the agreement. At the present time, these discussions are capricious and pedantic as they are not supported by any research from the present study.

Unexpected Responses

Throughout the literature review, it was discussed that discretion, as well as the administration of professional responsibilities and duties, shifted away from judges and toward prosecuting attorneys (Secunda, 1997; Standen, 1993; Tonry, 1996; Weinstein,

2003). Prior to sentencing guidelines taking root in legislation, prosecutors generally determined who should be charged and what that initial charge should be (Poulin, 1997; Koh, 1992). In short, prosecutors gained additional discretion in their daily duties by having the opportunity to emphasize particular factors of the case or dismiss relevant facts altogether with no justification for their actions. Each charge, then, had the potential to increase a defendant's sentence if found guilty (Secunda, 1997).

When speaking to professionals in the field about the determinate sentencing laws and the strengths and weaknesses associated with this style of justice, the researcher learned that professionals who deal with the ins and outs of determinate sentencing laws really do not consider or reflect upon the successes or failures of this type of administration. It seemed that all parties, from law enforcement to defense attorneys to prosecuting attorneys never really considered the effectiveness or fairness of these type laws until they were asked as part of the interview. Some even commented as much by stating it is just a part of their job and that they never really gave much thought to the reason why they have to do things the way they do them. It seemed as though the impact and equity of determinate sentencing laws and legislation were more a matter of research than of practitioner reflection or opinion. When compelled to consider different components and philosophical justifications, the responses were not always in the direction one would predict.

It was anticipated that defense attorneys would take issue with this shift in discretionary power as it could ultimately impact the sentence outcome of their clients. However, when discussing determinate sentencing protocols and procedures, some defense attorneys felt their counterparts were more limited in how they were allowed to

proceed with a particular case at hand. More tenured attorneys contended that the plea bargaining process was somewhat easier before mandatory minimum sentencing as both sides were better able to come to an agreement without certain requirements and restrictions hanging in the balance.

It was believed that law enforcement personnel would support mandatory minimum sentencing and harsher penalties for drug offenders. This was not the case either as narcotic detectives indicated their personal frustrations with attempting to circumvent charges that would result in certain mandatory minimum sentencing laws to kick in to provide the best care for those suffering from addictions. It seemed as though the detectives interviewed appreciated the mandatory minimum sentencing laws for much different reasons than outlined in the literature review. It added a great deal of humanity and concern for the offender from a law enforcement perspective that was not considered or discussed before in previous literature.

The same could be said of prosecuting attorneys as they mentioned frustrations that revolved around the idea of helping offenders and not wanting to see them relapse and reoffend. Those interviewed seemed to express both a genuine care for the addict and a deep-seated disgust for the dealers who target and take advantage of those suffering. It was surprising to find such empathy and compassion for one type of offender who suffered from an addiction and such determination and persistence for another type of offender who capitalized on the weak. Perhaps the sentiments from police officers and prosecuting attorneys were directed in the manner they were because those interviewed were more established and experienced in their fields and did not feel the need to provide answers to questions that were more in line with contemporary

thought. Regardless, the responses given were such that no other research alludes to or emphasizes conceptualizations and philosophies that echo those included in this sample.

Judicial Fingerprints

Due to availability and access restrictions, the researcher was not able to sit down and interview a judge concerning sentencing outcomes for drug offenders and obtain a judicial viewpoint and perspective about the strengths and weaknesses, limitations and rewards, and function and purpose of the determinate sentencing structure from a judicial point of reference. Prior research suggests that judges have had some of their discretionary power transferred to the prosecuting attorney and that judges are more limited in scope and creativity when deciding the type and length of sentence for an offender. While the fact remains that some of the judicial discretion may have been curtailed by determinate sentencing legislation, evidence was discovered during the course of the current project that suggests judges still have a tremendous amount of power and control in determining the severity of punishment an offender can receive in a court of law.

Due to issues of confidentiality, it was not possible for the researcher to record the name of the presiding judge over a certain case. Although the cases reviewed were all plea bargained, it became very obvious at times what type of sentence to expect from a specific judge, regardless of the case's prior record score or offense gravity score. It seemed as though whether an offender was brought before a judge who was more punitive in nature or one who was more lenient in nature, the fact remained that the presiding judge oftentimes left his or her fingerprints on the sentence outcome.

Judges and Severity of Punishment

Based on the quantitative and qualitative portions of the current study, it became clear that there are judges within the county who have built up a reputation for either being tough on drug crimes or lenient on drug crimes. When compiling the quantitative portion of this project, the researcher began to become familiar enough with the OGS and PRS values and was able to guess, within reason, what type and how long the sentence would be for certain types of offenders who possessed specific PRS and OGS values. More often than not, the researcher was either precisely right or within a few months of the actual sentence imposed. However, when dealing with two specific judges who shall remain anonymous, the researcher oftentimes was remiss with the sentence prediction.

The judge who seemed to be harsher and more severe in terms of sentence outcome seemed to have a greater propensity to distribute consecutive sentences as opposed to concurrent sentences. Concurrent sentences were most certainly the norm, but if a consecutive sentence was administered, it was likely to come from this specific judge. When speaking to professionals in all areas of the criminal justice system, prosecutors and defense attorneys alike, all referred to this judge by name and alluded to the level of punishment this person dished out for drug crimes. Those on the side of law enforcement and the prosecution felt more secure when going before this judge, while defense attorneys stated that they oftentimes were unsure of how things would go, even with a predetermined plea agreement.

Reversely, there was a judge with whom the researcher identified as someone who is more lenient in terms of sentence outcome. In much the same way professionals in the field knew the previous judge discussed for his/her punitive ways, the same

professionals all identified this second judge as someone who was more lenient with punishment. On two separate occasions during the qualitative interview process, the researcher was told a story about an individual who was arrested and charged with PWID of a controlled substance and also charged with simple possession. The defendant was found with a large amount of a controlled substance on his person, individually wrapped in small plastic bags, and a small amount in his vehicle after being pulled over by police.

The large amount on the defendant's person qualified him for a mandatory minimum sentence, while the amount found in the vehicle was such that he would incur a much less serious punishment. There were no questions or issues with the search, chain of evidence, or the defendant's rights. When the defendant went before this specific judge, the judge decided that the large amount on the defendant's person was for personal use and the small amount in the car was for distribution. The amount for "distribution" in the car was not a sufficient enough weight to qualify for a mandatory minimum sentence and the offender was given a much more lenient sentence than the sentence prescribed by law for the weight of the drugs found on an individual.

In much the same way defense attorneys felt a sense of uneasiness when going before the judge who had a reputation for being tougher on drug crimes, law enforcement officers and some prosecutors described similar feelings when going before the judge who was more lenient on drug crimes. When asked what their course of action is in either case, all parties suggested that there was very little that could be done when dealing with a judge as they have the last word about a case in their courtroom.

Due to examples and issues such as the ones described, the researcher believes projects such as this in the future should include a variable for judges. Even if the results

are only used for descriptive purposes, the researcher believes a tremendous amount of unexplained variance could be accounted for by learning if there were judges who held different philosophical beliefs and practices while presiding over certain cases.

Recommendations for Future Research

The determinate sentencing movement, in the form of sentence guidelines and mandatory minimum sentences, hoped to reduce unwarranted, unwanted disparity and punish like offenders similarly. Sentencing guidelines and mandatory minimum sentences have been criticized on the basis of being too complex, too harsh on minor offenders, ineffective, too general for individual reform to take place, and limiting necessary judicial discretion while promoting prosecutorial disparity (Tonry, 1993). When attempting to assess the effectiveness of the determinate sentencing movement on drug offenders in a southwestern Pennsylvania county to determine if it is working as intended, it appears as though more research is needed before any generalizing conclusion can be made.

It appears that in terms of sentence length, the statutes and protocols are achieving their objectives of uniformity and impartiality. Extralegal variables were not significant in determining the length of confinement an individual received for the current sample. Extralegal variables were not significant in any of the hypotheses models, except when 18-20 year olds were included. While extralegal variables played a role in determining the decision to incarcerate when other variables were controlled for, for this sample they had no impact on incarceration lengths. Punishment in terms of the decision to incarcerate and sentence length, are such that like offenders are being punished similarly when controlling for other independent variables. These facts would indicate that, for

this sample, determinate sentencing is working as it is achieving the goals of uniformity and impartiality for the most part.

However, criticisms of mandatory minimum sentencing that persisted in previous research have surfaced in the current study as well. Based on the interviews with professionals at various occupations within the criminal justice field, it seems as though they really do not consider the mandatory minimum sentencing or their philosophical usefulness and rationale when working in the field. The individuals interviewed for this research simply adapt and go about their business with the unstated understanding that these are the rules and they must abide by them. To the outside observer or researcher, determinate sentencing can be very difficult to understand and calculate. To the trained professional, however, it may be a matter of second nature. Scholars may spend months or years reviewing the ins and outs of mandatory minimums and still find language and function to be very complex and confusing while others straight out of law school may take to them as if they had written the laws themselves. Perhaps some people interviewed were not employed before determinate sentencing practices came into existence and mandatory minimums are the only life certain people in the world of criminal justice know and understand. Regardless of the reasons, those included in this study did not indicate the protocols were too complex to understand or follow.

While it is too presumptuous to comment intelligently or cast blame upon prosecutors for potential disparity in sentence outcome, it was the consensus of many of the people interviewed that certain aspects of determinate sentencing were too harsh on minor offenders. The idea that certain types of offenders were not receiving the type of treatment or punishment that would most benefit them and society as a whole suggests

certain aspects of determinate sentencing are ineffective and too general in nature. There is no noticeable distinction or legislative consideration between offenders who engage in drug manufacturing and/or distribution to support a habit and offenders who engage in said activities for purposes of tangible gains or to increase their illegal enterprises.

The recommendation from most professionals concerning this epidemic revolved around the idea of a drug court. Based on the responses of these people, drug courts would assist tremendously in putting some of the humanity back into the court process to provide the best type of treatment and help in deterring people from continuing in a career or life of drug behaviors. This humanistic approach could be achieved in an environment where the positive benefits of determinate sentencing already mentioned would have the potential to continue to flourish and prosper. The researcher strongly agrees with those interviewed that a drug court would be a beneficial route to consider in the county as many of the frustrations and issues people identified could be reduced and/or eliminated altogether while continuing to promote uniformity and impartiality.

Despite the criticisms uncovered in previous studies and throughout some of the literature, it appears as though, for the sample at hand, determinate sentencing is working effectively in the southwestern Pennsylvania County used for this study. Future research should attempt to determine the validity of the findings here that young, nonwhite males (ages 18-20) are incarcerated (v. probation) at a significantly greater rate than similarly offending white males. Additionally, more research is needed that addresses the shortcomings and issues discussed in this research before these conclusions can be generalized to the greater population.

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Appendix A
Request for Consent

Dear Mr. _____,

My name is Eric J. Kocian and I am a doctoral student in the Criminology Department at Indiana University of Pennsylvania. I am writing in response to our conversations to formally offer my appreciation for volunteering your time to assist me in obtaining vital information in support of my dissertation.

As discussed earlier, the focus of my study is to examine sentence outcomes for drug offenders to assess the impact of legally relevant variables and legally irrelevant variables. My research plan is one that involves analyzing the case files for drug offenders and interviewing professionals in the field. To collect this information, case file data will be collected and analyzed for all crimes within the 2005 calendar year for violations of Section 30 of the Pennsylvania Crimes Code. I will be examining the legally relevant variables, such as Prior Record Score and Offense Gravity Score, as well as defendant demographic characteristics, to assess the impact these factors have on sentence outcome. My primary reason for interviewing professionals is to capture the issues that may have impacted the implementation or enforcement of these particular laws. Interviews will also be conducted with various law enforcement professionals from within the county to provide deeper insights into determinate sentencing policies and practices. The interview is projected to last approximately 30 minutes. I will personally conduct the interview. The interview will be audio taped so I can focus on our conversation without distracting from the interview by taking notes.

The Institutional Review Board for the Protection of Human Subjects at IUP has approved the study and every precaution will be taken to ensure the confidentiality of all who participate. I have worked with numerous federal, state, and local law enforcement agencies as part of my professional experiences and internship opportunities throughout my academic career, so I have a better than basic knowledge about the apprehension which occurs when someone is requesting an interview. I guarantee every precaution will be taken to ensure your confidentiality. All the information from the interviews will be compiled and reported as a whole; absolutely no names, departments, or geographical locations will be identified.

I have listed the contact information for myself and my dissertation chair should you have any additional questions. Again, any and all assistance is greatly appreciated.

Sincerely,

Eric J. Kocian, Doctoral Candidate
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Appendix B

District Attorney Letter of Consent (omitted due to confidentiality reasons)

Appendix C

Variable Coding

Offense Gravity Score

Numeric Value according to file

Prior Record Score

Numeric Value according to file

Type of Adjudication

Guilty Plea and Nolo Contendere = 0

Not Guilty Plea = 1

Weapons Possession/Used

Did not possess = 0

Possessed only = 1

Possessed and used = 2

Age

Years old at arrest (continuous)

(21 – 29 [1] all others [0]) (dichotomous)

Race

Other = 0

Hispanic = 1

Black = 2

White = 3

Gender

Females = 0

Males = 1

County of Residence

County resident = 0

Not county resident = 1

Age-Gender Restricted Model Demographic (H₆)

Those without age-gender restricted model effects = 0

Black males in the age range of 21-29 = 1

Appendix D

Letter of Introduction

Dear Mr./Mrs./Ms. _____,

My name is Eric J. Kocian and I am a doctoral student in the Criminology Department at Indiana University of Pennsylvania. I am writing in response to our conversations to thank you for volunteering your time to assist me in obtaining vital information in support of my dissertation.

As discussed earlier, the focus of my study is to examine sentence outcomes for drug offenders to assess the impact of legally relevant variables and legally irrelevant variables. My primary reason for interviewing professionals in the field is to capture any departmental issues that may have impacted the implementation or enforcement of these particular laws. To collect this information, case file data will be collected and analyzed for all crimes within a predetermined calendar year for violations of Section 30 of the Pennsylvania Crimes Code. Interviews will also be conducted with various professionals from within the county to provide deeper insights into determinate sentencing policies and practices. The interview is projected to last approximately 30 minutes. I will personally conduct the interview. The interview will be audio taped so I can focus on our conversation without distracting from the interview by taking notes.

The Institutional Review Board for the Protection of Human Subjects at IUP has approved the study and every precaution will be taken to ensure the confidentiality of all who participate. I have worked with numerous federal, state, and local law enforcement agencies as part of my professional experiences and internship opportunities throughout my academic career, so I have a better than basic knowledge about the apprehension which occurs when someone is requesting an interview. I guarantee every precaution will be taken to ensure your confidentiality. All the information from the interviews will be compiled and reported as a whole; absolutely no names, departments, or geographical locations will be identified.

I have listed the contact information for myself and my dissertation chair should you have any additional questions. Again, any assistance you can provide will be appreciated.

Sincerely,

Eric J. Kocian, Doctoral Candidate
Department of Criminology
G-22 Wilson Hall
Indiana, PA 15705
Phone: (724) 357-3918
Email: nhsj@iup.edu

John A. Lewis, Ph. D.
Department of Criminology
106 Wilson Hall
Indiana, PA 15705
Phone: (724) 357-7740
Email: mfyj@iup.edu

Appendix E

Informed Consent Form

IUP Department of Criminology
Wilson Hall, Room G-22
Indiana, Pennsylvania 15705

Dear Mr./Mrs./Ms. _____,

This interview is designed to gather information about the implementation and enforcement of Pennsylvania's determinate sentencing statutes (mandatory minimum sentencing and sentence guidelines). The interview will focus primarily on your perceptions about: 1) the effectiveness of this legislation, 2) administrative and operational issues that you faced which could have affected the enforcement of these laws, and 3) any professional adjustments or changes that occurred as a result of these particular laws. Once your interview is completed and placed with other completed interview forms, all the responses will be examined and various reoccurring themes will be identified. When the results of the interviews are reported the focus will be on the identified themes, not individual responses.

Your participation is completely **voluntary**. You may choose to withdraw or not participate at anytime simply by stopping where you are in the interview. With your permission, the interview will be audio taped. When the interview is transcribed later, no names, departments, or geographical locations, other than Pennsylvania will be identified. Every effort will be made to ensure your complete confidentiality. The interview transcriptions and audiotapes will be assigned code numbers, and only myself and my dissertation chair will be able to determine which professional provided a particular interview. Also, once the interviews have been transcribed and the data coded, the master list of participant names will be destroyed. Until such time, the master list will be kept separate from all interview notes and tapes, and will be secured in my private home office.

There are no known risks for participating in this research, which has been reviewed and approved by the Institutional Review Board for the Protection of Human Subjects at IUP (724 357-7730). Also, there will not be any penalty for non-participation. There will be no benefit for participating other than to assist the researcher.

The only personal data, which will be solicited, are the interviewees name, position/title, and number of years in current professional occupation. Personal data is requested only for the research proposed. If you are not comfortable providing the personal data, you are solicited to still complete the interview. All completed field notes, interview transcriptions, and audiotapes of interviews will remain secured in my private home office unless the dissertation committee members need to access them. At their request, these notes, transcriptions, and audiotapes will be available for transfer from my home office to their office where they will be secured. Collected personal data will be maintained on a master interview roster and only the researcher and the dissertation chair will have access to it.

If at any time during or after the interview you have any questions, please ask. You can contact Eric J. Kocian or Dr. John Lewis at the address or telephone number listed below.

Your participation in this research is very important to us and we thank you for your assistance.

Sincerely,

Eric J. Kocian and
John A. Lewis, Ph.D.
IUP Dept. of Criminology
Indiana, PA 15705
(724) 357-3918
(724) 357-7740

Interviewees signature

Permission to audio record Yes ____ No ____