

SENTENCES FOR ADULT FELONS IN WASHINGTON: IDENTIFYING CHANGES THAT COULD REDUCE COSTS WITHOUT ENDANGERING PUBLIC SAFETY —INTERIM REPORT—

The 2003 Washington State Legislature directed the Washington State Institute for Public Policy to undertake an analysis of Washington's sentencing structure for adult felons. The goal of the study is set forth clearly in the authorizing legislation:¹

The Institute shall determine whether any changes could be made to the current state sentencing structure to address prison overcrowding and the need for new prison construction, giving great weight to the primary purposes of the criminal justice system. These purposes include: Protecting community safety; making frugal use of state and local government resources by concentrating resources on violent offenders and sex offenders who pose the greatest risk to our communities; achieving proportionality in sentencing; and reducing the risk of reoffending by offenders in the community.

In short, the main task for this study is to determine if there are changes to Washington's sentencing structure that could reduce costs without endangering public safety. Of course, any reduction in prison use reduces prison costs. The main analytical task, however, is to see if there are particular types of sentences that could be reduced without increasing crime.

The study requires an interim report by December 15, 2003, and a final report by March 15, 2004.

Since the analytical work on this project is in process, this interim report describes the research plan, as well as the steps taken so far. In particular, to take account of differential risk levels of our study group, we first had to complete a study of the Department of Correction's (DOC) risk assessment.²

¹ ESSB 5404 Sec. 608(2), Chapter 25, Laws of 2003.

² R. Barnoski, *Analysis of the Department of Correction's Risk Assessment* (Olympia: Washington State Institute for Public Policy, forthcoming).

Background: Washington's Adult Sentencing Laws

This study takes place within the context of sentencing policies for adult felony offenders in Washington. The basic framework for Washington's current adult sentencing laws has been in place since 1984, when the state's Sentencing Reform Act (SRA) went into effect.³

Each state's sentencing policies determine which convicted offenders will be incarcerated, and for how long. In more than half the states, the judicial branch of government has wide flexibility in making these two decisions. Also, executive branch agencies (parole boards and correctional agencies) typically have considerable influence over how long offenders remain incarcerated.

In contrast, the Washington legislature has asserted the primary role in determining these decisions for felonies. With passage of the SRA, Washington has a form of "presumptive determinate" sentencing.

Under this system, the Washington legislature enacts a statewide "sentencing grid" that judges must use to sentence convicted offenders.⁴ Washington's grid includes two basic factors: the severity of a convicted offender's current offense, and the offender's prior criminal history. The grid determines the range of sanctions within which a sentence must be imposed. Judges can make case-by-case exceptions to the legislature's sentencing grid, but the law presumes that the grid will determine the sentences received for nearly all

³ For a full history of Washington's juvenile and adult sentencing systems, see D. Boerner and R. Lieb, "Sentencing Reform in the Other Washington," in *Crime and Justice: A Review of Research*, Volume 28, ed. Michael Tonry (Chicago: University of Chicago Press, 2001).

⁴ Washington also has a grid for sentencing juvenile offenders. The juvenile grid, however, is not the subject of this research.

offenders.⁵ County prosecutors also have a central role in Washington's sentencing system by determining the charges that are filed in a case.⁶

Since passage of the SRA, the legislature has periodically returned some discretion to the judicial and executive branches. The sentencing framework established nearly 20 years ago, however, continues to operate for most sentencing decisions.

Research Design

The goal for this research is to determine whether there are changes to Washington's sentencing grid that would save money for state and local governments but not reduce public safety. To study this question, the Institute is examining the relationship between the legislature's changes to Washington's sentencing laws in the last 15 years and how these changes have affected the recidivism rates of offenders. That is, in the last decade and a half, the legislature has changed some sentences, often by increasing the lengths of stay for certain crimes. In this research, we are examining the impact of these changes on the recidivism rates of the offenders.

To carry out this research, the Institute will use its criminal justice research data base which contains information from the Department of Corrections and the Administrative Office of the Courts. These data include each offender's offense severity level and offender score (the two elements on the sentencing grid). In addition, the data base includes prior criminal records, current offenses, demographic information, and records of any recidivism events in Washington. The Institute's focus thus far has been to ensure these data will be sufficient to address the legislative questions.

To test the effect of sentencing changes on recidivism, we will compute the sentence that previous populations of offenders would have received under the current sentence guidelines. We will then create study groups of offenders where some of these offenders will have been sentenced under the current guidelines while others will have been sentenced under earlier guidelines. These two groups should have different lengths of stay in prison, or possibly

⁵ The record indicates that this presumption is correct. Recent data show that judges impose sentences outside the grid's ranges in only 3.6 percent of adult cases. Source: Institute analysis of data from the Washington State Sentencing Guidelines Commission, *Statistical Summary of Adult Felony Sentencing, Fiscal Year 2001*.

⁶ Boerner and Lieb (2001) p. 96-97.

some will have been sentenced to jail under the old guidelines but now are sentenced to prison. We will then determine if those receiving longer sentences or prison sentences have different recidivism rates than comparable offenders who in the past received a different sentence. One key to the validity of this study rests on identifying offenders sentenced in the past who are comparable to those currently sentenced, yet received a different sentence due to changes the legislature has made in the guidelines. A second key is to utilize the findings from our study of DOC's risk assessment to control for other relevant differences between our study groups.⁷

If this modeling approach is successful, we will then be able to estimate whether specific legislative changes to the grid affected recidivism rates. If the answer is that some of these changes have not affected recidivism rates, it will be possible to perform cost-benefit calculations and make inferences about how further changes to the grid could accomplish the two legislative goals for this study: save money but not decrease community safety.

It is important to note that this research design will not enable us to study the *general* deterrent effect of the changed sentencing laws. That is, we will not be able to ascertain whether the sentences deterred would-be criminals from engaging in crime in the first place. The Institute has previously estimated the combined effect of incarceration on deterrence and incapacitation.⁸

In addition, because of the retrospective nature of this study, we cannot examine sentences with extremely long durations. To estimate how sentences affect recidivism rates for two years following release, offenders in the study sample must have been released to the community no later than 1999, yet they also must have been affected by a legislative change to the guidelines sometime between 1986 and 1999.

For additional information on this project, contact Steve Aos at (360) 586-2740 or saos@wsipp.wa.gov.

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⁷ Barnoski, forthcoming.

⁸ S. Aos, *The Criminal Justice System In Washington State: Incarceration Rates, Taxpayer Costs, Crime Rates, and Prison Economics* (Olympia: Washington State Institute for Public Policy, 2003).