

REGULATED AND UNREGULATED SENTENCING DECISIONS: AN ANALYSIS OF FIRST-YEAR PRACTICES UNDER MINNESOTA'S FELONY SENTENCING GUIDELINES

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Determinate sentencing reform in Minnesota aimed at enhancing sentencing uniformity and neutrality. According to official reports by the Minnesota Sentencing Guidelines Commission, both of these goals were largely (although not completely) achieved during the first year of guideline implementation. However, methodological shortcomings in these reports question the true effectiveness of sentencing reform. Moreover, Minnesota's felony sentencing guidelines do not encompass the full range of sentencing options available to the courts. Our study reanalyzes the Commission's data to evaluate the degree of sentencing uniformity and neutrality achieved under regulated and unregulated sentencing decisions. Our results generally confirm the Commission's reports that regulated sentencing practices were significantly more predictable and neutral than unregulated practices. We conclude that Minnesota's reform efforts have succeeded where those other states have failed because of the presumptive (i.e., legally mandated) nature of their sentencing guidelines.

I. INTRODUCTION

Demands for greater determinancy in sentencing have been heard for well over a decade. Although these demands have been grounded in diverse political and correctional ideologies,¹ all have the common goal of constraining judicial discre-

The authors would like to acknowledge the assistance of Kay A. Knapp and the Minnesota Sentencing Guidelines Commission for providing the data for this study. We would also like to thank the editors and anonymous reviewers of the *Law & Society Review* for their helpful comments and suggestions. This project was supported in part by a grant from the Office of Graduate Studies and University Research at the University of Wisconsin-Eau Claire.

An earlier version of this article was presented at the Annual Meeting of the American Sociological Association, Washington, D.C. 1985.

¹ Useful discussions of the various ideological underpinnings drawn upon by advocates of determinate sentencing reform can be found in Travis (1982), Greenberg and Humphries (1980), and Clear (1978). These discussions, as well as those by such critics of determinate sentencing (at least in the form

LAW & SOCIETY REVIEW, Volume 20, Number 2 (1986)

tion so that sentencing outcomes will be more predictable, more uniform, and more socioeconomically neutral than under indeterminate systems. After a period of relative neglect, and not infrequent derision, determinate sentencing reform has emerged as a "national movement" (Travis, 1982). Today, over twenty-five states have implemented some type of determinate sentencing reform (Eskridge, 1984), and legislation has recently been enacted that will create a determinate sentencing system at the federal level.

For those concerned with the legal rights for the socially disadvantaged, this growing reform movement holds much promise. As numerous studies over the years have shown, minorities, the poor, and other disadvantaged groups have suffered most as a result of the sentencing disparities permitted under indeterminate systems.² Indeed, as Greenberg and Humphries (1980) remind us, these groups and their political allies (often organized through prisoners' rights organizations) were among the first to agitate for determinate sentencing reform.

Unfortunately, determinate sentencing reform, at least as implemented in most states, has generally fallen short of expectations. Most reforms have failed to alter sentencing practices substantially (see Carrow, 1984; Blumstein *et al.*, 1983; Cohen and Tonry, 1983; Casper *et al.*, 1982; Rich *et al.*, 1981), and, where changes have occurred, they have tended to be associated with increased penal sanctions and rising prison populations (see Kramer and Lubitz, 1984; Pointer *et al.*, 1982; Hussey and Lagoy, 1981; Clear *et al.*, 1978).

One apparent exception to this general trend is the reform effort undertaken in Minnesota by the Minnesota Sentencing Guidelines Commission (hereafter MSGC). The Minnesota reforms are, on paper, one of the most rigorous programs in the United States. Moreover, according to the Commission's initial report (MSGC, 1982), Minnesota sentencing practices achieved significant increases in both uniformity and neutrality during the first year the guidelines were in effect, and did so without escalating penal sanctions or prison populations (Knapp, 1982; Blumstein *et al.*, 1983). A subsequent report (MSGC, 1984) in-

adopted in Minnesota) as Rosett and Cressey (1976) and Wilkins *et al.* (1978), also include summaries of the many reservations commonly expressed about determinate sentencing systems. For other discussions of the movement toward determinate sentencing, see Harris (1975), von Hirsch and Hanrahan (1981), and Blumstein *et al.* (1983).

² This assertion concerning socioeconomic biases in sentencing practices has not been without its detractors. For recent discussions of this controversy, see Miethe and Moore (1984), Zatz (1984), and Spohn *et al.* (1982).

icated that these trends have continued during the first three years the guidelines have been in place.

Yet, while it is clear that Minnesota's determinate sentencing system has successfully resisted any tendency toward escalating penal sanctions, there are questions that can be raised regarding its effect on sentencing neutrality. First, the MSGC's conclusions are based almost exclusively on descriptive statistics comparing, for example, the proportion of blacks and whites receiving a certain type of sentence before and after guideline implementation. There is only minimal statistical control for confounding effects. For instance, in the analysis of racial neutrality, the only control variables are offense seriousness, prior convictions, and jurisdiction. Even fewer controls are imposed in the analysis of gender neutrality and the effects of employment status (see MSGC, 1982: 37-41; 1984: 61-69). Although useful in some respects, analyses of this type do not permit a rigorous examination of the extent to which socioeconomic or case-processing variables may function as *determinants* of sentencing outcomes. Such an examination is crucial if we are to assess the effectiveness of the Minnesota model in bringing about greater equality in the imposition of criminal sanctions.

To more rigorously test the effectiveness of the Minnesota system, we performed regression analyses on both regulated and unregulated sentencing practices. By comparing the results, we can gauge the extent to which the sentencing guidelines enhanced sentencing neutrality. First, however, we must present a brief overview of Minnesota's determinate sentencing system to better delineate its intended goals, the parameters of its authority over sentencing decisions, and its unique qualities relative to other efforts at determinate sentencing reform.

II. DETERMINATE SENTENCING IN MINNESOTA

Minnesota's felony sentencing guidelines went into effect on May 1, 1980 (1978 Minn. Laws 244).³ Like several other states, Minnesota adopted a commission approach to sentencing reform. However, the particular structure of the system developed by the MSGC differs significantly from those in other states. The developmental history of guideline construction in Minnesota has been documented extensively (see Moore and Miethe, 1985; MSGC, 1984; Martin, 1983; Knapp, 1982; von Hirsch, 1982). In this section, therefore, we will focus on those

³ Unless otherwise specified, discussion of the MSGC's authority over guideline construction is taken from Section 244.09 of the act.

structural characteristics of the Minnesota system that define its authority over sentencing practices and contribute to its uniqueness as a model of sentencing reform.

First, Minnesota's guidelines differ from those in most other states in ways that would probably increase judicial resistance to implementation. The MSGC took a prescriptive rather than descriptive approach to guideline construction. With a descriptive approach, empirical studies of past sentencing practices are used to determine the types of sanctions judges have usually imposed in various types of cases. These normalized practices are then codified as the standards used to guide future sentencing practices. By contrast, the MSGC saw itself as a policy-making body charged with prescribing the form that future sentencing practices *should* assume (see MSGC, 1982: 6–8; von Hirsch, 1982: especially 171–176).

Second, the MSGC adopted a “modified just-deserts” (retributionist) theory of criminal punishment in which the severity of a criminal sanction is apportioned primarily on the basis of the seriousness of convicted offense and, to a lesser extent, the offender's criminal history. It is, in essence, a sentencing philosophy that values punishment of the act (and past acts) over utilitarian concerns such as deterrence, rehabilitation, and isolation (for extended commentary, see MSGC, 1982: 6–12; von Hirsch, 1982: 182–191).

The practical consequences of this philosophy were twofold. First, it accorded offense seriousness greater importance in determining sentencing decisions than had been true in the past. Moreover, the Commission decided that offenses against persons should be sanctioned more severely than those against property. The Commission institutionalized this priority in its ranking of offense seriousness. Second, the retributionist approach eliminated from consideration many offender and case characteristics that had played a role in past sentencing practices. Indeed, the MSGC committed itself not only to the general principle that sentencing practices “should be neutral with respect to race, gender, social, or economic status” of the offender (MSGC, 1982: 1), but also listed specific factors that judges were prohibited from taking into account when determining sentences. These include the offenders' race, sex, employment status, education, and marital status and the defendant's exercise of constitutional rights during the adjudication process (MSGC, 1983: 16). In both instances, the prescriptions and proscriptions derived from the Commission's sentencing philosophy represented significant departures from past sentencing practices.

Third, the Commission extended the authority of the guidelines to include decisions on both disposition (i.e., a stayed or executed sentence) and duration (i.e., length of sentence). An offender's location in a sentencing "grid" establishes sentence duration. A staggered "dispositional line" that runs across the grid determines whether the sentence should be stayed or executed.⁴ The slope and shape of this dispositional line reflects the Commission's policy choices concerning those offense-offender combinations for which imprisonment is deemed most appropriate. Determinate sentencing systems in most other states do not explicitly regulate this crucial in-out decision and consequently allow judges considerably greater sentencing discretion.

Fourth, the Minnesota guidelines are presumptive rather than advisory. That is, sentencing guidelines in Minnesota carry the weight of law. While the guidelines provide for departures from the presumptive sentence, these departures are governed by both specific and general legal standards and must be justified in writing. The specific legal standards include a list of offense attributes (e.g., excessive brutality toward the victim) that judges may legitimately use in justifying a departure *and* a list of case and offender attributes (e.g., the exercising of one's right to trial, race, and social class) that may not be considered in departure decisions. All other departures from the guidelines must be justified by the general legal standard of "substantial and compelling" reasons. Any sentence based upon a prohibited consideration may be appealed (see MSGC, 1984: 121-123). By contrast, under advisory systems, compliance with sentencing standards is achieved solely on a voluntary basis.

The MSGC, through these changes, established a set of sentencing standards that is broader in scope than most other systems and significantly reduced the range of factors that may be legitimately considered in sentencing decisions. Moreover, because of the presumptive nature of the guidelines, the MSGC not only altered sentencing practices in Minnesota dramatically, but was able to do so authoritatively. Given the lack of a similar legal mandate in other states, it is not surprising that other reforms have produced little change in sentencing practices (see Cohen and Tonry, 1983; Rich *et al.*, 1981).

For all their rigor, however, the Minnesota guidelines do not totally eliminate judicial discretion. First, offenders con-

⁴ For a full description of Minnesota's sentencing grid, see MSGC (1982; 1983; 1984).

victed of misdemeanor or gross misdemeanor offenses fall outside the authority of the guidelines. Second, the guidelines do not address the type, conditions, or length of sentence imposed on felons who receive a stayed prison sentence.⁵ They simply limit judges to those sentencing options “legally permissible” under the Minnesota criminal code. Given that over 80 percent of all convicted felons receive a stayed sentence (MSGC, 1982), judges retain considerable discretionary authority in this regard. The court may, for instance, impose a stay of execution or a stay of imposition. The practical effect of this difference is that a stay of imposition will be recorded as a misdemeanor conviction while a stay of execution will remain a felony conviction. Third, the specific conditions imposed on offenders may include various types of supervised or unsupervised probation, fines, restitution, community treatment programs, detention for up to one year in jail or the workhouse, or some combination of the above. Fourth, the duration of the sentence may range well beyond that served under an executed sentence (MSGC, 1983: 26–28).⁶ In all these instances, the decision as to which of these options to exercise remains that of the sentencing judge.

In addition, judicial discretion has not been fully eliminated even with respect to those decisions falling under guideline authority. The courts retain limited authority to determine the appropriateness of sentencing departures (*ibid.*, pp. 21–24), and they may, within limits established by the Commission, exercise some discretion in determining length of imprisonment (*ibid.*, pp. 13–15). The guidelines explicitly provide for a durational range of up to 15 percent around the presumptive sentence length. While this range of allotted variation may be as little as two months at the lower end of the sentencing grid, at

⁵ Although the legislature granted the MSGC the authority to develop guidelines for nonprison sentences, the Commission chose not to do so. There are two apparent reasons for this decision. First, from a pragmatic point of view, developing guidelines for stayed sentences would have greatly complicated the MSGC’s work during the initial stages of guideline construction. Second, allowing judges greater flexibility in disposing of cases involving less serious offenses and offenders probably lessened political resistance to the guidelines from those deeply committed to a rehabilitative sentencing philosophy. At any rate, the MSGC still retains the authority to develop guidelines for nonprison sentences and may do so at some future date (see Knapp, 1984: 189; MSGC, 1983: 26–28).

⁶ Minnesota’s determinate sentencing law did not eliminate statutory maxima and minima on sentence lengths established under Minnesota’s 1963 criminal code; it merely constrains sentencing practices governed by the guidelines to those bounds set by the MSGC. Sentencing decisions not governed by the guidelines continue to fall under the authority of the 1963 code.

the upper end it may be as much as thirty months (see MSGC, 1982: 2).

A. *Summary and Research Objectives*

One of the principal goals of Minnesota's determinate sentencing law is the reduction of sentencing disparities. Toward this end, Minnesota's sentencing guidelines set forth explicitly prescribed and proscribed factors to be used in determining sentencing outcomes. More specifically, Minnesota's guidelines require that sentencing outcomes be determined primarily by the seriousness of convicted offense and the offender's criminal history, and that social and case-processing variables play no role in sentencing decisions. However, these prescriptions and proscriptions apply only to sentencing practices within the authority of the guidelines and are not binding on nonguideline practices.

The main objective of this study is to assess the extent to which sentencing practices falling under guideline authority differ from those outside the guidelines. With respect to sentencing neutrality, our general hypothesis is that proscribed variables will explain little of the variance in regulated sentencing decisions, but will be significant determinants of unregulated outcomes. We will also test for possible indirect effects of proscribed variables on regulated sentencing practices.

III. METHODS

A. *Data*

The data for this study, provided by the MSGC, come from a sample of 1,728 felony cases processed during the first year of guideline implementation. The sample included the population of all cases resulting in imprisonment ($N = 827$) and a subsample of those resulting in stayed sentences, stratified by race, gender, and county. Data from this sample include information on alleged as well as convicted offenses, criminal history, plea negotiations, and a variety of offender and offense characteristics. Because of missing data on some variables, the final sample consisted of 1,523 cases.

B. *Variables*

The variables selected for analysis, along with coding schemes and summary statistics, are shown in Table 1. *Outcome (endogenous) variables* are the ultimate dependent variables in the analysis and are of two types: those governed by the guidelines and those outside guideline authority. Included

Table 1: Variables, Coding Schemes, and Summary Statistics

Variables	Codes	Mean or Percent ^a	<i>N</i>
<u>Outcome Variables</u>			
A. Within Guidelines			
Actual disposition (PRISON)	0 = Stay 1 = Prison	.481	1,523
Length of prison sentence (Time)	Time in months	35.019 (30.004)	732 ^b
B. Outside Guidelines			
Type of stay (STAYEX)	0 = Stay imposition 1 = Stay execution	.589	778 ^c
Duration of stayed sentence (STAYDUR)	Time in months	45.014 (26.533)	778 ^c
Confinement as condition of stay (JAIL)	0 = No 1 = Yes	.566	778 ^c
<u>Predictor Variables</u>			
A. Prescriptive Variables			
Presumptive disposition (PREDISP)	0 = Stay 1 = Executed	.420	1,523
Presumptive duration (PREDUR)	Time in months	33.965 (21.194)	732
Seriousness of convicted offense (SEVERITY)	10-point scale(1/10)	4.184 (2.070)	1,523
Criminal history score (HISTORY)	7-point scale(0/6)	1.689 (1.976)	1,523
Mitigated dispositional departure (MITDISP)	0 = No 1 = Yes	.042	1,523
Aggravated dispositional departure (AGGDISP)	0 = No 1 = Yes	.102	1,523
Mitigated durational departure (MITDUR)	0 = No 1 = Yes	.102	1,523
Aggravated durational departure (AGGDUR)	0 = No 1 = Yes	.049	1,523
Consecutive sentence (CONSEC)	0 = No 1 = Yes	.063	732
Weapon used in crime (WPNUSE)	0 = No 1 = Yes	.268	1,523
Crime against a person (PERSON)	0 = No 1 = Yes	.352	1,523
Multiple convictions (MULTCONV)	0 = No 1 = Yes	.173	1,523
B. Proscribed Variables			
Race 1 (WHITE)	0 = Black/other 1 = White	.631	1,523
Race 2 (BLACK)	0 = White/other 1 = Black	.187	1,523
Gender (FEMALE)	0 = Male 1 = Female	.120	1,523
Employment at sentencing (EMPLOY)	0 = No 1 = Yes	.196	1,523

(Table 1, cont'd)

Employment stability (CAREER)	0 = No 1 = Yes	.125	1,523
Educational attainment (HSGRAD)	0 = <HS grad 1 = HS grad	.525	1,523
Marital status (SINGLE)	0 = Other * 1 = Single	.594	1,523
Multiple offenses charged (MULTOFFS)	0 = No 1 = Yes	.397	1,523
Plea bargain on charge (PBCHAR)	0 = No 1 = Yes	.395	1,523
Plea bargain on sentence (PBSENT)	0 = No 1 = Yes	.385	1,523
Jurisdiction (HENRAMCO)	0 = Rural 1 = Urban	.500	1,523
Trial conviction (TRIAL)	0 = Plead guilty 1 = Trial conviction	.083	1,523

^a Standard deviations are given in parentheses.

^b Includes only those cases resulting in a prison sentence.

^c Includes only those cases receiving a stayed sentence.

among the former are whether the presumptive sentence was stayed or executed (PRISON) and length of prison sentence (TIME) for those receiving an executed prison sentence. Outcomes not governed by the guidelines include the type of stayed sentence imposed (STAYEX), duration of stayed sentence (STAYDUR), and whether confinement in jail or the workhouse was a condition of the stayed sentence (JAIL).

Predictor (exogenous) variables are also of two types: prescriptive and proscriptive. *Prescriptive variables* are those factors that judges are legally required to take into consideration when imposing sentence. Primary among these considerations are the presumptive disposition (PREDISP) and duration of imprisonment (PREDUR) as well as the two principal determinants of a presumptive sentence—seriousness of convicted offense (SEVERITY) and criminal history score (HISTORY). Other considerations falling within this category of factors are whether the offender received a mitigated (MITDISP) or aggravated (AGGDISP) dispositional departure or a mitigated (MITDUR) or aggravated (AGGDUR) departure and, in the case of multiple convictions, whether the sentences were to run concurrently or consecutively (CONSEC). These latter considerations are all decisions governed by the guidelines. We will therefore also analyze them to determine compliance with guideline directives.

We have also included several additional case attributes as prescribed variables. These include whether a weapon was used in the commission of the offense of conviction

(WPNUSE), whether the offender was convicted of a crime against a person (PERSON), and whether there were convictions for multiple offenses (MULTCONV). Although the guidelines do not attach specific penalties to weapons use, the Minnesota criminal code mandates a prison sentence in such cases (Minn. Stat. § 609.11 [1976]) and the guidelines outline the options available to the sentencing judge when a conflict arises between this statutory requirement and the presumptive sentence. Even though the Commission institutionalized its decision to punish crimes against persons more severely than those against property in its rankings of offense seriousness, we included the variable PERSON to test for any independent effect this consideration might have on sentencing practices within the guidelines and to determine the extent to which the crimes against persons affected sentencing practices outside the guidelines. Finally, we included the variable MULTCONV simply to control for any confounding influences that multiple convictions might have had on both presumptive and actual sentencing outcomes.

Proscribed variables are those case and offender attributes the MSGC declared *should not* influence sentencing outcomes. Primary among those factors explicitly prohibited by the Commission are the offender's socioeconomic characteristics and exercise of his or her legal rights. Included here are measures of race (WHITE, BLACK), gender (FEMALE), employment status at sentencing (EMPLOY), long-term employment stability (CAREER) (e.g., having a skilled trade or profession), educational attainment (HSGRAD), marital status (SINGLE), and whether the offender took the case to trial (TRIAL).

We included four additional measures in the category of proscribed variables. First, although some members of the Commission suggested that sentences be modified to account for suspected (but unproven) offenses, this option was finally rejected by the Commission in favor of limiting punishment to convicted offenses only. To test compliance with this aspect of the MSGC's policies, we have included a measure of whether the offender was originally charged with more than one offense (MULTOFFS). We have also included measures of whether the offender received a plea bargain on charges (PBCHAR) or sentence (PSENT) for similar reasons. In addition, although not explicitly mentioned in the Commission's official documents, we may reasonably assume that it was the Commission's intent that statewide sentencing policies not vary by jurisdiction. Hence, we have included a dummy variable

(HENRAMCO) to test for differences in sentencing practices between rural and urban courts.⁷

C. *Analysis*

Before proceeding, an elaboration of our general hypotheses is in order. As indicated, because of the presumptive nature of the guidelines, we expect regulated sentencing practices to exhibit substantial compliance with guideline directives. More specifically, we should find that presumptive sentence, in conjunction with sentencing departures, consecutive sentences, and weapons use, will explain virtually all the variation in dispositional outcomes. This hypothesis must necessarily be softened somewhat in the case of durational outcomes because of the 15 percent range of variation permitted judges when setting actual length of imprisonment. Similarly, seriousness of convicted offense, followed by the offender's criminal history score, should be the primary determinants of presumptive sentence. By contrast, we expect a null effect regarding the impact of prescriptive and proscribed variables on sentencing departures and consecutive sentences. Since the Commission intended that such exceptions to the presumptive sentence be sufficiently situationally specific as to prevent their general application (see MSGC, 1983: 20), we should find that our predictor variables exert little discernible influence on these sentencing decisions. Finally, proscribed variables should have no influence on any of the guideline sentencing outcomes, either directly or indirectly.

Unregulated sentencing practices, on the other hand, should reflect both greater jurisdictional diversity and the greater influence of variables associated with the types of offender-oriented utilitarian concerns (e.g., deterrence, rehabilitation, and incapacitation) more generally found in preguideline practices (MSGC, 1982; Miethe and Moore, 1984). More specifically, offender (e.g., race and employment) and case-processing (e.g., jurisdiction and nonplea adjudication) variables should ex-

⁷ An urban-rural dichotomy was chosen for the analysis of jurisdictional differences partly because urban cases account for half of all cases in the sample (see Table 1) and partly because the vast majority of all minority offenders are processed in urban jurisdictions (represented by Hennepin and Ramsey counties). By controlling for urban and rural jurisdictions, we can thus control for any confounding effects this may have on our analysis of racial differences.

Certain variables typically included in analyses of sentencing practices (e.g., the offender's age or drug use) were omitted from the present analysis because of their omission in the guidelines as explicitly prescriptive or proscribed factors. We feel that these omissions are justified since the primary objective of our analysis is to test for the relative effects of prescriptive and proscribed variables on sentencing outcomes, not to construct a "best-fit" model.

plain more of the variation in unregulated than regulated practices. We should also expect these differences between unregulated and regulated practices to be especially pronounced during the period under investigation, since it is during the first year of guideline implementation that the legacy of past practices and philosophies should be strongest.

It is important to note in this context that the MSGC's offense-oriented guidelines did not emerge *ex nihilo*. For almost five years prior to implementation, sentencing reform had been a topical political issue in Minnesota. Indeed, the MSGC itself was the result of a political compromise worked out among delicately balanced forces within the state legislature (MSGC, 1982; Martin, 1983). Well before the sentencing guidelines went into effect, judges were under pressure to modify their sentencing practices. Moreover, the MSGC engaged in a fairly elaborate political and educational campaign aimed at winning acceptance of its guidelines and, at least tacitly, of the sentencing philosophy that informed them (MSGC, 1984; Knapp, 1984). It is possible, therefore, to treat the magnitude of difference between regulated and unregulated sentencing practices as at least a partial test of the Commission's and the public's effectiveness in informally reducing judicial reliance on utilitarian sentencing strategies.

We begin by examining the extent to which sentencing practices governed by the guidelines comply with the prescriptions and proscriptions of the MSGC. Next, we employ our model of prescriptive and proscribed variables to predict presumptive sentence, dispositional and durational departures, and the use of consecutive sentences. This will permit us to estimate the "indirect" effect of these two sets of variables on actual sentencing outcomes. Finally, we estimate models for sentencing decisions beyond guideline authority to assess the impact of prescriptive and proscribed variables on these outcomes.⁸

⁸ Although problems may arise when estimating a dichotomous dependent variable using ordinary least squares (OLS) (Hanushek and Jackson, 1977; Aldrich and Cnudde, 1975), it has been shown that, with large sample sizes and mean values approximating .5 on the dependent variable (conditions that apply in the present sample), OLS results are similar to those obtained using alternative estimation techniques such as logit or loglinear analysis (Roistacher and Goodman, 1976; Aldrich and Cnudde, 1975; Knoke, 1975). However, OLS estimation of dichotomous dependent variables typically results in conservative measures of explained variation and significance tests (Goodman, 1976).

IV. RESULTS

A. Sentencing within the Guidelines

The results of this phase of the analysis are presented in Tables 2 and 3. As Table 2 shows, presumptive disposition (PREDISP), followed by aggravated (AGGDISP) and mitigated (MITDISP) dispositional departures, are virtually the sole determinants of whether an offender receives a stayed or executed sentence (PRISON). Jurisdiction (HENRAMCO), plea bargaining on sentence (PBSENT), and employment stability (CAREER) also achieve statistical significance, but their sub-

Table 2: Standardized Regression Coefficients for Models Predicting Sentencing Outcomes within Guideline Authority

Variables	PRISON	TIME	PREDISP	PREDUR
<u>Prescriptive</u>				
PREDISP	.961 ^a	—	—	—
PREDUR	—	.697 ^a	—	—
SEVERITY	.006	.072	.496 ^a	.905 ^a
HISTORY	.010	.000	.488 ^a	.607 ^a
PERSON	.009	-.011	.111 ^a	-.001
WPNUSE	.002	-.046	.140 ^a	.007
CONSEC	—	.051 ^b	—	—
AGGDISP	.599 ^a	—	—	—
MITDISP	-.385 ^a	—	—	—
AGGDUR	—	.379 ^a	—	—
MITDUR	—	-.131 ^a	—	—
MULTCONV	.006	.005	.012	.018
<u>Proscribed</u>				
MULTOFFS	-.004	-.044 ^b	.006	.024
PBCHAR	-.000	.038	-.016	-.056 ^b
PBSENT	-.008 ^b	-.033	-.031 ^b	.016
TRIAL	-.001	.055 ^b	.020	.017
HENRAMCO	-.009 ^b	.023	.024	-.036
BLACK	.001	-.038	.036	-.058
WHITE	-.001	-.011	.100 ^a	-.054
HSGRAD	-.002	.024	.001	.009
FEMALE	-.002	-.014	.028	-.010
EMPLOY	.005	-.024	-.002	-.029
CAREER	.010 ^b	-.018	.030	-.003
SINGLE	.005	.006	-.001	-.049 ^b
<i>N</i> =	1,523	732	1,523	732
<i>R</i> ² =	.980	.744	.684	.607
<i>R</i> ² adj =	.980	.737	.680	.597

^a Significant at $p < .01$.

^b Significant at $p < .05$.

stantive impact is minimal. The same is true for length of prison sentence (TIME), although the effects of proscribed variables are slightly greater. Thus, as expected, presumptive sentence and allowable departures explain virtually all the variations in actual dispositional outcomes and the great majority of variation in durational decisions.⁹

In our analysis of the indirect effect of prescriptive and proscribed variables on sentencing outcomes, we find that, in accordance with guideline policies, seriousness of convicted offense (SEVERITY) and criminal history (HISTORY) are the primary determinants of both presumptive disposition (PREDISP) and presumptive duration (PREDUR) (see Table 2). In the case of presumptive disposition, conviction for a crime against a person (PERSON) and weapons use (WPN-USE) contributed slightly to the severity of presumptive sentence. Once again, proscribed variables had only minimal impact. However, seriousness of convicted offense does not play as strong a role (relative to criminal history) in determining severity of presumptive disposition as would be expected given the retributionist cast of the Commission's policies. Unfortunately, we cannot determine the precise reasons for this outcome from our analysis. Overall, our findings concerning the determinants of presumptive sentencing and sentencing outcome indicate substantial compliance with the spirit as well as the letter of the sentencing guidelines.

As shown in Table 3, the same is generally true for allowable exceptions to the guidelines. Remember that the Commission intended these exceptions to the presumptive sentence to be so situationally specific that their application would not easily permit circumvention. As indicated in the first five columns of Table 3, none of the equations predicting exceptions to the presumptive sentence accounts for more than 15 percent of the explained variation in the use of departures and consecutive sentences. These results suggest that the use of allowable exceptions to the guidelines are primarily determined by highly case-specific attributes.

There are, however, two qualifications to this conclusion that require elaboration. First, we cannot with absolute cer-

⁹ More specifically, when these successive sets of variables are entered into the regression model, presumptive sentence, aggravated departures, and mitigated departures explain 51%, 33%, and 14% of the variation in actual disposition, respectively. For actual duration of sentence, the explained variation attributable to these successive variables is 55%, 16%, and 2%, respectively. It is also noteworthy that, in the absence of controls for prescriptive variables, several proscribed variables exhibited significant and moderately strong effects on both dispositional and durational outcomes.

Table 3: Standardized Regression of Coefficients for Models Predicting Allowable Exceptions to the Presumptive Sentence

Variables	AGGDISP	MITDISP	AGGDUR	MITDUR	CONSEC ^a	AGGDISP ₂ ^b	AGGDUR ₂ ^b
Prescriptive							
SEVERITY	-.195 ^c	.173 ^c	.036	.087 ^d	-.067	-.635 ^c	-.050
HISTORY	.059 ^d	.041	-.035	.255 ^c	.107	-.303 ^c	-.296 ^c
PERSON	.044	.163 ^c	.057	.055	.180	-.104	.011
WPNUSE	-.071 ^d	-.185 ^c	-.018	-.009	-.002	-.067	.046
MULTCONV	.099 ^c	-.008	.166 ^c	-.027	—	.024	.228 ^c
Proscribed							
MULTOFFS	.077 ^c	-.025	.044	-.063 ^d	.057	.036	.196 ^c
PBCHAR	.002	-.025	.029	.019	.019	.001	.037
PBSENT	-.034	.043	-.001	.097 ^c	-.076	-.055	-.080
TRIAL	-.009	-.061 ^d	.000	-.072 ^d	.141	.040	.101
HENRAMCO	-.017	.159 ^c	.015	.088 ^c	-.198 ^c	-.216 ^c	-.045
BLACK	.028	-.067 ^d	.001	-.016	-.055	.064	-.046
WHITE	.047	-.007	-.042	.016	-.227 ^c	-.076	-.147
HSGRAD	-.016	.012	-.078 ^c	-.042	-.000	-.003	-.052
FEMALE	-.068 ^c	.028	-.009	.000	-.006	-.069	.003
EMPLOY	-.121 ^c	.025	-.035	-.032	-.004	-.129 ^c	-.006
CAREER	.005	.047	.015	-.009	-.039	-.145 ^c	.007
SINGLE	.075 ^c	-.003	-.002	-.035	.089	.114 ^d	.014
N =	1,523	1,523	1,523	1,523	264	223	229
R ² =	.095	.083	.060	.100	.144	.618	.294
R ² adj =	.085	.073	.049	.090	.084	.586	.237

^a Includes only cases involving multiple convictions.
^b Includes only cases receiving a dispositional or durational departure.
^c Significant at $p < .01$.
^d Significant at $p < .05$.

tainty rule out model misspecification as an alternative explanation for the generally low predictive power of our equations. Indeed, diagnostic tests did reveal some evidence of non-linearity in the use of sentencing (and especially dispositional) departures. However, this effect did not seem strong enough to warrant abandoning the linear model.¹⁰ Moreover, while exclusion error is always a possible source of misspecification, the variables included in the equations presented in Table 3, if not fully comprehensive, are representative of those employed in most sentencing studies.¹¹ In short, we feel relatively confident that the low predictive power of the equations in Table 3 reflects a generally high degree of compliance with the Commission's policies on the use of sentencing departures and consecutive sentences.

A second and more significant qualification to our general conclusion regarding exceptions to the presumptive sentence is that, even though our findings indicate substantial compliance with MSGC policies, they also reveal evidence of a patterned use of departures and consecutive sentences that is at odds with those policies. In general, it appears that exceptions to the presumptive sentence are used to "adjust" presumptive sentences that, according to the individual or collective perspective of judges and other officials, are inappropriate to the case at hand.

For instance, aggravated dispositional departures (AGGDISP), *ceteris paribus*, are more likely in cases involving an unemployed single male (EMPLOY, SINGLE, FEMALE) with prior convictions, multiple charges or convictions, and lower offense seriousness and no weapons conviction. Mitigated dispositional departures (MITDISP), by contrast, are more likely in cases involving a serious offense against a person in which no weapon was involved,¹² and when the offender was not black and did not take the case to trial. In other words, it would appear that aggravated and mitigated dispositional departures are used to adjust sentence severity in cases in which the presumptive sentence might seem, to the officials involved, overly lenient or severe *given* other offense and/or offender characteristics. Thus, aggravated dispositional departures appear more likely in cases involving what might be perceived as

¹⁰ Nonlinear transformations produced the strongest results when used to predict aggravated dispositional departures (AGGDISP). However, the adjusted R^2 for AGGDISP only increased from .095 to .140. Results of these tests are available upon request.

¹¹ See n. 9 above.

¹² The negative relationship between weapons use and both aggravated and mitigated dispositional departures is due to the fact that departures were generally less likely to be used in cases involving a weapons charge.

a “dangerous” offender (prior record, single male, and unemployed) convicted of a relatively nonserious offense, while mitigated dispositional departures are more likely when an otherwise “nondangerous” offender (nonblack, no weapon, and evidence of contrition) is convicted of a relatively serious offense (higher seriousness ranking and a person offense).

To further test this hypothesis, we examined only those cases receiving a sentencing departure to determine which factors best predict the use of aggravated versus mitigated dispositional and durational departures (AGGDISP₂, AGGDUR₂). These results are presented in columns six and seven of Table 3. The strong inverse relation between offense seriousness and the use of aggravated dispositional departures, as well as the moderately strong effects of criminal history and socioeconomic characteristics on this departure decision, suggest a process of sentence adjustments designed to bring the actual sentence more in line with what judges and other criminal justice officials may consider an appropriate sanction for the crime or person involved or both.

Again, qualifications are in order. First, this pattern is less apparent in the case of durational departures and in the use of consecutive sentences. This would suggest that the perceived need to adjust sentences is greater in regard to decisions concerning whether to imprison an offender than for those involving the length of confinement. Although decisions about length of imprisonment (CONSEC, AGGDUR₂) also appear subject to “extralegal” considerations (e.g., jurisdiction, multiple offenses, and race), these factors fail to exhibit either the strength of association or as systematic a pattern as was observed for dispositional outcomes. Secondly, it should be borne in mind that, even though a discernible pattern is evident in the use of dispositional departures, dispositional departures were used in fewer than 15 percent of all felony sentences.

In general, then, our analysis of sentencing practices within the guidelines suggests substantial compliance with MSGC policies. This was particularly true for sentencing outcomes that did not involve exceptions to the presumptive sentence. Prescriptive variables dominated the equations predicting presumptive sentence as well as actual disposition and duration of imprisonment (see Table 2), while proscribed considerations played only a minor, indeed trivial, role in these decisions. For the most part, the same was true of the predictors of exceptions in the presumptive sentence (see Table 3), although in this case the role of proscribed variables entered more significantly into the sentencing equation. In particular, it appeared as though

Table 4: Standardized Regression Coefficients for Models Predicting Offense Seriousness and Criminal History Score

Variables	SEVERITY	HISTORY
<u>Prescriptive</u>		
HISTORY	.056*	—
PERSON	.574*	-.087*
WPNUSE	.202*	-.047
<u>Proscribed</u>		
BLACK	.020	.138*
WHITE	.061*	.147*
HSGRAD	-.019	.092*
FEMALE	-.115	-.243*
SINGLE	-.009	-.162*
EMPLOY	-.052*	-.257*
CAREER	.014	-.030
HENRAMCO	.020	.015
PBCHAR	-.062*	-.005
PBSENT	-.031	-.006
<i>N</i> =	1,523	1,523
<i>R</i> ² =	.573	.153
<i>R</i> ² adj =	.570	.146

* Significant at $p < .01$.

there was some attempt by judges and other officials to use these exceptions (especially dispositional departures) to modify sentences in ways that may have comported more closely with their own individual or collective sense of what constituted an “appropriate” outcome. As just indicated, however, this deviation from MSGC guidelines affected a relatively small proportion of all felony cases sentenced in Minnesota during the period under observation.

Finally, because of the importance of offense seriousness (SEVERITY) and criminal history (HISTORY) in determining case outcomes, each of these variables was regressed on a model comprised of both prescriptive and proscribed variables. As shown in Table 4, proscribed variables make a minimal contribution in predicting offense seriousness. Proscribed variables have a greater impact on the criminal history score, but the model as a whole accounts for only a small amount of the variation in the dependent variable. Moreover, even in those cases in which the effects of proscribed variables are moderately strong (e.g., gender [FEMALE] and employment status [EMPLOY]), one can only speculate as to whether, for instance, employed persons have less extensive criminal records than the

Table 5: Standardized Regression Coefficients for Models Predicting Extrajudicial Decisions

Variables	STAYEX	STAYDUR	JAIL
<u>Prescriptive</u>			
SEVERITY	.125 ^a	.319 ^a	.185 ^a
HISTORY	.348 ^a	-.011	.235 ^a
MULTCONV	.131 ^a	-.045	.063
WPNUSE	.042	-.026	.058
PERSON	-.013	.043	-.013
MITDISP	-.034	.087 ^b	-.127 ^a
<u>Proscribed</u>			
HENRAMCO	.269 ^a	-.075 ^b	.025
MULTOFFS	.071 ^b	.103 ^b	.038
PBCHAR	.035	.041	-.055
PBSENT	-.141 ^a	.027	-.032
TRIAL	-.004	.040	.039
BLACK	-.044	.006	-.059
WHITE	-.014	-.004	-.053
FEMALE	.013	-.041	-.145 ^a
SINGLE	-.008	-.020	.082 ^b
HSGRAD	-.071 ^b	-.052	-.085 ^b
EMPLOY	-.057	.044	-.085 ^b
CAREER	-.058	-.049	-.032
<i>N</i> =	778	778	778
<i>R</i> ² =	.319	.171	.181
<i>R</i> ² adj =	.303	.152	.162

^a Significant at $p < .01$.

^b Significant at $p < .05$.

unemployed because of behavioral differences between the two groups or because of differences in the behavior of criminal justice officials. Thus, in general, proscribed variables appear to have only a moderate (and undetermined) effect on sentencing outcomes as transmitted through the intermediate variables of offense seriousness and criminal history.

B. Sentencing outside the Guidelines

The most striking difference between regulated and unregulated sentencing practices is the greater indeterminacy of the latter. As indicated in Table 5, only the model predicting the type of stayed sentence (STAYEX) explained a moderate amount of the variation in sentencing outcomes. Felons convicted of more serious offenses (SEVERITY), those with multiple offenses (MULTOFFS), and offenders with longer criminal histories (HISTORY) were more likely to receive stays of exe-

cution than their counterparts. While the same pattern was generally true for decisions concerning the duration of a stayed sentence (STAYDUR) and whether jail time was imposed as a condition of the stayed sentence (JAIL), the predictive power of our model was substantially reduced. For the most part, these patterns parallel the MSGC's recommendation that the least severe sanctions (i.e., stays of imposition, shorter terms of stayed sentences, and no jail time) be reserved for less serious offenses and for offenders with shorter criminal histories.

There are, however, several other findings that deserve comment. First, it is important to note the extent to which criminal history determines both the type of stayed sentence and the use of jail as a condition of a stayed sentence. This would suggest, in contrast to guideline practices, that these types of decisions were more strongly influenced by judges' assessments of the offender than the offense for which he or she was convicted. There was also a slight tendency for charged but unproved offenses (MULTOFFS) to play a role in determining the length of a stayed sentence. It will be recalled that the Commission rejected unproven allegations as a legitimate sentencing criterion in decisions under guideline authority.

Second, even controlling for other relevant factors, jurisdiction (HENRAMCO) plays a substantial role in determining the type of stayed sentence received by an offender. Urban jurisdictions were much more likely to utilize stays of execution than were rural jurisdictions. Although the precise reasons for this finding cannot be determined from the present data, it may be that rural judges and prosecutors are more likely to give offenders a "break" than are judges and prosecutors in the more crime-ridden and anonymous urban jurisdictions. Whatever the reason, this finding clearly differs from the Commission's ideal of a uniform statewide sentencing system and, because blacks and other minorities are highly concentrated in Minnesota's Hennepin and Ramsey counties metropolitan area, suggests a possible source of indirect discrimination.

Finally, although the coefficients are not especially large, a number of social characteristics influenced whether jail time was imposed as a condition of a stayed sentence. As shown in Table 5, offenders who were single, male, unemployed, and poorly educated were more likely than their counterparts to receive jail time. Again, it should be recalled that many of these same characteristics were associated with criminal history score, which also played a substantial role in decisions concerning the type of stayed sentence as well as confinement decisions. Thus, it would appear that unregulated sentencing

decisions were more prone to direct and indirect socioeconomic biases than regulated decisions.

In summary, our analysis of unregulated sentencing practices produced mixed results. Decisions concerning the use of stayed sentences tended to parallel the Commission's general recommendations that more severe sanctions be reserved for more serious offenses and offenders, yet they tended to differ from the Commission's more specific preference that sentencing outcomes be principally determined by offense seriousness. Rather, nonguideline practices were more typically conditioned by case-processing and/or offender characteristics, including both criminal history and, at least in regard to confinement, socioeconomic attributes. Equally important is the fact of greater indeterminacy in sentencing outcomes outside the guidelines. The implications of these findings are discussed in the following section.

V. DISCUSSION AND CONCLUSIONS

Sentencing reform in Minnesota has differed from that in other states because of two safeguards built into the very structure of its determinate sentencing system. One is the structural cap on prison populations that has helped prevent wholesale escalation of criminal punishments. The second, and the one that has been the primary focus of the present analysis, is the system of prescriptive and presumptive constraints imposed on sentencing decisions. These constraints were constructed to enhance both the uniformity and neutrality of sentencing outcomes. As our analysis has shown, this structural safeguard has been largely successful in achieving its desired ends in sentencing decisions governed by MSGC guidelines. Like the findings reported by the MSGC, we found sentencing practices governed by the guidelines to be both highly predictable and relatively unaffected by proscribed variables.

Yet, also like the MSGC reports, we did find evidence of guideline practices that continue to be at odds with the ideals of sentencing uniformity and neutrality. Decisions concerning the use of sentencing departures revealed a pattern suggesting that exceptions to the presumptive sentence may be used as a means of "adjusting" sentencing outcomes to fit judges' individual or collective sense of justice. Although affecting only a small proportion of all felony sentences, such "adjustments" seem to demonstrate that, when there is resistance to the policies and practices mandated through determinate sentencing standards, circumvention may result.

As suggested earlier, a comparison of sentencing practices within and outside guideline authority may serve as an indirect test of the effectiveness of the MSGC's political and educational campaign designed to win support for, and perhaps adherents to, its sentencing policies. Viewed from this perspective, our findings concerning unregulated sentencing practices suggest that the MSGC's campaign was only marginally successful. Not only were sentencing practices outside the guidelines much less predictable than those under the guidelines, but they were also more likely to be influenced by offender and case-processing factors. Although the effects of these variables were not great in absolute terms, extraguideline sentencing decisions tended to reflect an ongoing commitment to individualized sentencing and the types of utilitarian considerations rejected by the MSGC when constructing its guidelines.

To summarize, our findings suggest that nonguideline decisions continued to be influenced by sentencing philosophies very different from those endorsed by the MSGC. Moreover, these alternative philosophies also appeared to work their way into the otherwise tightly regulated framework of the Minnesota guidelines through the provision for departures from the presumptive sentence. And each of these findings persisted in the face of a fairly intensive campaign aimed, at least implicitly if not explicitly, at convincing judges and other criminal justice officials of the value of more highly standardized and uniform sentencing practices.

The practical implications of these findings seem fairly straightforward. As noted elsewhere (von Hirsch and Hanrahan, 1981; Blumstein, et al., 1983; Eskridge, 1984; Cohen and Tonry, 1983), most efforts at determinate sentencing reform have followed a voluntary approach in which compliance with new sentencing standards is sought on a good faith basis. Such an approach is generally assumed to be less likely to incur resistance from judges and other criminal justice officials and thus, in its own way, actually facilitate the process of sentencing reform. However, the prevalence of this type of approach may also account for the fact, noted earlier, that few reform efforts have proven successful in significantly altering sentencing practices. One of the chief reasons sentencing reform has been so successful in Minnesota, at least in those areas of conduct governed by the guidelines, is that the State's sentencing guidelines are backed by the weight of law. As we have seen, when that legal mandate was absent or, as in the case of departure decisions, open to judicial interpretation, sentencing practices tended to vary from the general goals and policies enunciated

by the MSGC. In any reform effort, there will be inevitable resistance to new and different ideas, especially when they conflict with long-established beliefs and practices. As our analysis illustrates, one effective way of overcoming such resistance and ensuring compliance with expressed sentencing policy is to back those policies with the full force of law.

This conclusion must be tempered by two qualifications. First, any system of presumptive sentencing must include allowable exceptions to sentencing guidelines. Although this may occasionally permit questionable deviations from the guidelines, it is also necessary to ensure that injustices will not result in those exceptional cases that invariably arise. As we have seen, even though judges in Minnesota appear to have found ways to adjust sentencing outcomes through departure decisions, this occurred in only a relatively small proportion of cases. However, it is also important to make certain that these departures from the guidelines are monitored and subject to appellate review. In Minnesota, this process of review has worked to correct at least some abuses (or misinterpretations) of departure guidelines (see MSGC, 1984: 111–121).

Second, we should emphasize that Minnesota is in many respects a unique case. Its generally homogeneous population, liberal traditions, and history of moderation in the use of imprisonment all suggest that efforts to duplicate its model of sentencing reform should be approached with caution. Nevertheless, we concur (although not necessarily for the same reasons) with von Hirsch (1982: 213–215) that, remaining problems notwithstanding, Minnesota has produced a workable and effective approach to sentencing reform—and one that could well be used as a *model* in other states. What remains to be seen, and what should prove especially critical to other reform efforts that wish to draw on Minnesota's experience, is the extent to which the successes achieved in Minnesota during the first year of guideline implementation are reproduced or even improved upon in subsequent years.¹³

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¹³ A longitudinal analysis of the Minnesota guidelines is currently underway by the present authors.

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