EVALUATION OF MINNESOTA'S FELONY SENTENCING GUIDELINES

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TABLE OF CONTENTS

LIST OF TABLES

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ABSTRACT

This study is an evaluation of the Minnesota Felony Sentencing Guidelines enacted on May 1, 1980. Using data on felons processed in the district courts over one pre-guideline (1978) and three post-guideline periods (1981, 1982, 1984), we examine goal attainment under the Minnesota guidelines and how the guidelines have influenced charging, plea bargaining, and sentencing decisions over time. Data from a sample of criminal justice officials is used to supplement the quantitative analysis of changes in prosecutorial and sentencing practices over time. Our most general conclusion is that the Minnesota guidelines have been effective in increasing the uniformity, neutrality, and proportionality of criminal sanctions, but gains in these areas have diminished by 1984. Changes in the policy-role of the Commission, legislative mandates, and evolving case law which have enhanced the discretionary authority of prosecutors and judges are identified as the major causes of the decline in effectiveness of the guidelines. Recommendations are offered regarding how controls can be imposed on prosecutorial discretion within the guidelines themselves, the value of an active policy-role on the part of a sentencing commission, the role of appellate review, and how other states can benefit from the Minnesota experience in the construction and implementation of presumptive sentencing standards.

CHAPTER I:

INTRODUCTION TO SENTENCING REFORM

Few issues in criminal justice have generated more controversy than the on-going debate over the merits of various sentencing philosophies and policies. During the early 1970s, these debates became especially lively, fueled by several influential publications which seriously questioned the rehabilitative ideal and highlighted the disparities in the application of punishments under indeterminate sentencing. Sentencing biases against the socially disadvantaged were strongly voiced in the book Struggle for Justice (American Friends Service Committee, 1971) and by various other prisoners' rights organizations. Martinson's (1974) report on the failure of rehabilitation also generated some re-thinking about the value of indeterminate sentences and contributed significantly to the shift from treatment to punishment as the primary philosophical justification for incarceration (see Orland, 1979; c.f., Cullen and Gilbert, 1982; Currie, 1985). A concern with sentencing disparities and the "irrationality" of sentencing was firmly echoed in Judge Frankel's (1972) Criminal Sentences and by numerous other commentators (e.g., Morris, 1974; Fogel, 1975; van den Haag, 1975; Wilson, 1975; von Hirsch, 1976). Inconsistency and unfairness in parole board decisions were also identified as major causes of inmate discontent and riots (see Orland, 1979).

Out of this context, various reform efforts emerged to constrain judicial discretion and to enhance the predictability, uniformity, and the socio-economic neutrality of sentencing decisions.[1] In fact, these reform efforts gained widespread support from diverse political factions, but for rather different reasons. Specifically, sentencing reform offered "liberals" a means of reducing disparities and

improving the quality of justice, while it appealed to "law and order'" advocates as a way to "get tough" on crime and escalate the severity of criminal sanctions (see Moore and Miethe, 1986; Greenberg and Humphries, 1980). As approaches which offered solutions to diverse problems, parole guidelines, determinate sentencing, sentencing guidelines, and mandatory sentencing became endorsed as alternative models of sentencing reform. Over the last decade, nearly all states have proposed or enacted some type of sentencing reform (see Shane-Dubow et al., 1985; Tonry, 1987).

A. THE STRUCTURE OF SENTENCING REFORM EFFORTS[2]

As the foregoing discussion suggests, sentencing reform efforts have taken a variety of forms. These reform efforts vary considerably with regard to who establishes the norms of punishment, whether such norms are based on previous practices, the degree of compliance mandated to the reform effort, the relative weight to be attached to specific criteria when affixing punishments, the range of punishments and the degree of control exerted over judicial discretion, and the underlying theory for imposing punishments.

The first major distinction in types of reform efforts has to do with who establishes the sentencing structure and the norms of punishment. Three types have been used across states and within states at different time periods: (1) guidelines which evolve exclusively out of legislative activity, (2) judicially-based guidelines, and (3) "sentencing commissions" developed through legislation. The "legislative approach" is clearly reflected in extensions and modifications of California's Uniform Determinate Sentencing Law and characterizes the current stage of guideline development in most other states (e.g., Arizona, Colorado, New

Jersey, North Carolina, Ohio, Tennessee). Up until 1984, at least seven states (Delaware, Florida, Maryland, Massachusetts, Michigan, Rhode Island, and Wisconsin) were utilizing nonstatutory, judicially developed guidelines (Eskridge, 1984).[3] Voluntary judicially-based guidelines have also been widely used in pilot studies in various local courts across the country (see Eskridge, 1984; Shane-Dubow et al., 1985; Tonry, 1987). As advocated by Frankel (1973), Singer (1978) and others, independent "sentencing commissions", charged with developing the structure of the guidelines and norms of imprisonment pending legislative approval, have been proposed or enacted in several additional states (e.g., Minnesota, Pennsylvania, Washington, Connecticut, Illinois, South Carolina, Florida, Wisconsin) and by recent federal legislation. However, similar to legislative and judicially-based approaches, the "commission model" also exhibits enormous variation in terms of the structure and scope of the guidelines, as well as in the duties, responsibilities, and authority granted the sentencing commission.[4]

A second major distinction concerns the degree to which sentencing standards are based on previous sentencing norms. Most extant determinate sentencing systems and guideline models have followed a "descriptive" rather than "prescriptive" approach (von Hirsch and Hanrahan, 1981). Under a descriptive approach, empirical studies of past sentencing practices are used to determine the types of sanctions judges have previously imposed in various types of cases. These normalized practices are then codified as the standards used to guide future sentencing practices (see Moore and Miethe, 1986). In contrast, prescriptive approaches are guided by policy choices concerning what <u>should</u> be the appropriate sanction for particular categories of offenses (see von Hirsch,

1982:171-176). The sentences underlying a prescriptive model may or may not comport with previous practices.

Another fundamental distinction between sentencing reform efforts has to do with the degree of compliance mandated by law. Here, the critical distinction is between "voluntary guidelines" and "presumptive" sentences. "Voluntary" or "advisory" guidelines lack legal authority for compliance and are typically used in states which have judicially-based guidelines, or in numerous local courts which are evaluating the feasibility of sentencing guidelines. Presumptive guidelines are less frequent, but are used for all felony cases in some states (e.g., Minnesota, North Carolina, Pennsylvania, Washington) and for specific offenses in several others (see Miethe and Moore, 1985; Eskridge, 1984). Under presumptive guidelines, judges are required to sentence within the prescribed range and can deviate from this presumptive sentence only if they provide written justification for doing so.

States undertaking sentencing reform also vary in terms of the criteria used in affixing punishments, the relative weight attached to each criterion, and the rationale and philosophy underlying punishment. Specifically, all states use measures of offense seriousness and the offender's criminal history in establishing the severity of punishment, but the weighting of these components (as well as the inclusion of other factors to guide decision- making) varies considerably by state. For instance, under the Minnesota guidelines, only these two factors are considered in the decisions to impose a prison sentence and the length of such confinement, but the seriousness of the offense is given greater importance than past criminal behavior in these decisions (see MSGC, 1984). In other states, several factors are used to compute offense seriousness (i.e., seriousness of offense, victim

injury, weapon use, special vulnerability) or the relative weight given to offense and offender characteristics depends on the type of convicted offense (e.g., Maryland, Pennsylvania). In still other states (e.g., Michigan, Wisconsin), a separate sentencing grid is used for each type of felony. Similarly, the dominant philosophy underlying sentencing decisions is either a singular philosophy (i.e., Minnesota's "modified deserts" model), a combination of utilitarian and non-utilitarian philosophies (e.g., Pennsylvania) or, more commonly, there is no well articulated underlying rationale for punishment.

Finally, sentencing reform efforts exhibit enormous variation in terms of the range of appropriate punishments and the degree of control exerted on judicial discretion in sentencing. For example, few states regulate whether a prison sentence is imposed or stayed (the "in/out" decision) and the range of prison terms imposed is only slightly less restrictive than under indeterminate sentencing systems. The range of punishments permissible under most "determinate" sentencing systems and the lack of regulation of the critical "in/out" decision has usually resulted in little loss of judicial discretion and has been identified as a major cause of the inability of determinate sentencing to achieve its intended goals (see Blumstein et al., 1983; Miethe and Moore, 1985).

B. GOALS OF DETERMINATE SENTENCING AND SENTENCING GUIDELINE

Although sentencing reform efforts proposed and enacted in numerous states have taken various forms and reflect the particular problems facing each state, the overiding impetus for this national reform movement is the concern with reducing disparities in the application of criminal sanctions. This concern is echoed in the enabling legislation in each state, the prescriptive goals of increasing the

uniformity, equality and neutrality in sentencing, commentaries about justice and fairness, and in social science research on socioeconomic biases in the application of criminal sanctions and the role of extralegal factors in sentencing decisions (see, generally, von Hirsch, 1975; Orland, 1979; Shane-Dubow et al., 1979; Blumstein et al, 1983; Hagan and Bumiller, 1983).

At the same time that uniformity and a reduction of disparities were being prescribed as major goals of determinate sentencing and sentencing guidelines, numerous social changes were taking place that had direct implications on the nature and direction of the reform movement. Starting in mid 1970's, there was a notable shift back to Classical views of punishment (e.g., retribution), an emergence of utilitarian philosophies other than rehabilitation (e.g., incapacitation, general and specific deterrence), a movement from "due process" to "crime control" models of criminal justice administration (see Packer, 1968), rising crime rates, and greater public sentiment and pressure on legislators and criminal justice officials to "get tough" on crime. These external forces created an atmosphere for reform and the development of alternative sentencing policies.

Determinate sentencing and sentencing guidelines arose out of this social climate and became actively promoted by various groups, but not necessarily for the same reasons. For instance, these reform efforts were perceived by "liberals" as a means of decreasing disparities and improving the quality and equality of justice. For "law and order" advocates, sentencing reform provided a legitimate way to "get tough" on crime and escalate the severity of criminal sanctions (for an extensive review of these positions, see Greenberg and Humphries, 1982). Furthermore, voluntary sentencing guidelines were being advocated as a "middle ground" position that offered sentencing standards but retained judicial discretion

(see Gottfredson et al., 1978; Carrow, 1984). As approaches which offered solutions to various problems, these reform efforts became widely endorsed by otherwise disparate and conflicting groups.

As true of most reform efforts (see Casper and Brereton, 1984), the ability of determinate sentencing and sentencing guidelines to achieve their intended goals was nonetheless severely questioned at the onset. The lack of legal mandate for compliance was seen as a major impediment to the ability of voluntary sentencing guidelines to alter previous practices and reduce disparities (see Blumstein et al., 1983; Tonry, 1987). Although challenged on numerous grounds (see Griswold and Wiatrowski, 1985; Orland, 1979), a major criticism of determinate sentencing models is that even if the disparities arising from unbridled judicial discretion could be controlled, they will simply resurface at stages not covered by reform effort (see, generally, Zimring, 1977; Alschuler, 1978; Clear et al., 1978; von Hirsch and Hanrahan, 1981; Coffee and Tonry, 1983; McCoy, 1984; Verdun-Jones and Cousineau, 1985; Miethe and Moore, 1986). This "hydraulic" or "zero-sum" effect is so firmly entrenched as a criticism of determinate sentencing that most researchers begin with the assumption that displacement of discretion is inevitable, and then proceed to describe the various adaptive responses to such structural changes. Unfortunately, little empirical research has examined whether and to what extent the hydraulic displacement of discretion to prosecutors actually occurs in post-guideline practices (c.f., McCoy, 1984; Miethe and Moore, 1986). Yet, if this hydraulic effect exists, gains in sentencing neutrality and uniformity could be eroded by greater socioeconomic biases and other disparities in prosecutors' charging and plea bargaining practices. Under such

conditions, the ability of determinate sentencing to achieve its intended goals and to implement meaningful reform would be greatly diluted.

C. PREVIOUS EVALUATIONS OF SENTENCING REFORM EFFORTS

As noted elsewhere (e.g., Blumstein et al., 1983; Shane-Dubow, 1985; Tonry, 1987), systematic evaluations of determinate sentencing systems and guideline models are sparse, primarily because of the recency of these reform movements. However, for those states with adequate data on pre- and post-guideline practices, two general analytic strategies have been used to assess the success of sentencing reform: impact analysis and multivariate modeling approaches. Impact analysis is usually considered a policy-directed approach which examines the likely consequences of selecting alternative plans of action (see Knapp, 1982; MSGC, 1984). It also applies to evaluations of sentencing reforms which focus on the impact of these reforms on the degree of judicial compliance, rates of imprisonment, time served, early case disposition, plea negotiation and charging practices, and other case processing outcomes (for applications, see Clear et al., 1978; Lipson and Peterson, 1980; Cohen and Tonry, 1983; Blumstein et al., 1983; MSGC, 1984).

In contrast to impact analysis, a multivariate modeling approach attempts to explain various dispositional decisions by identifying the major determinants of these decisions and comparing the relative importance of each of these factors before and after implementation of the reform effort (see for applications, Rich et al., 1981; Cohen and Helland, 1982; Clarke et al., 1983; Miethe and Moore, 1985). While differing in emphasis on particular types of questions, both strategies can be used to assess whether greater sentencing uniformity and neutrality has been achieved in post-reform practices, and whether the nature and determi-

nants of initial charging practices, plea bargaining, and sentencing outcomes have been altered in a way that circumvents or supports explicit policy goals.

California's Uniform Determinate Sentencing Law has been the most widely studied sentencing system. There have been at least seven major evaluations of the extensions and revisions of the California law (see, for review, Cohen and Tonry, 1983:353-411). Although numerous adverse consequences were expected, the general conclusion from these evaluations is that little change in case processing or sentencing decisions could be directly attributed to the new determinate sentencing law (DSL). For instance, no major changes in initial charging practices or overall rates of guilty pleas were observed after passage of the new law. Although there was some indication of earlier guilty pleas and the use of enticements for plea bargaining, explicit bargaining was restricted to jurisdictions which had already engaged in such practices before DSL. The rise in prison use and declines in the duration of confinement after California's DSL have also been attributed to preexisting trends, not to the law itself (see Cohen and Tonry, 1983).

The lack of major change in presentence and sentencing practices after implementation of current reform efforts is also evident under different sentencing structures. For example, Rich et al. (1981,1982) have evaluated the success of voluntary/descriptive guidelines in several local jurisdictions. These authors report that incarceration and durational decisions were largely consistent with pre-guideline practices in Denver and Philadelphia. However, other researchers (Gottfredson and Gottfredson, 1984:303) note that the conclusion of "no effect" in the Rich study must be viewed in light of a subsequent finding that in these jurisdictions the guidelines "were not implemented". Similar findings of no effect were observed in evaluations of pre- and post-guideline practices in Newark (see

Cohen and Helland, 1982) and in Florida and Maryland (see Carrow et al., 1985). Multivariate modeling approaches have also been used to examine the impact of voluntary guidelines on the determinants of sentencing decisions (Rich et al., 1981). Specifically, using a regression analysis, these authors found that post-guideline decisions about the duration of confinement were not affected by sex, race, and other demographic characteristics of the felon, but that males and blacks had a greater risk of imprisonment than their counterparts in some cities. However, these patterns were similar to those observed before the guidelines, suggesting that socioeconomic disparities did not either increase or decrease in post-guideline practices.

The inability of most current reform efforts to produce significant changes in sentencing practices can be traced to some fundamental deficiencies in the construction and scope of sentencing guidelines. First, the failure to regulate prosecutorial charging and plea bargaining practices has been considered a major obstacle in achieving the goals of sentencing neutrality and uniformity (see also, Alschuler, 1978; Coffee and Tonry, 1983; Verdun-Jones and Cousineau, 1985). From this perspective, gains in sentencing equality and uniformity are perceived as easily circumvented by greater disparities in the application of prosecutorial discretion. Yet, even if this presumed hydraulic effect characterized post-reform practices, it is also doubtful whether major changes would actually occur under most extant reform efforts because of the limited control exerted on judicial discretion (see also, Miethe and Moore, 1986). Since judges still retain enormous discretionary authority under most "determinate" sentencing systems (through allowable departures, wide ranges for durations, and the failure to regulate the "in/out" decision), there is little impetus for a backward transference of discretion

to prosecutors. Second, given the limited control over judicial discretion, it is also not surprising that few changes in sentencing practices have been observed after implementation of determinate sentencing or sentencing guidelines.

The manner in which sentencing standards are constructed and implemented may also contribute to the deficiencies in this general reform movement. For instance, regardless of their legal authority (i.e., voluntary or presumptive) or how information on past sentencing practices is utilized (descriptive or prescriptive), sentencing standards which evolve exclusively from state legislatures have been widely criticized for being ill-conceived, poorly monitored, insensitive to escalating prison populations, and extremely volatile to changing political tides and public pressures to "get tough" on crime (see, specifically, von Hirsch and Hanrahan, 1981; von Hirsch, 1982; Blumstein et al., 1983; Miethe and Moore, 1985). Guidelines generated through "sentencing commissions" are more insulated against political and public pressures, but are susceptible to many of the same problems (Martin, 1983).[5] On the other hand, descriptive approaches to guideline construction are especially susceptible to specification errors which may codify previous biases into current practices, generally lack sufficient explanatory power in predicting past practices, and appear to side-step the issue of what philosophical principle or rationale should guide sentencing practices (see Rich et al., 1982; von Hirsch, 1982; Sparks, 1983). Finally, the utility of voluntary or advisory guidelines has also been questioned on the grounds that they lack legal authority for judicial compliance and have been largely ineffective in modifying past sentencing practices (see Blumstein et al., 1983; Cohen and Tonry, 1983; Tonry, 1987).

While most sentencing reform efforts have not resulted in substantial reductions in sentencing disparities, one major consequence of these efforts has been an increase in prison commitments and a subsequent drain on correctional resources. Drastic increases in prison populations have been observed or projected in Colorado, New Mexico, Pennsylvania, and Indiana under their sentencing structures (see Pointer et al., 1982; Kramer et al., 1985; Clear et al., 1978). The majority of states with determinate sentencing have experienced an increase in prison populations of over 12% in a single year (see Shane-Dubow et al., 1985: Table 43). Escalating prison populations not only generate prison overcrowding and financial burdens, but may also hinder the ability of determinate sentencing to achieve its goals of reducing disparities and increasing the uniformity and socioeconomic neutrality of sentencing decisions. As will be argued later, sentencing uniformity and neutrality may be of only secondary importance when states are facing serious threats to correctional capacity. If this is true, a drastic reduction of sentencing disparities will only be attained under current reform efforts when the sentencing standards are established and managed within the constraints of available correctional facilities.

Although most extant sentencing reform efforts have failed to achieve their explicit goals and are associated with increasing prison populations, the sentencing guidelines developed in the state of Minnesota are considered the major exception to this pattern. In fact, according to the Panel on Sentencing Reform (Blumstein et al., 1983), Minnesota's determinate sentencing system was the only reform effort to date that appeared to alter previous sentencing practices in a manner consistent with intentions.[6] Subsequent evaluations (e.g., Knapp, 1984; MSGC, 1984; Miethe and Moore, 1985; Moore and Miethe, 1986) have con-

firmed the ability of the Minnesota guidelines to achieve greater uniformity, neutrality, and proportionality of punishments and to do so within the constraints of available correctional resources.[7]

The initial success of the Minnesota guidelines (as well as the inability of alternative approaches to reduce disparities and regulate prison populations) has contributed to its popularity as a model for sentencing reform. Currently, the state of Washington has adopted the Minnesota approach as their model of guideline development and the "commission approach" underlying the Minnesota guidelines has been developed and proposed in several other states (e.g., Pennsylvania, Wisconsin, Michigan, South Carolina). The recently established federal sentencing commission is also similar in structure and function to that used in Minnesota. As suggested by several authors (von Hirsch, 1982; Blumstein et al., 1983; Shane-Dubow et al., 1985), if the initial successes achieved under these guidelines are borne out in sentencing practices in later years, the Minnesota guidelines may serve as a landmark in sentencing reform.

CHAPTER II:

MINNESOTA'S DETERMINATE SENTENCING SYSTEM

Minnesota was the first state to establish felony sentencing guidelines that were both presumptive and prescriptive. These guidelines went into effect for all offenders convicted of a felony on or after May 1, 1980. Although the developmental history and implementation of Minnesota's reform efforts have been extensively documented elsewhere (see Knapp, 1982, 1984; MSGC, 1982; MSGC, 1984; von Hirsch, 1982; Martin, 1983; Moore and Miethe, 1986), the review provided below focuses on those aspects of the Minnesota sentencing guidelines which contribute to its uniqueness as an experiment in sentencing reform. This chapter covers the following areas: (1) a review of the enabling legislation, (2) the primary goals of the guidelines, (3) the structure/scope of the guidelines, and (4) previous evaluations of case processing, presentence, and sentencing decisions within and outside the authority of the guidelines.

A. THE HISTORY OF MINNESOTA'S SENTENCING REFORM

As true in other states (see Martin, 1983), enactment of the Minnesota Sentencing Guidelines was the product of an intensive struggle between various political factions, criminal justice officials, and citizen-action groups. Indeed, the emergence of sentencing guidelines in Minnesota has been described as a "three year struggle characterized by procedural maneuvering, emotionalism, and misunderstanding" (Appleby, 1982:301). However, out of this context emerged a comprehensive set of sentencing standards that reflects a broad commitment to the reduction of sentencing disparities.

The inception of the Minnesota guidelines has been traced to the introduction of a determinate sentencing bill (Senate File 634) by Senator McCutcheon on February 27, 1975. The major motivation for the bill was McCutcheon's belief that disparate sentences were the major cause of prison unrest and that some inmates were "manipulating" rehabilitation programs in order to gain early release from the parole board (Appleby, 1982:301). Characterized as a "get tough on crime" proposal, the original bill mandated prison terms for all convicted felons, eliminated "good time" and would have made most sentences longer than those served under the indeterminate system. However, according to Appleby (1982:302), "the bill was not so much a serious proposal as it was an idea thrown out to stimulate study of sentencing reform".

The original McCutcheon bill served as a vehicle for further debate and discussion about the direction of sentencing reform in Minnesota. A subcomittee was formed and testimony from criminal justice officials and citizens given at a series of meetings, focusing on the issues of sentence length, recidivism, and various types of discretion. The original bill was subsequently revised and then completely rewritten. While still perceived as a "law and order" proposal, the revised Senate bill actually contained many provisions that would suggest otherwise (e.g., presumptive sentences of 40% of the maximum established in the 1963 criminal code, provisions for "good time"). According to Martin (1982:269), it was also designed to maintain the average time currently served and the current level of prison populations. Yet, the image of being a "law and order" proposal assured its passage by the full Senate in 1976 (Appleby, 1982). After some political manuevering, a House bill authored by Kempe (House File 1865) was at-

tached to the bill, later amended, "surprisingly" passed by both houses, but vetoed by Governor Anderson (see Appleby, 1982; Martin, 1982; MSGC, 1982).

Throughout the deliberations, it was clear that various Senate bills reflected support for determinate sentencing, whereas most of the House bills tended toward "guidelines" and "advisory" standards which attempted to rectify abuses within the current indeterminate system. Prior to the start of the 1978 session, legislative leaders attempted to reach a compromise between the House and Senate positions. A joint House-Senate conference committee was subsequently appointed in January of 1978. After being unable to reach an acceptable compromise bill, this joint committee recommended the creation of a "sentencing commission" which would have the authority to establish guidelines (for an extensive discussion of this process, see Parent, 1978; Appleby, 1982; Martin, 1982; MSGC, 1982). However, the interests of both the House and Senate were reflected in the committee report by endorsing fixed, presumptive sentencing but providing for some range of judicial discretion, leaving the indeterminate system intact for consideration as a model for sentencing, and delegating the task of guideline construction, implementation, and monitoring to the proposed sentencing commission.

After the conference committee report was approved by the House and Senate, the bill was signed into law by the Governor on April 5, 1978. The new law (Minnesota Statutes 244.09) became effective on the next day. The Commission was instructed to submit its guidelines for legislative review on January 1, 1980. Unless the legislature acted otherwise (which it did not), the guidelines would go into effect on May 1, 1980.

The legislation creating the Minnesota Sentencing Guidelines Commision (MSGC) outlined the membership structure, the duties and responsibilities of the members, and various provisions pertaining to guideline construction. The enabling legislation authorized the Sentencing Commission to establish "the circumstances under which imprisonment is proper" and "a presumptive, fixed sentence for the duration of such confinement based on reasonable offense and offender characteristics" (Minn. Stat. 244.09, 1978). The enabling legislation also mandated that the Commission "take into substantial consideration prior sentencing and release practices and correctional resources" (MSGC, 1984:7).[8] However, as will be discussed shortly, several additional provisions afforded the Commission a great deal of flexibility in determining the nature and scope of the sentencing guidelines.

B. THE GOALS OF THE MINNESOTA GUIDELINES

Throughout the development of the Minnesota Sentencing Guidelines, there was a firm commitment to reduce sentencing disparities and a concern with correctional resources. However, there was less consensus from the beginning on the appropriate rationale or philosophy underlying punishment and the merits of utilitarian (e.g., rehabilation, deterrence, incapacitation) and non-utilitarian (e.g., retribution) purposes. In addition to promulgating sentencing guidelines which were based on appropriate offender and offense characteristics, the Commission was also delegated the task of deriving a rational and consistent basis for allocating punishments. The establishment of the Minnesota guidelines was predicated on the belief that "the articulation and implementation of sentencing standards will result in a reduction of sentencing disparity and a more rational

use of existing correctional resources" (Knapp, 1982: 237; MSGC,1984:1). The guidelines embodied the goals of sentencing uniformity (i.e., like offenses should be treated similarly), neutrality (i.e., sentences should not be affected by the socio-demographic characteristics of the offender), and proportionality (i.e., the punishment should be commensurate with the gravity of the offense).

Following a series of debates over the relative merits of utilitarian and non-utilitarian sentencing philosophies, the Commission ultimately selected retribution as its dominant sentencing philosophy. While several alternative approaches were considered, a retributive philosphy was thought to correspond most closely with the Commission's mission of enhancing the uniformity, neutrality, and proportionality of punishments (see von Hirsch, 1976, 1982). However, a strict just deserts perspective gave way to a "modified just deserts" philosophy through the inclusion of prior criminal activity as a basis for sentencing decisions. Under this model, criminal sanctions should be applied primarily on the basis of the seriousness of the convicted offense and, to a lesser extent, the offender's prior criminal conduct.

However, it was in other policy areas that the Commission demonstrated its activist nature and its commitment to the goals of sentencing uniformity and neutrality. First, the enabling legislation mandated only that the Commission establish "the circumstances under which imprisonment is proper and durations for such confinement of up to 15% above or below the presumptive, fixed sentence" (Minn. Stat. 244.09, 1978). Yet, it was the Commission's decision to impose more restrictive durational ranges (6-7% above and below the presumptive sentence) than mandated by the legislature or had been true of most other states with determinate sentencing (see MSGC, 1984; Miethe and Moore, 1985; Moore

and Miethe, 1986). Second, the Commission's choice of the severity of convicted offense and the offender's criminal history as the only appropriate determinants of punishment also enhanced the predictability, uniformity, and neutrality of sentencing decisions. Third, the Commission chose to reinforce the goals of sentencing neutrality and uniformity by proscribing various socioeconomic characteristics (i.e., race, gender, employment status, education, marital status) as a basis for sentencing decisions (see MSGC, 1982:16; Moore and Miethe, 1986:256). These choices exercised by the Commission provided a unique foundation for reducing disparities and enhancing the uniformity, neutrality, and predictability of sentencing decisions.

C. THE STRUCTURE AND SCOPE OF THE GUIDELINES

The various structural features of the Minnesota Sentencing Guidelines have been well documented (see, generally, MSGC, 1982, 1984; Knapp, 1982, 1984; von Hirsch, 1982; Blumstein et al., 1983; MSGC Commentary, 1983; Miethe and Moore, 1985; MSGCA, 1985; Moore and Miethe, 1986). In this section, we will outline the general structure of the guidelines, specific features of the guidelines, developing case law, and revisions of the guidelines which have further refined their scope, structure, and authority.

1. The General Structure of the Guidelines

The Minnesota guidelines apply to all felony convictions which occurred on or after May 1, 1980. The guidelines established by the Commission embody the principles of uniformity, neutrality, and proportionality of punishments and are designed to make more rational use of available correctional resources. As described below, the guidelines are both "presumptive" and "prescriptive", regulate

both dispositional and durational decisions (but allow for departures from the presumptive sentences), consider offense seriousness and criminal history as the two principal bases for sentencing decisions, and represent a major shift in the type of offenses and offender for which imprisonment is deemed the appropriate punishment.

Under the Minnesota guidelines, a convicted felon's location in the "sentencing grid" determines the presumptive disposition (i.e., whether or not a prison sentence is "stayed" or "executed") and the duration of imprisonment. The "sentencing grid" consists of two dimensions: a vertical axis which represents the seriousness of the convicted offense and a horizonal axis which represents a weighted index of the offender's prior criminal history (see Table 1).[9] A "dispositional line" is drawn across the grid to represent the combination of offense seriousness and criminal history in which the presumptive disposition is either a stayed or executed prison sentence. A range of durations of confinement (about 7% above or below the presumptive sentence) is provided in each cell of the grid. Judges can impose any sentence length within this range without the sentence being considered a departure from the guidelines.

---Insert Table 1 about here---

The guidelines are "presumptive" in the sense that they carry the weight of law and are to be applied unless there are "substantial and compelling reasons" for departure. A judge must justify any departure from the presumptive disposition or duration with written statements outlining the reasons for the departure. In this departure statement, it must be shown why the sentence imposed is "more appropriate, reasonable, or equitable than the presumptive sentence" (see MSGC, 1982:13). The adoption of a presumptive sentencing approach which regulates

both dispositional and durational decisions makes the Minnesota guidelines quite different from the sentencing guidelines used in most other jurisdictions (see von Hirsch and Hanrahan, 1981; Blumstein et al., 1983; Miethe and Moore, 1985; Moore and Miethe, 1986).

The Minnesota guidelines are also relatively distinct in the Commission's selection of a "prescriptive" approach to sentencing standards. As mentioned earlier, most states have used a descriptive approach by relying upon statistical analyses of past sentencing practices to derive average sentences, and then using these normalized sentences as the basis for current practices. In contast, the sentencing standards in Minnesota were based on policy decisions concerning what ought to be the appropriate sanction (see von Hirsch, 1982; MSGC, 1984). By adopting a presumptive approach, the Commission assumed the responsibility for setting sentencing policy rather than, in effect, delegating that choice to trial court judges through their past practices. Coupled with the Commission's selection of a "modified just deserts" philosophy, this policy choice ensured that sentencing practices (at least in theory) would be very different from pre-guideline practices.[10] However, this policy choice also meant that the Minnesota guidelines should be susceptible to greater judicial resistance and circumvention than would the voluntary/descriptive guidelines used in most jurisdictions (see also, Miethe and Moore, 1986).

Even though considered one of the most rigorous and systematically crafted determinate sentencing systems (see von Hirsch and Hanrahan, 1981; Blumstein et al., 1983), it is important to note that the Minnesota guidelines are rather modest in scope, for several reasons. First, the guidelines apply only to felony convictions; offenders convicted of misdemeanor or gross misdemeanor offenses

fall outside the authority of the guidelines. Second, although regulating the "in/out" decision and length of prison confinement, the guidelines do not address the type, conditions, or length of sentence imposed on felons who receive a stayed prison sentence. They simply limit judges to those sentencing options legally permissible under the Minnesota criminal code.[11] Given that over 80 percent of all felons in Minnesota receive a stayed prison sentence (MSGC, 1982), judges still retain considerable discretion over sentencing decisions. Finally, as is true of other determinate sentencing systems, the Minnesota guidelines do not cover the critical area of prosecutorial discretion in charging and plea negotiation practices. Consequently, they are quite susceptible to the hydraulic effect and circumvention through non-regulated prosecutorial practices (see Miethe and Moore, 1986a).

2. Specific Features of the Minnesota Guidelines

While the previous section outlines the general structure and scope of the Minnesota Guidelines, there are other features which further delineate the scope, structure, and authority of the sentencing guidelines. Four of these specific considerations (the role of unproven and alleged behaviors, grounds for departures, multiple convictions and types of stayed sentences) are summarized below.

"Alleged, but unproven" behavior was rejected by the Commission as a legitimate grounds for establishing the severity of the offense for two fundamental reasons. First, given the lower evidentiary standards at sentencing hearings, it was thought that serious legal and ethical questions would be raised if punishment were influenced by alleged behavior or "real offense" sentencing (see MSGC Commentary, 1983; and, generally, Tonry, 1981; von Hirsch, 1982). Second, if punishment were based on alleged but unproven behavior, it was also thought

that prosecutors would be less accountable in plea negotiations since even uncharged behavior could be employed in sentencing hearings to seek a departure from the presumptive sentence (MSGC Commentary, 1983).[12]

Dispositional and durational departures are the means by which the potential rigidity of "fixed" sentencing is addressed under the Minnesota guidelines. While departures are to be the exception rather than the rule (see MSGC, 1982; MSGC Commentary, 1983)[13], judges may depart from the guidelines for any case if there are appropriate reasons for deviating from the presumptive sentence. What is an appropriate reason for departure is governed by both specific and general legal standards. The general legal standard is "substantial and compelling reasons", while the specific legal bases for departures involve proscribed factors (e.g., those factors which cannot be used as reasons for departures) and a nonexclusive list of prescribed grounds for departures. For instance, in furtherance of their goal of sentencing neutrality, the Commission prohibited the use of many offender-related factors (e.g., race, gender, employment history, educational attainment, length of residence, maritial status, living arrangements) as grounds for a dispositional or durational departure (see MSGC, 1982; MSGC Commentary, 1983). Whether a defendant exercised their constitutional right to a trial is also prohibited as a legitimate basis for a departure from the presumptive sentence. If a departure is imposed, judges must also provide a written justification for why the selected sentence is "more appropriate, reasonable or equitable" than the presumptive sentence (see MSGC, 1982:13).[14]

Major changes in case law have resulted in an inclusion of several other factors which may be considered in departure decisions (see generally, MSGC, 1984). First, in State v. Randolph (1982), a defendant's demand for an executed

sentence (rather than imposing the presumptive stayed sentence) is not an absolute right, but if the conditions of the stay are "more onerous than an executed sentence, the sentence must be executed at the defendant's request" (MSGC,1984:116). The developing case law since Randolph has virtually reaffirmed this request as an absolute right. Second, the defendant's "amenability or unamenability to probation" has been accepted by the Minnesota Supreme Court as grounds for a mitigated and aggravated dispositional departure (see MSGC, 1984:117). Since amenablility to probation is strongly associated with various offender characteristics (e.g., community ties, family stability, employment status), this justification for departures seems likely to adversely impact both proportionality and neutrality of punishment (see MSGC, 1984:122).

There are also several issues surrounding the treatment of multiple convictions under the Minnesota guidelines. When multiple current convictions exist, the presumptive sentence is concurrent sentencing. However, consecutive sentences are permissible under any of the following situations: (1) when a current person offense occurs prior to expiration of a previous sentence for a crime against a person, (2) when there are multiple person offenses (i.e., multiple behavioral incidents) involving different victims, and (3) when one of the current convictions is for escape from lawful custody (see MSGC Commentary, 1983). The primary rationale provided for this policy is that if the severity of sanction is to be proportional to the severity of the offense, consecutive sentences (which involve longer periods of confinement) should be reserved to the more severe offenses (MSGC Commentary, 1983). Under all other situations, the use of consecutive sentences involves a departure from the guidelines.

Finally, when the presumptive disposition is a non-executed prison sentence, the judge can impose either a "stay of execution" or a "stay of imposition" as a condition of the sentence. The practical effect of this difference is that, after five conviction-free years from the date of discharge, a stay of imposition is recorded as a misdemeanor conviction, whereas a stay of execution remains a felony conviction (see Moore and Miethe, 1986:258). Given that felony convictions are given greater weight than prior misdemeanor convictions in the "criminal history" index, a stay of imposition may also be used as an enticement for guilty pleas because it is a less severe sanction and has less effect on the criminal history if that person is later convicted of another offense. Although this is a non-presumptive policy, the Commission recommends that a stay of imposition be reserved for those convicted of less serious offenses and those with less extensive criminal histories (see MSGC Commentary, 1983).[15]

3. Case Law and Modifications to the Guidelines

As true of any legal reform, there have been significant changes in the structure and scope of the Minnesota guidelines since their inception. Several of these changes are legislative in nature, while others derive from developing case law. Still others have resulted from modifications imposed by the Commission. The revisions and modifications of the guidelines which are most likely to alter the direction and impact of this reform effort are summarized below.

The major legislative changes which are likely to influence sentencing, charging, and plea negotiation practices in later years are changes in the mandatory minumum sentences for the use of a firearm in the commission of an other felony (Minn. Stat. 609.11) and the enactment of a series of statutes pertaining to intrafamilial sexual assault (see MSGC, 1984; MSGCA, 1985). Mandatory

minimums were increased in 1981 from one year and a day to three years for first offenses, and from three to five years for second or subsequent firearm offenses (MSGC, 1984:27). However, at the same time, this statute was amended to provide prosecutors discretion to enter a motion to sentence apart from the mandatory minimum for the use of a dangerous weapon. This motion by the prosecutor must be accompanied by a statement of reasons and the court "shall sentence apart from the mandatory minimum if it finds that substantial mitigating factors exist" (Minn. Stat. 609.11, subd.8). While the original legislative language read that judges "shall" sentence apart, it was later interpreted to mean that judges "may" sentence apart from mandatory minimums (Olson [1982]). These changes have greatly increased the discretionary authority of judges and prosecutors in cases in which a weapon was used in the commission of an other felony (see also, Rathke, 1982:280).[16]

The enactment of the intrafamilial sexual abuse statutes in 1981 and subsequent revisions provides that judges may give a mitigated dispositional departure if it is in the best interest of the victim or family to do so (see MSGCA, 1985). When determining whether or not to depart in these cases, the general principle embodied in the legislation was that "the court shall be guided by the policy of preserving and strengthening the family unit whenever possible" (Minn. Stat. 609.38). The ability to depart from the presumptive sentence in these cases further enhances the discretionary authority available to the courts.

Although several appellate cases have the potential to greatly influence departure rates under the guidelines[17], one Supreme Court case (Hernandez [1981]) is especially noteworthy in terms of its impact on the determination of the presumptive sentence. While the immediate impact of this decision was a mod-

ification by the Commission in the procedure by which criminal history points accrue with multiple current felony convictions (see MSGC, 1984:28), the Hernandez rule also has major implications on the nature of plea negotiations under the sentencing guidelines.

Prior to Hernandez, the procedure for computing criminal history score was to count only convictions that were sentenced before the current sentencing date (see MSGC,1984). Under this method, if a person was sentenced for two felony convictions on the same day, the first conviction could not be "read in" to increase the criminal history score for subsequent sentencing. However, the Hernandez decision allows "prior" felony points to be added for current sentencing decisions even when these felony points accrue from sentences pronounced on the same day.[18]

Subsequent to the Hernandez decision, the Commission made revisions and clarifications regarding the maximum number of felony points that could accrue for "same day" sentencing and the scope of this ruling. Ordinarily, when multiple offenses stem from a single behavioral incident involving a single victim[19], the "one course of conduct, one sentence" rule is applied. Similarly, when there are multiple victims involving a single course of conduct, a two-point limit in calculating criminal history is applied regardless of whether or not multiple felony sentences are imposed on the same day. However, in the case of burglary and kidnapping, Minnesota law provides for multiple convictions and sentences even though only one victim and one course of conduct may be involved. When the Commission wrote the guidelines, they perceived the possibility of manipulation of this provision and limited to one the number of criminal history points that could accrue from a burglary conviction. In 1983, they extended this cap on

criminal history points to kidnapping and included new language to clarify that convictions for the "earlier" offense (burglary or kidnapping) could not be used to increase the criminal history score for sentencing on the "later" (i.e., other related) felony offense (see MSGCA, 1985; 17-19).

Except under the limiting conditions mentioned above, the immediate consequence of the Hernandez rule is that prosecutors can "stack the deck" in charging and plea bargaining practices. Specifically, the retention of "separate behavioral incidents" in any felony complaint can be used to "target the dispositional line" or increase the period of confinement though the successive escalation of criminal history points (see MSGC, 1984; Miethe and Moore, 1986a). In each of these cases, the ability of prosecutors to dismiss or reduce additional charges can be a major enticement for acceptance of a guilty plea. If such plea concessions are only afforded to particular types of offense or offenders, the intent of the guidelines to achieve uniformity, neutrality, and proportionality in punishments would be severely undermined.

D. PREVIOUS EVALUATIONS OF THE MINNESOTA GUIDELINES

Several empirical evaluations of plea bargaining and sentencing practices under the Minnesota guidelines have been undertaken by the Commission itself (see MSGC, 1982; MSGC, 1984) and independent analysts (Miethe and Moore, 1985, 1986a; Moore and Miethe, 1986). Though based on data from only the first three years under the guidelines, these previous evaluations give some indication of the ability of the Minnesota guidelines to achieve their explicit policy goals.

The three-year evaluation by the Commission (MSGC, 1984) is a descriptive analysis of changes over time in case attributes, prosecutorial charging and plea negotiation practices, and sentencing practices as they relate to the goals of sentencing uniformity, neutrality, and proportionality. The report also examines the impact of the guidelines on prison population and identifies trends in dispositional and durational departures, case processing, and regional variation in sentencing and plea negotiation practices.

Sentencing uniformity has been examined by the Commission in terms of departure rates and dispositional cell variance. While durational departure rates have remained relatively stable for the first three years (8.5%, 7.2%, 7.7%, respectively), dispositional departures have steadily increased from 6.2% in 1981 to 8.9% in 1983 (see MSGC, 1984). Similarly, when a weighted cell variance is used to compute dispositional uniformity across the grid[20], each post-guideline period exhibits greater uniformity in the use of imprisonment than prior to the guidelines, but there has also been a steady decrease in dispositional uniformity over post-guideline time periods. However, while some slippage has occurred in later years, the level of sentencing uniformity is still above the pre-guideline baseline as of 1983.

Proportionality of punishments has followed a similar pattern. Consistent with articulated policy, rates of imprisonment for person offenders with low criminal histories increased, while imprisonment rates for property offenders with moderate to high criminal histories decreased after passage of the guidelines. Case law has also reinforced the principle that sentence durations should be proportional to the seriousness of the convicted offense and the offender's prior criminal behavior (see MSGC, 1984). However, there was some slippage in sen-

tencing proportionality by 1983. Rates of imprisonment for person offenders decreased somewhat and imprisonment rates for property offenders increased over the previous year (see MSGC, 1984).

The issue of sentencing neutrality is addressed in the Commission's report by comparing sentencing patterns for various social groups (e.g., whites versus minorities, males versus females, employed versus unemployed felons). These comparisons reveal several trends in the socioeconomic neutrality of punishments. First, departure rates (both dispositional and durational departures) are generally higher among minorities than whites and male than female offenders. A similar pattern exists for the severity of sanctions (i.e., imprisonment rates and duration of confinement). Racial differences are partially attributable to county variation, but persist to some extent even when within-county comparisons are made (see MSGC, 1984). Second, unemployed felons received more severe sanctions than did employed felons and this pattern persisted even when controls were introduced for offense seriousness and criminal history (see MSGC, 1984). Thus, while the first principle embodied in the Guidelines is that sentencing should be neutral with respect to socioeconomic status, social differentiation in sentencing has not been eliminated under the guidelines.

The Commission's report also examines trends in case processing and prison populations. Prison populations have remained within capacity during the first three years of the Guidelines. Although prison commitments and sentence durations increased significantly in 1982, intervention by the Commission and the Minnesota Legislature to establish shorter sentences had the effect of bringing sentencing practices back to traditional levels in 1983 (see MSGC, 1984:vi).

Overall rates of trials and processing time between conviction and sentencing changed very little after implementation of the guidelines (see MSGC, 1984).

While the method of analysis differs considerably, the evaluations performed by the current authors yield results largely consistent with the Commission's findings. Specifically, a regression analysis of data from the first year of the guidelines (Moore and Miethe, 1986) revealed that imprisonment and durational decisions regulated by the guidelines were far more predictable and uniform than was true of non-regulated sentencing decisions. The decision to impose jail time as a condition of a stayed prison sentence (a non-regulated decision) was strongly influenced by various social and economic characteristics of the offender (e.g., gender, marital status, educational attainment, employment status). Socioeconomic attributes had little net effect on sentencing decisions under the authority of the guidelines.

Another study (Miethe and Moore, 1985) compared models of plea negotiation and sentencing decisions before and after implementation of the Minnesota guidelines. While the post-guideline data were also limited to first-year practices, several changes consistent with articulated policy were observed. First, the severity of the convicted offense became a far more important determinant of the decision to incarcerate and pre-guideline differentiation due to employment status and race of the offender was virtually eliminated in post-guideline incarceration decisions. Second, there was basically no change over time in the determinants of the decision to impose jail time as a condition of a stayed sentence. Though several social characteristics influenced this non-regulated sentencing decision (e.g., employment status, gender, educational attainment), socio-economic differentiation remained at its pre-guideline level.

A final study (Miethe and Moore, 1986a) examined the "hydraulic" effect as it relates to charging and plea bargaining practices under the Minnesota guidelines. It was argued here that if the hydraulic displacement of discretion operates to circumvent the intent of determinate sentencing, then it should be especially apparent under Minnesota-like guidelines, which exert substantial control over judicial discretion but do not regulate prosecutorial practices. However, comparisons of time-specific models of charge reductions, charge dismissals, and sentence negotiations revealed few signs of greater socioeconomic disparities in post-guideline plea bargaining practices. In fact, differences over time were largely due to the greater importance of case and case processing attributes (e.g., county of adjudication, weapon use) in post-guideline periods. Thus, little evidence of a hydraulic effect was found in this study, at least during the early years of the guidelines.

E. SUMMARY

The Minnesota Felony Sentencing Guidelines are a fairly unique model of criminal justice reform. Primary among these unique features are the presumptive and prescriptive nature of the guidelines, their regulation of both dispositional and durational decisions, and the decision to calibrate sentences under the guidelines to existing correctional resources.

Previous evaluations of sentencing practices up to 1983 suggest that the guidelines have been largely successful at achieving their stated objectives. However, there is some indication that initial gains in sentencing neutrality, uniformity, and proportionality have eroded in recent years. Furthermore, there have been several major changes in case law and the nature of offending which

serve as external forces operating on the structure of the guidelines. How well the Minnesota sentencing guidelines have been able to maintain their objectives within a changing social and legal environment is a question of ultimate concern not only for the state of Minnesota, but also for other jurisdictions who may be considering the Minnesota approach to guideline construction and implementation. As described in the next chapter, a primary objective of the present study is to examine changes in charging, plea bargaining, and sentencing practices that may diminish the integrity and success of the Minnesota experiment.

CHAPTER III:

OBJECTIVES OF THE CURRENT STUDY

The primary purpose of this study was to perform a comprehensive evaluation of charging, plea negotiation, and sentencing practices under the Minnesota guidelines as they relate to the goals of uniformity, neutrality, and proportionality in sentencing. Using data from one pre-guideline period (1978) and three post-guideline panels (1981, 1982, 1984), the specific objectives of this study are summarized below:

(1) To document general trends in case-processing, charging, plea negotiations, and sentencing decisions before and at various stages after implementation of the guidelines.

(2) To determine the extent to which factors influencing sentencing decisions and prosecutorial practices have changed over pre- and post-guideline time periods.

(3) To evaluate the impact of several organizational and legal changes which have enhanced prosecutorial and judicial discretion on charging, plea negotiation, and sentencing decisions. Included here are changes in the Minnesota statute and case law, the nature of criminal behavior, and Commission practices over post-guideline time periods.

The first objective was accomplished through a comparison of case attributes, charging, plea negotation, and sentencing practices over pre- and post-guideline time periods. Average rates of charge and sentence bargaining, departures from the guidelines (both dispositional and durational departures), and imprisonment rates were compared across time periods. Changes in case attributes (e.g., offense severity, weapon use, multiple charges), offender characteristics (e.g., race, gender, employment status, criminal history), average length of prison confinement, and the type of conditions imposed upon offenders who receive "stayed" prison sentences were also examined. Although this descriptive

analysis covers much of the material already discussed in the Commission's reports (MSGC, 1982, 1984), we have added several measures not included in the Commission's report and extended the analysis through 1984.

Multivariate modeling of various dispositional decisions was the primary analytic tool used to address the second research objective. Separate regression models were estimated at each time period in order to examine the relative importance of various offense and offender attributes on charging, plea bargaining, and sentencing decisions.[21] A comparison of these models over time was performed to access the extent to which greater sentencing uniformity and neutrality was achieved after implementation of the guidelines.

This multivariate approach was used to identify the major determinants of different types of plea negotiations (e.g., charge reductions, charge dismissals, sentence concessions) and sentencing decisions within and outside the authority of the guidelines. Included as sentencing decisions within the authority of the Minnesota guidelines are whether or not the convicted felon received a prison sentence, a dispositional or durational departure, a consecutive or concurrent sentence for those with multiple convictions, and the length of prison confinement. Non-regulated sentencing decisions involved cases in which the convicted felon received a stayed prison sentence and included the type of stayed sentence (i.e., stay of imposition or execution) and whether any jail time was imposed as a condition of this stayed sentence. The predictor (independent) variables in these regression models included a set of prescribed variables that should influence sentencing decisions under the authority of the guidelines (e.g., offense severity, criminal history, use of a dangerous weapon, multiple convictions, "person" crimes) and a set of proscribed factors which are not legitimate bases for

these decisions (e.g., race, gender, marital status, employment status, educational attainment, county of adjudication, method of conviction).[22]

In addition to the general modeling approach outlined above, separate analyses were performed for cases processed in Ramsey county, Hennepin county and the other counties combined, as well as for specific types of offenses (e.g., robbery, burglary, assault). These county- and crime-specific analyses were done at each time period to further explore temporal changes in the determinants of presentence and sentencing practices and to examine how particular counties may have adjusted their practices in response to sentencing guidelines. The use of an aggregate modeling approach coupled with separate analyses by type of crime and counties provided for a more comprehensive picture of changes in charging and sentencing practices.

The impact of organizational and legal changes on charging and sentencing practices was examined by means of a descriptive analysis of trends over time. While it is difficult to make causal statements about the precise role of these organizational and legal changes, some indication of their impact was found by comparing practices before and after these changes took place. Survey data on the attitudes and opinions of criminal justice officials was also used to further explore the effects of legal and organizational changes on charging and sentencing practices.

A. RESEARCH QUESTIONS

Our principal research questions concern (1) the degree to which the goals of sentencing uniformity, neutrality and proportionality were attained under the guidelines, (2) the determinants of dispositional and durational departures from

the guidelines, (3) the possible circumvention of the guidelines through non-regulated charging and plea bargaining practices, and (4) whether adaptative respones to the changes elicited by the guidelines are evolving over post-guideline time periods. The expected results in each area are discussed below.

Because the guidelines are presumptive and closely govern judicial discretion through its system of prescribed and proscribed factors, there should be a high level of determinancy in regulated sentencing decisions (i.e., the "in/out" decision, length of prison confinement). After passage of the guidelines, most of the variation in regulated sentencing decisions should be attributable to prescribed factors (i.e., severity of convicted offense, criminal history, multiple convictions, weapon use, offense against the person).[23] By contrast, case attributes (e.g., number of alleged offenses), case processing (e.g., county of adjudication, plea concessions), and offender characteristics (e.g., race, gender, marital status, employment status, educational attainment) should have little net impact on these decisions after the passage of the guidelines. Since it was the Commission's intent that exceptions to the presumptive sentence be so situationally specific that their application would not easily permit circumvention (see Moore and Miethe, 1986:266), departure decisions should be determined by highly case-specific attributes and bear no relation to demographic or other socioeconomic factors.

It is far more difficult to anticipate what will happen to non-regulated practices after implementation of sentencing guidelines. Looking first at non-regulated sentencing practices (i.e., type of stayed sentence, whether jail time is imposed as condition of a stayed sentence), three distinct outcomes are possible. First, non-regulated sentencing decisions may reflect a level of determinancy and a degree of socio-economic neutrality and uniformity which is comparable to that

expected for regulated sentencing decisions. For example, this situation may occur if the active policy-role and educational campaign promoted by the Commission staff resulted in the spirit and the intent of the guideline "trickling down" to non-regulated sentencing decisions (see Moore and Miethe, 1986). On the other hand, as the only remaining bastion for unfettered judicial discretion, these non-regulated sentencing decisions may retain their emphasis on individual and utilitarian concerns or be driven to a greater extent by individual-based considerations. Under this latter situation, greater disparities and less uniformity in non-regulated sentencing decisions would characterize post-guideline practices. The third possibility is that non-regulated sentencing decisions will be guided by the same factors before and after the guidelines.

Turning to prosecutorial practices, the most widely cited criticism of determinate sentencing is that its goals are easily circumvented through non-regulated charging and plea bargaining decisions. As mentioned earlier, this presumed hydraulic effect should be especially apparent under Minnesota-like guidelines which exert more control over judicial discretion than in other systems, but do not regulate charging and plea negotiation practices. In fact, if the Minnesota guidelines have given prosecutors' greater leverage and they are exercising this newly found power, one would expect major changes in the nature and determinants of charging and plea negotiation practices after implementation of sentencing guidelines.

There are several fundamental ways in which prosecutorial charging and plea bargaining practices can directly influence sentencing decisions under the guidelines. First, vertical overcharging (i.e., charges more serious offenses than possibly warranted) and aggregating separate charges for some offenses (e.g.,

thefts) can be used to move the severity level of the offense upon conviction to a point at which the presumptive sentence is a prison term or longer period of prison confinement. Second, if charges involving multiple person victims are retained through conviction, prosecutors can provide the opportunity for consecutive sentencing. Third, in cases of multiple behavioral incidents, the Hernandez rule can be used to successively increase the offender's criminal history to "target the dispositional line" or increase the length of prison confinement. Finally, prosecutorial discretion to drop or sentence apart for weapons offenses can also significantly influence sentencing decisions under the guidelines. While several of these options have always been available, the outcome of prosecutorial practices is far more certain and predictable under the guidelines. Furthermore, in each of these cases, the authority granted prosecutors to drop or reduce charges offers them considerable leverage in plea negotiations. Given the impact of charging practices on sentencing decisions, plea agreements involving charge reductions and dismissals should be more common in post-guideline time periods.

Several outcomes are possible when rates of sentence bargaining are compared over time. On the one hand, given that the guidelines regulate the length and type of confinement imposed on felons who receive prison sentences, there is little to be gained from a sentence concession in these cases. Yet, only about 20% of the cases call for an executed prison sentence, so this structural constraint on sentence concessions should have only a modest effect on overall rates of sentence bargaining. Moreover, even among these prison cases, an agreement to "stand silent" by not seeking an aggravated durational departure or not contesting a defense request for a mitigated departure can be a major sentence concession. For felons who receive a stayed prison sentence, major concessions on the type of

stayed sentence (execution or imposition) and the conditions of the stay (e.g., limited or no jail time) can be granted in return for a guilty plea. Overall, one would expect a decrease in rates of sentence bargaining, but the nature of sentence concessions would depend upon the location of the offender and offense within the sentencing grid (i.e., more common among those who receive a stayed prison term).

The importance of prosecutorial charging and plea negotiation practices can not be underestimated. As numerous critics of determinate sentencing have argued, it is through such non-regulated decisions that the gains in sentencing uniformity, neutrality, and proportionality under the guidelines can be easily eroded. Consequently, the nature and determinants of charging and plea negotiation practices before and after the implementation of the guidelines were closely examined in the present study.

Finally, a number of commentators have noted that structural adaptations to new reform efforts slowly evolve through time (see, generally, Casper and Brereton, 1984; Miethe and Moore, 1986). As true of the Minnesota guidelines, these adaptative responses are especially likely when the reform effort is designed to make major changes over previous practices and imposed by an external body. Several changes in statute and case law, as well as changes introduced by the Commission, have occurred over time that enhance the ability of prosecutors and judges to circumvent the sentencing guidelines. While documenting the precise impact of these legal changes is difficult, one would nonetheless expect some adjustments to sentencing guidelines and some slippage in goal attainment over time.

CHAPTER IV:

DESCRIPTION OF THE DATA AND SUMMARY RESULTS

Three primary data sources were used to evaluate the research questions in this study. First, statewide monitoring data over all post-guideline time periods and a statewide sample of cases in 1978 were used to compare general measures of case attributes, offender characteristics and sentencing decisions over time. Second, detailed data collected previously by the Commission for three time periods (1978, 1981, 1982) was supplemented with data on felony cases in 1984 collected as part of the current study. Third, a survey was distributed to a sample of district court judges, prosecutors and defense attorneys across the state of Minnesota.

As part of their monitoring function, the Commission receives data on all felony convictions in the district courts in Minnesota. Although limited in terms of the type of information collected[24], the monitoring data provide information on the severity of the convicted offenses, the presumptive disposition and duration of confinement, whether the sentence is a departure from the guidelines, the felon's criminal history score, and several offender characteristics (race, gender, and age). Given the inclusion of all felony convictions, the monitoring data provide an efficient means of computing statewide sentencing trends, but are quite limited as a primary source for examining changes in the determinants of charging and sentencing decisions.

The primary data used in this study were four samples of felony cases processed in district courts across the state of Minnesota. Samples of convicted felons were selected for the fiscal year 1978 (two years before the guidelines), the first

eighteen months under the guidelines (May 1, 1980 to October 1, 1981), an additional twelve month period (October, 1981 to September, 1982) and a subsequent twelve month period (November, 1983 to October, 1984). For purposes of convenience, the labels 1978, 1981, 1982, and 1984 will be used to refer to each sample.

The data for each time period were collected from the following sources: the Minnesota Sentencing Guidelines worksheets, Minnesota's State Judicial Information System (SJIS), Minnesota's Department of Corrections files, court transcipts, initial complaints filed by prosecutors, arrest reports, presentence investigation reports (PSI), and Minnesota's SJIS case transaction reports. The SJIS case number was used to draw random samples of all felony cases processed during each year. Data coders tracked the cases through the SJIS case number and were sent out to various agencies to gather the data for these samples.

While each sample was stratified by sex, the post-guideline samples were further stratified by race, county and disposition (including all felons who received an executed prison sentence across the state in 1981, but only felons who received executed prison sentences in the eight most populous urban and rural counties in 1982 and 1984).[25] Random samples of felons who received stayed prison sentences in each post-guideline time period were drawn only from this eight county region, whereas a statewide sample was used for cases processed in 1978. To increase the comparability across samples, only felony cases in the eight county region are examined in the indepth analysis. Although this sample specification somewhat restricts our generalizations about statewide practices, over 60% of all statewide felony cases are processed in these eight counties. Given that disproportionate stratified sampling was used in each sample, a weighting

factor was applied to each strata so that the samples more accurately represent the respective population of cases in the eight county region. When tests of statistical significance were performed, a sample readjustment was applied to the initial weights so that the sample sizes were not artifically inflated by the weighting procedure (see, generally, Miethe and Moore, 1985).

The data collected in each of these samples were quite similar across pre- and post-guideline periods. Specifically, for each sample, data were collected on various case-processing, offense, offender, charging, and plea negotiation characteristics. There are also comparable measures of various sentencing outcomes at each time period. However, in order to increase comparability of the samples, offense and plea negotiation information is restricted to the three most serious charges against each felon. Combined, these four data sets contain a wealth of information on offender and case attributes, charging decisions, plea negotiation practices, and sentencing decisons.

It is important to note, however, that the sampling frame used in the four-year county subsamples is limited in several respects. First, the samples include only convicted felons. Cases which result in dismissals or acquittals on all felony counts are excluded.[26] Convictions for misdemeanor or gross misdemeanors are also excluded because such convictions do not fall under the authority of the guidelines. Due to these exclusions, our results are restricted to convicted felons and, in particular, those who may have been less successful in various plea bargaining arrangements. For instance, in terms of charge negotiations, our results are restricted to those felons whose charges are reduced no further than a lesser included felony. Second, the decision to exclude an observation during each sample if there was missing data on any key variable resulted in a reduction in

the base sample sizes. However, a comparison of the original and base samples at each time period revealed few significant differences, suggesting that our decision to use the base samples was accomplished without loss of generality. Consequently, the multivariate analysis using these four samples is based on 1268, 1330, 1716, and 1673 convicted felons who were processed in the eight counties during the respective pre- and post-guideline time periods (for further discussion of the samples, see MSGC, 1982, 1984; Miethe and Moore, 1985, 1986a).

The final dataset contains the results of a mail survey given to district court judges, prosecutors, and defense attorneys (mostly public defenders) in the eight county region. The survey was distributed through each official's district or county office. The survey included questions about these officials' perceptions of goal attainment under the guidelines, whether they believed that judicial and prosecutorial discretion had increased or decreased, the major advantages and limitations of the guidelines, and their perceptions of major changes since passage of the guidelines. A copy of the survey instrument is contained in Appendix I. The overall response rate for the survey was 57.8% (200/346). The response rate for each group of criminal justice officials was 57.4% for the district court judges (66/115), 54.9% for prosecutors (62/113) and 61.0% for public defenders (72/118). While the survey provides some fundamental data on criminal justice officials' perceptions about various aspects of the guidelines, it was used primarily to supplement and inform the quantitative analysis of charging, plea bargaining, and sentencing practices under the Minnesota guidelines.

A. MEASURES OF VARIABLES

A summary of the major variables used in this study, their coding, and descriptive statistics for each time period is provided in Tables 2a and 2b. These tables also reveal the source of the information (statewide data is provided in Table 2a and data from the eight county subsample is contained in Table 2b) and indicate general changes in measures of offender, offense, case processing, initial charging, plea negotiation, and sentencing outcomes over time. The variables are grouped into four general categories: (1) sentencing decisions (2) case characteristics (3) case processing and plea negotiation decisions, and (4) offender attributes.

---Insert Table 2a and Table 2b about here---

1. Coding of Variables from Statewide Monitoring Data

As shown in Table 2a, the statewide monitoring data provided several measures of sentencing decisions which were available at each time period. However, several other measures were only applicable in post-guideline periods. Information was available at each time period on whether or not a prison sentence was imposed (PRISON), the length of the pronounced confinement for those receiving a prison sentence (CONFINE)[27], and whether a consecutive or concurrent sentence was imposed (CONSCUR). For those felons who received a stayed prison sentence, data were also collected at each time period on whether any jail time was imposed as a condition of the stayed sentence (ANYJAIL) and whether this sentence involved a stay of execution rather than a stay of imposition (STAYEXEC). The post-guideline monitoring data also contained informa-

tion on whether there was a dispositional (DISPODEP) or durational (DURATDEP) departure from the presumptive sentence.

The major case attributes included in the statewide data for all years are the severity level of the most serious convicted offense (SEVERITY) and whether the felon was convicted for a crime against the person (PERSON) or had a combination of criminal history points and offense severity which placed them above or below the dispositional line (ABOVBLOW). The coding of this latter variable in 1978 was accomplished by superimposing the original dispositional line adopted by the Commission on the pre-guideline cases. However, the revised dispositional line (changing severity level 1 offenses with a criminal history score of 6 or more to a presumptive executed prison sentence) was used in the coding of this variable for all post-guideline periods. Whether the felon was convicted of a crime against the person was determined by examination of the Minnesota statutes. Although not available in 1978, conviction for the use or possession of a firearm or other dangerous weapon (WEAPON) was also included as a case attribute for each post-guideline period.

Two case processing variables were included in the statewide data: method of conviction (PLEA) and county of adjudication (COUNTY). Method of conviction contrasts persons who were convicted at trial (either bench or jury trial) with those who plead guilty. County of adjudication was coded so that comparisons could be made between cases processed in Hennepin County (including Minneapolis), Ramsey County (including St. Paul), and all other counties in the state. Finally, the major offender characteristics included in the statewide data are the offender's criminal history score (HISTORY), gender (MALE), race (RACE) and age (OFFAGE). While the coding of the other offender attributes

is self evident, criminal history score is based on the weighted index developed by the Commission and ranges from "0"(no criminal history) to "6"(6 or more criminal history points).

2. Coding of Variables for the Eight County Subsample

As shown in Table 2b, the sentencing decisions examined in the indepth subsamples are identical to those available in the statewide monitoring data (i.e., PRISON, CONFINE, DISPODEP, DURATDEP, CONSCUR, ANYJAIL, STAYEXEC). As mentioned previously, these latter two variables (i.e., ANY-JAIL and STAYEXEC) are sentencing decisions not under the authority of the guidelines, whereas the other sentencing outcomes are regulated by the sentencing guidelines.

The coding of case attributes in the eight county subsample (i.e., SEVER-ITY, WEAPON, ABOVBLOW, PERSON) is also identical to that used in the statewide monitoring data. However, the additional case attributes in the county subsample include measures of the severity of the most serious charge initially filed by the prosecutor (SEVCHAR) and whether the use of a dangerous weapon was mentioned anywhere in the initial complaint (ALEGWEAP), whether the defendant was charged with separate behavioral incidents (CHARSBI), and whether the offender was convicted of multiple behavioral incidents (MCONVSBI).

The severity of the most serious charge filed by the prosecutor (SEVCHAR) was coded on the same 10-point scale used by Commission to measure the severity of the convicted offense. The number of behavioral incidents charged (CHARSBI) is a dichotomous variable that indicates whether initial charges were filed for more than one separate behavioral incident. Multiple behavioral inci-

dents were noted if the initial complaint included crimes which involved a series of separate offenses committed over a particular period of time or involved different victims (see endnote #19). An independent assessment of the criminal complaint was performed in order to assess whether there were sufficient grounds to charge multiple behavioral incidents even if such charges were not actually filed (CODERSBI).[28] Dummy coding was also used to measure whether multiple convictions were given for those charged with multiple behavioral incidents (MCONVSBI).

The major case processing variables examined in the county subsamples were the county of adjudication, method of conviction, and various types of plea bargaining. Both method of conviction (PLEA) and county of adjudication (COUNTY) are coded in a manner similar to the statewide data.

Measures of the two most common forms of plea bargaining (charge bargaining and sentence negotiations) were included in the indepth data. As shown in Table 2b, charge bargaining was operationalized in terms of whether the defendant received either a charge dismissal (CHARDISM) or charge reduction (CHREDUCE) on any of the three most serious charges as a result of a plea agreement.[29] A distinction was made between these two types of charge bargaining because charge dismissals yield greater concessions than charge reductions in cases of multiple counts under the Minnesota guidelines. For instance, under a plea agreement in exchange for a charge reduction, consecutive sentencing and the accrual of criminal history points for "same day" sentences is still possible, but these factors are no longer applicable if a person pleads guilty to only one charge in exchange for a dismissal on all other counts. However, a

separate variable (PBCHAR) was also created which taps whether or not either a charge reduction or charge dismissal was given as a condition of a guilty plea.

Sentence bargaining (PBSENT) was examined in terms of whether there was a plea agreement on either the type of sentence or length of confinement to be served. A sentence concession was recorded if any of the three most serious charges involved any of the following types of plea agreements: limited or no initial jail time for those receiving a stayed prison term, a stay of imposition rather than a stay of execution of the sentence, "standing silent" as to the type or length of sentence, concurrent rather than consecutive sentences for multiple charges, and/or a reduction of a felony sentence to gross misdemeanor sentence.[30] An overall measure of plea bargaining (PLEABARG) is also included to detect changes in the extent and determinants of plea bargaining before and after the implementation of the guidelines. This general measure of plea bargaining contrasts felons who receive any type of plea agreement (i.e., either a charge bargain, sentence concession, or both) with those who entered a straight guilty plea or were convicted at trial. Since charge bargaining is influenced by different factors than sentence negotiations (see Miethe and Moore, 1986), inclusion of both types of plea bargaining in a single measure (PLEABARG) is somewhat misleading, but is done here primarily for heuristic purposes.

Finally, in addition to those attributes contained in the statewide monitoring data (i.e., HISTORY, MALE, RACE, and OFFAGE), offender characteristics in the eight county indepth subsample also include measures of the convicted felon's marital status, employment status and educational attainment. Our measure of marital status (UNMARRIED) taps one dimension of "ties to the community" and compares persons who are currently not married (i.e., single,

divorced, widowed, separated, cohabitators) with those who are currently married. Employment status (UNEMPLOY) contrasts persons who were employed at the time of the offense either on a full or part-time basis (in comparison to "unemployed"), whereas educational attainment (HSGRAD) is dichotomized to compare persons with a high school degree or greater educational training with those with less educational achievement.

B. COMPARISON OF VARIABLES OVER TIME PERIODS

A comparison of the descriptive statistics in Table 2a reveals statewide changes in sentencing decisions, case attributes, case processing, and offender's characteristics over pre- and post-guideline time periods. An examination of these trends reveals several changes which may indicate a decline in goal attainment under the Minnesota guidelines.

First, there has been a steady increase in rates of imprisonment over post-guideline time periods, ranging from 15% in 1981 to 19.6% in 1984. While still below the pre-guideline rate of 20.3%, this increase in imprisonment rates over post-guideline periods and the length of prison sentences up to 1982 poses a long term threat to correctional resources. However, due to a reduction in the volume of crime, some adjustments in the lengths of presumptive sentences by the Commission in 1983 and legislative changes in "good time" for mandatory mininum sentences (see MSGC, 1984:93), the guidelines have maintained prison populations below capacity. These adjustments are reflected in a lower average length of confinement in 1984 than in 1982, even though more serious offenses and offenders were processed in 1984. Rates of dispositional departures (especially mitigated departures) have increased over post-guideline periods, whereas dura-

tional departures have decreased somewhat since 1981. Rates of consecutive sentencing and the imposition of stays of execution have remained fairly stable over pre- and post-guideline time periods. However, for those felons who received a stayed prison sentence, there has been a sharp increase in rates of jail time as a condition of a stayed sentence, rising from about 45% in 1978 to 66% in 1984.

Second, temporal differences in sentencing practices were also examined separately for various social groups. Although not shown here, a comparison of these trends gives some initial indication of the level of socioeconomic neutrality in sentencing decisions. For instance, it is clear that non-whites (both blacks and "other" racial/ethnic minorities), the unemployed, males, and persons not currently married were treated with greater harshness than their counterparts, but these differences did not change appreciably over pre- and post-guideline periods. Regardless of time period, non-whites had higher rates of imprisonment, consecutive sentences, jail time as a condition of a stayed sentence, stays of execution, and were given longer terms of imprisonment. Higher rates of aggravated departures (both dispositional and durational departures) were also found among non-white than white felons. A similar trend was observed for other social groups. Yet, given that social differences may be attributable to differences in prescribed factors which should influence sentencing decisions[31], the presence of notable variation by social group does not necessarily indicate less socioeconomic neutrality under the guidelines. This question will be addressed shortly by introducing controls for prescribed variables under the guidelines.

Third, in terms of case attributes, both the proportion of convictions for crimes against the person and the severity of offenses increased over post-guideline time periods. Increases in the number of sexual assault and domestic

abuse cases were major contributors to the rise in crimes against the person over post-guideline periods. The increase in the average severity of the convicted offense (along with increased criminal history scores) also contributes to the steady increase in the proportion of cases below the dispositional line. In terms of case processing attributes, trial rates have increased slightly over post-guideline periods, whereas a somewhat greater proportion of the post-guideline cases came from non-metropolitan counties ("other" counties) than was true before the guidelines.

Fourth, the most notable shift in offender characteristics is the greater criminal history scores of post-guideline felons and the change in the age and racial composition of offenders. For example, nearly 59% of the pre-guideline felons had no criminal history, whereas only 54% had no criminal history in 1984. This difference is more extreme at the high end of the criminal history scale, where only 1.7% of the pre-guideline felons had 6 or more criminal history points in contrast to 5.1% in 1984. In terms of racial differences, the percentage of offenders who are non-white (black or "others") has increased steadily from 15.4% in 1978 to 18.2%, 19.0%, and 19.5% over the respective post-guideline periods. While gender differences have remained fairly stable over time, the percentage of convicted felons over 30 years of age has steadily increased from a low of 12.7% in 1978 to a high of 27.2% in 1984.

Finally, the examination of the summary statistics in Table 2b parallels the findings for the statewide data, but also reveals several fundamental changes in other case characteristics and plea bargaining practices over pre- and post-guidelines time periods. For instance, rates of charging for multiple behavioral incidents (CHARSBI) have increased over post-guideline periods. Rates of con-

viction for multiple behavioral incidents have also increased over time, from 9.5% in 1978 to 13.8% in 1984. However, there has been only a slight increase in the average severity of the initial charges filed by the prosecutor, suggesting that vertical overcharging has not increased appreciably after passage of the guidelines. In terms of plea bargaining practices, plea agreements involving charge dismissals (CHARDISM) have steadily increased over time, wheras charge reductions (CHREDUCE) have become less common after passage of the guidelines. Differences in rates of sentence negotiations (PBSENT) are most apparent between 1978 and 1981. However, by 1984, sentence negotiations were only slightly less common than before the guidelines.

Overall, these general changes in charging and plea bargaining practices suggest that several adjustments in prosecutorial practices have occurred after implementation of sentencing guidelines. While the analysis of general trends give some indication of changes in charging, case processing, case attributes and sentencing decisions over time, it is limited in its ability to isolate the causes of these changes and their subsequent impact on the explicit policy goals of the Minnesota guidelines.

CHAPTER V:

GOAL ATTAINMENT AND ADJUSTMENTS UNDER THE GUIDELINES

The primary goal of the Minnesota guidelines is to reduce disparities in the application of felony sentences. This concern with sentencing disparities was apparent at the onset of reform effort and is echoed in the pursuit of proportionality, predictability, uniformity, and the socio-economic neutrality of sanctions (see MSGC, 1984). The articulation of a set of prescribed and proscribed factors by the Commission also reflect this commitment to reducing sentencing disparities. In this chapter, we describe the results of our analyses of (1) whether the Minnesota Guidelines have achieved their explicit policy goals, (2) the effect of the guidelines on non-regulated sentencing decisions and plea negotiation practices, and (3) the extent to which various external and internal forces (e.g., changes in case law, legislative mandates, Commission policy) have altered charging and sentencing practices in a manner which circumvents the explicit intent of the guidelines.

A. GOAL ATTAINMENT UNDER THE GUIDELINES

1. Uniformity/Neutrality in Regulated Sentencing Decisions

Several strategies can be used to measure the degree to which the Guidelines have reduced disparities and increased the uniformity of punishments. First, as a measure of uniformity in dispositional decisions, one can compare changes in the cell variance in the sentencing grid for the "in/out" decision. The greater the overall variance across all cells over time, the greater the non-uniformity in this

decision. However, as mentioned earlier (see endnote #20), this measure of sentencing uniformity is limited because the overall value is sensitive to changes in the marginal cell frequencies over time. In order to control for such effects, the cell frequencies of cases processed in 1982 (the year in which the highest volume of cases were processed in the Minnesota District Courts) are superimposed on all other years. Given identical cell frequencies for all years, the values of dispositional uniformity are .105, .053, .059, and .060 for the respective pre- and post-guideline time periods.[32] These findings parallel the results reported by the Commission (see endnote #20) and suggest that the decision to incarcerate has become more uniform after passage of the guidelines. However, over post-guideline periods, there has been a slight decrease in sentencing uniformity.

An alternative way of measuring the reduction in disparities is to examine the proportion of variation in dispositional decisions and length of confinement that is attributable to prescribed variables over time. This entails estimating time-specific models of each sentencing decision and decomposing the variance into that explained by prescribed variables (i.e., severity of the convicted offense, criminal history, the location of the case above or below the dispositional line, weapon conviction, crimes against the person) and proscribed variables (i.e., other offense attributes, case processing and other offender characteristics). Although R^2 is a sample-specific statistic (and consequently comparisons of R^2's over time should be viewed with caution), this decomposition nonetheless gives some indication of whether sentencing decisions are more predictible and uniform over time. If the guidelines are reducing disparities, a greater proportion of variation in sentencing decisions should be accounted for by prescribed considerations, with proscribed variables having a diminished net effect over time. The

time-specific models of the "in/out" decision and length of prison confinement are summarized in Table 3.

---Insert Table 3 about Here---

As shown in Table 3, the decision to incarcerate has become far more predictable and uniform under the guidelines.[33] Only 32.1% of the variation in pre-guideline imprisonment decisions is explained by prescribed variables, whereas in all post-guideline periods at least 56% is explained by these factors. The addition of proscribed variables does not improve appreciably the fit of the models at any time period. However, several case and offender characteristics still had significant effects on the decision to imprison a convicted felon at each post-guideline period. Specifically, post-guideline felons who were white, employed, and received a sentence concession were generally more likely to receive a stayed prison sentence than their counterparts. Yet, the greater predictability of the post-guideline models and the modest variation attributed to the proscribed variables suggests that disparities in the "in/out" decision have been reduced after passage of the guidelines.

Gains in sentencing uniformity, neutrality, and predictability are less dramatic when time-specific models of the length of confinement are estimated. In fact, with the exception of 1981[34], the proportion of variation in durational decisions explained by prescribed variables is only slightly higher in post-guideline years, ranging from 46.3% in 1978 to 50.6% in 1984 (but see endnote #33). However, as evidence of greater uniformity, the additional variation attributed to proscribed variables is slightly over 5% in 1978, but less than 3% for each post-guideline period. The tendency for pre-guideline felons who are currently married and who receive a sentence concession to obtain shorter sentences was

also reduced in post-guideline periods, but several other proscribed variables increased in importance at particular post-guideline periods (e.g., blacks and unemployed felons are given longer sentences than their counterparts in 1984). Overall, the time-specific models of sentence durations in Table 3 suggest that only modest improvement in uniformity, neutrality, and the reduction of disparities in the length of prison confinement have occurred after implementation of the guidelines.

Two other sentencing decisions under the authority of the guidelines are the decision to impose consecutive or concurrent sentences for felons with multiple convictions and whether to impose a dispositional or durational departure from the presumptive sentence. Concurrent sentencing is the presumptive sentence in cases of multiple convictions, but consecutive sentencing is possible when there are multiple behavioral incidents involving multiple person victims or under several other specific conditions (see MSGC Commentary, 1983). Given that over 75% of the cases of multiple convictions for each year result in concurrent sentences (see Table 2b) and all the cases of consecutive sentencing fall within articulated exceptions, models of concurrent or consecutive sentencing are not examined here. Suffice it to say, there has been a great deal of compliance with this aspect of the guidelines.

Dispositional and durational departures are the means by which the otherwise considerable constraints of presumptive sentences are ameliorated under the Minnesota guidelines. Departures from the presumptive sentence are to be considered the exception rather than the rule (see MSGC, 1982; MSGC Commentary, 1983), but judges may depart from the guidelines on any case if there are "substantial and compelling reasons". While the Commission prohibited social

and economic factors as grounds for departures, the introduction of "amenability or unamenability to probation" and the "need for treatment or supervision" as legitimate bases for a dispositional departure (see MSGC, 1984:122) provide ample opportunity for the re-introduction of socioeconomic factors in sentencing decisions. Such a situation would undermine both sentencing neutrality and uniformity.

As shown in Table 2a, rates of dispositional departures (both mitigated and aggravated) have increased over post-guideline periods. Rates of aggravated durational departures have remained fairly constant over time, but mitigated durational departures have decreased over post-guideline periods. In addition to the general increase in departure rates, socioeconomic differentiation in the type of persons who receive various types of departures have also increased over time. For instance, felons convicted of multiple counts and who are male, nonwhite, between 19 and 29 years old, single, and unemployed had generally higher rates of aggravated dispositional departures across all post-guideline periods than their counterparts. Rates of mitigated dispositional departures were also disproportionately higher among felons who were processed in Hennepin County, received charge reductions as part of a plea agreement, over 30 years old, married, employed and male.[35]

In terms of durational departures, both mitigated and aggravated departures were more common among felons who are male, black, and processed in Hennepin County. For each of these persons, aggravated durational departures were generally more common than mitigated durational departure. Yet, although not shown here, most of the social differentiation in rates of durational departures was eliminated once a regression analysis was performed to control for

other case and case processing attributes. However, in cases of dispositional departures, the tendency for felons over 30 years old, employed and processed in Hennepin County to have higher rates of mitigated dispositional departures remained when controls were introduced. Thus, contrary to the intent of the Guidelines, these findings suggest that dispositional departures are being used in a manner which decreases uniformity and enhances the importance of socioeconomic factors in sentencing decisons.

a. Summary

Several strategies have been used to assess the degree of uniformity and neutrality in sentencing decisions after passage of the guidelines. In terms of the major sentencing decisions within the authority of the guidelines (i.e., the in/out decision, length of prison confinement), there has been some success in the reduction of sentencing disparities. As measured by the total grid variance and the proportion of variation attributed to prescribed variables, the decision to impose a prison sentence has become more uniform, more socioeconomically neutral, and more predictable in post-guideline time periods. While there were occassional fluctuations in the significance of various predictors, there is also little indication that disparities in this regulated decision have increased over post-guideline periods. However, gains in sentencing uniformity and neutrality have been less dramatic in terms of the length of incarceration. Although a smaller proportion of variation is explained by proscribed variables after passage of the guidelines, several social groups (e.g., black and unemployed felons) receive longer prison sentences by 1984. Furthermore, rates of dispositional departures were more

common among particular types of persons which also suggests a type of disparity antithethical to the general thrust of the guidelines.

2. Proportionality of Punishments

The Minnesota guidelines are based on a "modified just deserts" philosophy and reflect a commitment to the goal of proportionality in punishments. Sentences under the guidelines are to be imposed in direct proportion to the gravity of the the offense and, to a lesser extent, the offender's prior criminal history. This weighting of offense severity and criminal history is reflected in the slope of the dispositional line and the presumptive durations of confinement within each cell. Given that person offenses are generally ranked as more serious than property offenses, proportionality in punishments was the major justification given for the anticipated post-guideline increase in imprisonment rates for felons convicted of crimes against the person.

Although proportionality can be assessed several ways (e.g., by inspection of the ranking of offenses, by examining departure rates for particular reasons), it was addressed here on a crime-specific basis. In particular, the achievement of proportionality was estimated by comparing over time: (1)the percent of person offenders (in contrast to property offenders) who are imprisoned, (2) the percent of cases in which a weapon was alleged (versus convictions for a weapons charge), (3) the gap between potential charges (based on an independent assessment of the criminal complaint), filed charges and convictions for separate behavioral incidents, and (4) the rates of attrition in charges for other offenses (e.g., aggravated robbery, 1st degree burglary, 1st degree assault).[36] A reduction in the imprisonment rate for person offenders and a greater gap between potential, filed,

and convicted charges after passage of the guidelines would indicate a decline in the proportionality of punishments. The results of these analyses are summarized in Tables 4 and 5.

---Insert Table 4 About Here---

As shown in Table 4, a higher proportion of those imprisoned are convicted of crimes against the person in each post-guideline period. However, over post-guideline periods, the percent of those imprisoned who are person offenders has declined nearly to its pre-guideline level, ranging from 56.9% in 1981 to only 44.6% by 1984. Furthermore, the percent of all person offenders who are imprisoned increased from 41.1% in 1978 to 44.2% in 1981 and 49.9% in 1982, but decreased to only 37.8% in 1984. The corresponding imprisonment rates among non-person offenders (mostly property offenders) were 16.4%, 10.4%, 13.8%, and 15.5%, suggesting that rates of imprisonment among these felons is increasing over post-guideline periods to a point comparable to the pre-guideline level.

In order to assess whether imprisonment rates have increased among particular configurations of offenses and offenders, incarceration rates were computed for the following groups: person offenders with "low" (0 or 1 point), "moderate" (2 to 4 points) and "high" (5 or 6 points) criminal histories and non-person offenders with "low" "moderate" and "high" criminal histories. Consistent with the Commission's goal of sentencing proportionality, rates of imprisonment are higher among person offenders than non-person offenders at each level of criminal history and across all time periods (see Table 4). However, even though overall imprisonment rates have increased over post-guideline periods, the rate of imprisonment among person offenders with either low or moderate criminal

histories had decreased by 1984 to a point lower than pre-guideline levels. Given that person offenses are considered more serious than property offenses, this reduction in imprisonment rates among person offenders with at least moderate criminal histories in 1984 suggests declining proportionality of punishments. On the other hand, the fact that imprisonment rates among person offenses remain higher than for other offenses at comparable levels of criminal history suggests that greater proportionality has been achieved under the guidelines.

Another way of evaluating sentencing proportionality over time is to examine the relationship among the potential charges that could have been filed, the charges actually filed by prosecutors, and the charges which result in conviction for various types of offenses. Although there may be legitimate reasons for differences between potential charges, filed charges and the convicted offense[37], greater discrepancies between the charged and convicted offense after implementation of the guidelines would suggest a loss in proportionality through extra-guideline charging and plea bargaining practices. Since there are sufficient numbers of these cases, our analysis of within-offense proportionality focused on a comparison of "potential" charges, "filed" charges and convictions for aggravated robbery, burglary in the first degree, assault in the first degree, multiple behavioral incidents, and the use of a dangerous weapon in the commission of another offense (see endnote #36). The results of these crime-specific analyses are summarized in Table 5.

---Insert Table 5 about Here---

As shown in Table 5, there is a sizeable discrepancy between potential charges and convictions in cases of aggravated robbery, 1st degree burglary, and 1st degree assault.[38] While the correspondence between potential and filed

charges is quite high at each time period (i.e. above 90% in most cases), there have been several changes in the association between charges and convictions for the same offense. For instance, the gap between potential charges and convictions for aggravated robbery is slightly lower after passage of the guidelines, but drops near its pre-guideline level of 62.7% by 1984. First degree burglaries follows a similar pattern, but the rate of retaining these potential charges through conviction drops far below the pre-guideline level by 1984. In contrast, retention rates of potential charges for aggravated assault through conviction are highest before the guidelines (52.6%) and remains appreciably below this figure during all post-guideline periods.

The slippage between potential charges and convicted behavior is also shown when cases involving the use of weapons and multiple behavioral incidents are examined (see Table 5). Although pre-guideline data is not available, the retention rate of potential charges for use or possession of a dangerous weapon through conviction fluctuates over post-guideline periods from 55.1% in 1981, to 68.5% in 1982, and 56.5% in 1984. However, for potential charges and convictions for multiple behavioral incidents, the gap gap between alleged behavior and convictions is far wider than it is for weapons charges, but prosecutors are increasingly retaining more of these potential charges for multiple counts though conviction over time.

Overall, the results in Table 4 and 5 suggest several trends in the attainment of sentencing proportionality after passage of the guidelines. First, imprisonment rates among felons convicted of crimes against the person are generally higher over post-guideline periods, but dropped below their pre-guideline level by 1984. As another indicator of greater proportionality, imprisonment rates were also

significantly higher among person offenders than non-person offenders at comparable levels of criminal history across post-guideline periods (see Table 4). Second, while rates of retention of potential charges through conviction are quite low for some offenses (especially for aggravated assault and multiple behavioral incidents) at each time period, this gap between potential charges and convictions is generally wider before sentencing guidelines (see Table 5). If one assumes that a greater gap between potential charges and convicted behavior indicates a loss of proportionality, our crime-specific analyses also give some indication of gains in proportionality after implementation of the guidelines. However, both in terms of decreasing imprisonment rates for person offenders and retention rates for particular charges (e.g. aggravated robbery, 1st degree burglary), there also appears to be some slippage in proportionality by 1984.[39]

3. Correctional Resource Allocation

The concern with achieving a fiscally manageable correctional system was apparent in the early history of the Minnesota reform effort. The enabling legislation instructed the Commission to "take into consideration" available correctional resources when promulgating sentencing standards. As mentioned previously, the Commission went beyond this mandate by calibrating dispositional and durational decisions to available correctional capacity.

As reported by the Commission (MSGC, 1984), the guidelines have remained operative within existing correctional capacity. State facilities are operating at less than maximum capacity and only a few adjustments to the presumptive duration of confinement were made in 1983 in order to ensure their continued manageability. These adjustments were made primarily in anticipation

of changes in the distribution of cases toward higher criminal history scores, longer average durations of confinement, and an increase in the crime rate and volume of felony cases. However, the dire predictions about the growth in the felony population in 1983 did not materialize. In fact, the number of statewide felons in 1984 was lower than the 1982 figure (see MSGC, 1984). Suffice it to say, the Minnesota guidelines have been remarkably successful in acheiving a fiscally manageable statewide correctional system.

Although prison populations have remained within available capacity, there has been a steady rise in jail populations which has become an economic burden on many local jurisdictions. As reported earlier, rates of jail time as a condition of a stayed prison sentence have increased appreciably from 44.7% in 1978 to 66.1% in 1984. The greater use of jail as a condition of a stayed prison sentence over post-guideline periods has become a major economic issue facing several local jurisdictions. While the Commission has repeatedly entertained the possibility of presumptive jail guidelines, such standards have not been enacted. Nonetheless, the economic burden stemming from increases in jail confinement represents a major obstacle to overcome in an otherwise fiscally manageable correctional system.

B. ADJUSTMENTS TO SENTENCING GUIDELINES

A number of commentators have argued that Minnesota-like guidelines are especially vulnerable to circumvention through non-regulated decisions because they exhibit considerable control over judicial discretion. This argument presumes a hydraulic effect in which gains made at one stage of the process will be offset by losses at stages not regulated by the reform effort (see Miethe and

Moore, 1986 for an extensive discussion of this point). For instance, under the Minnesota guidelines, it is possible that observed reductions in disparities in the decisions to imprison and the length of such confinement could be eroded by greater socioeconomic disparities in charging decisions, plea bargaining practices, and non-regulated sentencing decisions. Similarly, criminal justice officials may exploit changes in Commission policy, case law, or legislative mandates as a means of circumventing the goals of the guidelines. Here, we will investigate some of the possible adjustments to the guidelines and whether these adjustments have affected the goals of sentencing uniformity, neutrality, and proportionality.

1. Disparities in Non-Regulated Sentencing Decisions

One adjustment that would undermine the general success of the Minnesota guideline would be greater disparities in non-regulated sentencing decisions. The time-specific models of sentencing decisions not under the authority of the guidelines are summarized in Table 6.

---Insert Table 6 about here---

Although the percent of felons who received jail time as a condition of a stayed sentence has increased steadily over time, pre-guideline disparities in this non-regulated decision exhibited no appreciable change over post-guideline periods. Regardless of time period, felons who were convicted of more serious crimes and multiple counts, had longer criminal histories and were male, younger, not currently married, unemployed and less educated were generally more likely to receive jail sentences than their counterparts. As shown in Table 6, offender characteristics remained a strong predictor of this non-regulated sentencing decision (as indicated by the additional variation accounted for by these variables

and the significance of their effects). While socioeconomic disparities have not increased over time, the decision to impose jail time as a condition of a stayed sentence continues to reflect a commitment to individualized sentencing, utilitarian rationales for punishment, and disparities in the type of persons who receive jail time.

The decision to impose a stay of execution rather than a stay of imposition is another sentencing decision not regulated by the guidelines. The practical difference between these two types of stayed sentence is that after 5 conviction-free years from the date of discharge, a stay of imposition is recorded as a misdemeanor whereas a stay of execution remains a prior felony conviction. For subsequent offenses, stays of execution are more detrimental because prior felony convictions are given greater weight in computing criminal history score than is a prior misdemeanor conviction.[40] Although the Commission recommends that stays of imposition be used for felons convicted of less serious offenses and with less extensive criminal histories, this is a non-presumptive policy (see MSGC Commentary, 1983).

As recommended by the Commission, stays of execution are more common, ceteris paribus, among felons who have longer criminal histories and commit more serious offenses (as measured by offense severity and multiple convictions). Yet, there is notable variation by county and employment status at each time period. As shown in Table 6, felons who are unemployed and who are processed in the urban counties (i.e., Hennepin and Ramsey Counties) are far more likely than their counterparts to receive a stay of execution at each post-guideline period. Other case and offender characteristics have become more or less important during particular years. In general, the time-specific models of the decision to

impose a stay of execution are generally consistent with the Commission's recommendations, but county differentiation in this non-regulated sentencing decision has increased considerably over post-guideline periods. As was true of the imposition of jail time, this non-regulated sentencing decision also continues to be guided by offender and case-processing attributes which reflect highly individualized and utilitarian sentencing goals.

2. Plea Bargaining Practices

Another way that guideline policies can be undermined is through unregulated prosecutorial charging and plea bargaining practices. Therefore, we examined whether or not the determinants of various types of plea bargaining have changed after passage of the guidelines and over post-guideline periods. Since the outcome of various plea agreements can determine the presumptive sentence, a finding that various case and offender characteristics have become more important in post-guideline plea negotiations would suggest that sentencing disparities have been enhanced indirectly through the selective use of prosecutorial discretion in plea bargaining practices. The time-specific models of the likelihood of receiving a charge dismissal, charge reduction, and sentence concession are summarized in Table 7.

---Insert Table 7 about Here---

Although rates of charge dismissals as part of a plea agreement have increased, the determinants of this type of plea negotiation have remained fairly stable over time. Charge dismissals are far more common at each time period, ceteris paribus, for felons who are initially charged with serious offenses, multiple behavioral incidents, and who are processed in Ramsey County. Persons proc-

essed in Hennepin County are less likely than felons in the "other" counties to receive charge dismissals at each post-guideline period, whereas felons involved in crimes in which a weapon was noted in the initial complaint were also less likely to receive a charge reduction in 1982. Before the guidelines, rates of charge dismissals in Hennepin county were not significantly different from "other" counties and charge dismissals were more common among those who allegedly used a weapon in the commission of another offense. Regardless of time period, offender characteristics had little net effect on the likelihood of a charge dismissal.

As shown in Table 7, charge reductions as a part of a plea agreement were far more likely at each time period if the felon was initially charged with a more serious offense. While charge reductions were more common before the guidelines, the impact of other case, case processing, and offender attributes on charge reductions fluctuated over time. For instance, persons charged with separate behavioral incidents were less likely to receive a charge reduction at each time period except in 1984. Similarly, pre-guideline felons processed in Ramsey county were more likely to receive this type of plea concession, but as of 1982 persons processed in Ramsey county were significantly less likely to receive a charge reduction than their counterparts in "other" counties. Again, offender characteristics had little net impact on charge dismissals at each time period, with the exception that blacks and unmarried felons were slightly less likely to receive this concession in 1982 than their counterparts.

The county variation observed in charge bargaining was also found when time-specific models of sentence negotiations were estimated. As shown in Table 7, post-guideline felons processed in the urban courts (Hennepin and Ramsey county) are generally far less likely to receive a sentence concession than are

felons processed in the other counties. Sentence concessions were also less likely at each time period for persons who were initially charged with more serious offenses and who had longer criminal histories. Furthermore, the offender's employment status had no appreciable effect on the likelihood of a sentence negotiation before the guidelines, but unemployed offenders were significantly less likely to receive such a concession at each post-guideline time period. Aside from employment status and criminal history, sentence concessions were largely independent of other offender characteristics at each time period.

In summary, our models of plea bargaining practices reveal several trends. First, there was little indication that socioeconomic disparities in sentencing decisions had increased indirectly through non-regulated plea bargaining practices. Regardless of time period, offense (rather than offender) characteristics were the major determinants of various types of plea agreements. Second, there was significant county variation in the likelihood of receiving plea agreements after passage of the guidelines. The consequences of this county variation on the goals of sentencing uniformity, neutrality, and proportionality are discussed below.

3. County Differences in Charging and Plea Bargaining

Given the degree of county variation in plea concessions, county-specific models of charge dismissals, charge reductions, and sentence negotiations were estimated at each time period. These analyses were performed to assess whether particular case attributes are given more or less importance in plea negotation practices and whether socioeconomic differentiation in the type of persons who receive plea concessions has increased over time within each county. The

county-specific rates of various types of plea bargaining and charging practices for each year are summarized in Table 8.

---Insert Table 8 about here---

The most striking result in Table 8 is the change in rates of sentence negotiations and charge dismissals in Ramsey county. Before the guidelines, about 44% of the felons processed in Ramsey county received a dismissal of some counts as part of a plea agreement. After passage of the guidelines, there has been a steady increase in this type of plea concession, up to 73% in 1984. Pre-guideline rates of charge reductions were also higher in Ramsey county than other counties, but this plea concession was almost eliminated in Ramsey county after implementation of the guidelines. Similarly, sentence concessions in Ramsey County were given in about 67% of the pre-guideline cases, but in less than 30% of the cases processed after the guidelines. These trends are quite divergent from the patterns in Hennepin and the other 6 counties. In these other counties, rates of sentence negotiations have generally increased over post-guideline periods and the increase in charge dismissals is also far less dramatic in these other counties.

Although Ramsey county has higher rates of charge dismissals and lower rates of sentence negotiations, the time-specific models of plea bargaining practices are remarkably similar across counties. Specificially, consistent with the aggregate models reported earlier (see Table 7), charge dismissals are far more common in each county and at each time period, ceteris paribus, for felons who are charged with serious offenses and multiple behavioral incidents. The major determinant of charge reductions at each year and within each county was the severity of the initial charge, whereas the most consistent finding for sentence negotiations was that unemployed felons were less likely to receive this type of

plea concession than their counterparts.[41] Except for the impact of employment status on sentence negotiations, plea bargaining practices within jurisdictions and across time were largely unaffected by offender characteristics, suggesting that socioeconomic disparities in the type of persons who receive plea concessions has not increased after passage of the guidelines.

While socioeconomic disparities in plea negotiation practices have not increased, several interesting trends emerged when county variation in charging and plea bargaining practices were examined over time. First, there was a major shift in Ramsey County from sentence bargains to charge dismissals as the primary concession for entering a guilty plea. Rates of various types of plea bargaining were more stable over time in other counties. Yet, as a means of adjusting for greater rates of charge dismissals, prosecutors in Ramsey County (in comparison to other counties) were also more likely to file initial charges for multiple behavioral incidents.[42] However, the change in rates of charge dismissals in this county is only partially attributable to the enactment of the sentencing guidelines. Instead, a more reasonable explanation is the centralized charging procedure used in Ramsey county and a change in internal policy regarding charge dismissals in 1982. Specifically, under centralized charging, most cases are initially charged by one or two senior prosecutors and then delegated to other attorneys for further processing (see MSGC, 1984: 140). While this approach encourages the filing and retention of all possible charges as a bargaining tool, there was a policy change in the Ramsey county district attorney's office in 1982 which required internal approval for the dismissal or reduction of charges. This policy change took some discretionary authority away from individual prosecutors and is also likely to have contributed to the increase in charge dismissals after 1982. Second,

the differential proclivities of counties to engage in plea bargaining have remained fairly stable over time. Overall rates of plea bargaining were lowest in Hennepin county at each time period and dropped in each metropolitan county during the first year of the guidelines, but increased over post-guideline periods. Finally, there was little indication of vertical "overcharging" in any county after passage of the guidelines. The average severity of the initial charges filed in each county remained fairly stable across time periods.

In summary, these county-specific analysis indicate that greater disparities in the type of persons who are granted plea concession have not materialized after passage of the guidelines. However, the rate at which different types of plea concessions are used changed considerably over time, especially in Ramsey county. While county differences is a kind of disparity antithetical to the thrust of the guidelines, these county-specific analysis also suggest that the goal of sentencing neutrality was not affected indirectly through non-regulated plea bargaining practices. On the other hand, the extensive use of charge dismissals as a bargaining tool calls into question whether proportionality in punishments is achieved for persons who commit multiple offenses.

4. Changes in Mandatory Minimums for Weapon Offenses

One of the major legislative changes which is likely to influence sentencing, charging, and plea negotiation practices in later years is the change in the mandatory minimum sentences for the use of a firearm in the commission of other felonies (Minn. Stat. 609.11). Mandatory minimums in 1981 were increased from one year and a day to three years for first offenses, and from three to five years for subsequent firearm offenses (MSGC, 1984:27). More importantly, this stat-

ute was also amended to provide prosecutorial discretion to enter a motion to sentence apart from the mandatory minimum, pursuant to a written statement which outlines why substantial mitigating factors exist (see Minn Stat. 609.11, subd. 8).

While the legislative intent of this change was to mandate minimum sentences and increase the gravity of punishments for weapons offenses (see also, Rathke, 1982:280), prosecutors have several options to circumvent the mandatory provisions. For instance, the firearm can be "swallowed" in cases of aggravated robbery and plead out to simple robbery, or a second degree assault involving a weapon can be amended to a charge of making a terroristic threat, which avoids the mandatory mininum for dangerous weapons and has a presumptive stayed prison sentence. Further, the felony charge can also be reduced to a gross misdemeanor or misdemeanor (e.g., carrying a pistol without a permit, reckless use of a firearm) in which case both the guidelines and the mandatory mininum sentence are avoided (see Rathke, 1982).

Our analysis of adjustments to changes in the mandatory minimum involves a comparison over time of the percent of cases in which the use of a dangerous weapon could be inferred from the available information versus the rate of convictions for weapons charges. While the data on the gap between potential charges and convictions for weapon offenses has already been presented in our discussion of the proportionality in punishments (see Table 5), it is reinterpreted here as an indicator of adjustments to external (i.e., legislative) forces.

Contrary to the image that prosecutor's are "swallowing" the weapon as a means of avoiding the mandatory minimum, it appears that a higher percentage of charges for dangerous weapons were being retained through conviction in the

year immediately following this legislative change, but that prosecutors were also filing motions as part of plea agreements to sentence apart from the mandatory provisions in order to mitigate the sentence. However, after 1982, prosecutors seemed to move back toward dropping the weapons charge as a plea agreement and minimized the rates of filing motions to sentence apart from the weapon conviction. Specifically, before the legislative change, 55.1% of the potential weapons charges resulted in convictions, but this retention rate has increased considerably to 68.5% in 1982, the year following the legislative change. In 1984, the retention rate through conviction for cases of alleged use of dangerous weapons dropped back down to only 56.5%, a level similar to that prior to the legislative change. Yet, during 1982, prosecutors filed 63 motions to sentence apart from the mandatory mininum compared to only 29 such motions in 1984.

The analysis of attrition of potential weapons charges gives some indication about how criminal justice officials have adjusted their practices to externally imposed changes. Specifically, during the first year, there was a great deal of compliance with the legislative change, as indicated by the high rates of retention of these charges through conviction. Yet, as an enticement for entering a guilty plea, prosecutor's also had to "give up" the weapons conviction by arguing for a mitigated sentence on this conviction. Possibly because filing motions to sentence apart from the mandatory minimum are less efficient or became less acceptable to defense counsel or judges, the "swallowed weapon" (rather than a sentence bargain) became the primary enticement for a guilty plea in later years. This pattern also suggests that prosecutors reverted back to pre-legislative practices. In addition to indicating a loss in proportionality of punishments over time, the major gap between those who could be potentially charged with using dangerous

weapons and those convicted of such acts is also indicative of a lack of uniformity in punishments (i.e., like offenses are not treated similarly).

5. Computation of Criminal History and the Hernandez Rule

As mentioned earlier, the Minnesota guidelines have been modified several times to accomodate evolving case law, legislative changes, and procedural adjustments made by the Commission. Of the many modifications and extensions of the guidelines, however, State v. Hernandez (1981) is is especially important because it has major implications on charging, plea bargaining, and sentencing decisions. While the immediate impact of this decision was a change in how criminal history points accrue with multiple current felony convictions (see MSGC, 1984:28), the Hernandez rule is far more than a technical issue since it challenges the basic integrity of the Minnesota guidelines.

Prior to the Hernandez decision, an offender's criminal history score was computed only on the basis of sentences imposed prior to the date of sentencing for the current convictions. Under this procedure, if a person was sentenced for two felony convictions on the same day, these convictions were not successively "read in" when computing the criminal history score associated with the second conviction. These convictions could only be used to enhance the felon's criminal history score for sentences given at a later date. However, the Hernandez decision allows for "prior" criminal history points to be added for purposes of current sentencing decisions even when these felony points accrue from sentences pronounced on the same day.

Except under certain conditions (see MSGCA, 1985: 17), there is no absolute limit on the number of criminal history points that may accrue in cases of multi-

ple convictions for separate behavioral incidents under the Herandez procedure. For instance, a person with no previous criminal history who is charged with seven counts of selling marijuana could end up with a criminal history score of 6 for the last conviction and, consequently, a presumptive prison sentence of 21 months.[43] If one or more of these charges were dropped as a result of a plea agreement the presumptive prison sentence would be stayed.

As the above example clearly illustrates, the Hernandez rule for same day sentencing affords prosecutors enormous power in determining the presumptive sentence through the number of charges retained through convictions. This can occur in several fundamental ways. First, in cases of separate and distinct acts (i.e. separate behavioral incidents), prosecutors can "target the dispositional line" by entering a sufficient number of charges so that the defendant upon conviction receives a prison term. Second, if these charges involve violent crimes against multiple victims, retention of more than one of these initial charges through conviction also provides for the possibility of consecutive (rather than concurrent) sentences. In both of these cases, the ability of prosecutors to dismiss, reduce, or aggregate additional charges affords them enormous leverage in plea negotiations.[44] Since charging and plea bargaining practices largely determine the presumptive sentence, the selective use or threat of "Hernandezing" the charges may also undermine the goals of uniformity, proportionality, and neutrality of punishments under the Minnesota guidelines.

As will be shown later, criminal justice officials in our survey clearly believed that prosecutors were using the Hernandez rule to "target the dispositional line". However, it is difficult to empirically document the direct impact of this rule because there is no available information on the offender's criminal history score

prior to the current charges. In other words, our data on the felon's criminal history is based on their criminal history score after all convictions have been compiled. Since we do not know the prior record before the current charges, there is no way to determine directly how many separate counts needed to be retained to change the presumptive sentence to imprisonment or, conversely, how often prosecutors' "gave up" the possibility of a prison term by not "Hernandezing" potential charges for multiple behavioral incidents.

Nonetheless, several types of data can be used to estimate indirectly the possible extent and consequences of the Hernandez ruling. This evidence was accumulated by comparing, over time (1) average criminal history scores, (2) criminal history scores for offenses in which "Hernandezing" would be most likely to alter the presumptive sentence, and (3) rates of potential charges, filed charges, and convictions for multiple behavioral incidents. These comparisons are summarized below.

Given its consequence on the accrual of criminal history points, one would expect an increase in average criminal history scores after the Commission's ratification of the Hernandez rule in late 1981. In the eight county subsample, the average criminal history score increased the most between 1981 and 1982 (the year following Hernandez) and has continued to rise over post-Hernandez periods. The average criminal history scores are .97, 1.02, 1.20, and 1.30 over the respective pre- and post-guideline time periods. Although there are other reasons why criminal history scores may increase over time, it seems reasonable to attribute some of this sudden increase in criminal history in 1982 to the use of the Hernandez rule.[45]

Although the Hernandez rule can also affect durational decisions under the guidelines, the use of this rule is especially advantageous to prosecutors when a conviction on the most serious charge alone would not result in a prison sentence. For these less serious charges (i.e., crimes at a severity level of less than IV), the ability to charge for separate behavioral incidents and successively escalate criminal history scores upon conviction can be used to achieve a presumptive prison sentence. Consequently, if the Hernandez procedure is being used in the above manner, one would expect both higher criminal scores and more convictions for multiple behavioral incidents after 1981 for cases in which the most serious charge is for crimes at low severity levels (mostly property offenses).

When separate analysis are performed for specific types of crimes, a post-Hernandez increase in criminal history scores is also observed. Specifically, the average criminal history score for persons charged with crimes at severity levels I-II (e.g., aggravated forgeries, felony possession of marijuana) changed from .78 points in 1981 to 1.05 points by 1982 and to 1.20 in 1984. The corresponding average criminal history scores for initial charges at severity levels III-IV (e.g., theft crimes and non-residential burglaries) over the same post-guideline periods are 1.15, 1.29, and 1.30, respectively. The average criminal history score also increased between 1981 and 1982 from 1.09 to 1.29 for felons initially charged with serious person crimes (severity levels VII-X), but decreased in 1984. Thus, not only is the Hernandez decision associated with an increase in the criminal history scores for less serious property offenses, but it also corresponds with an increase in criminal history scores for felons charged with serious crimes against the person. Finally, rates of conviction for multiple behavioral incidents increased at each level of charge severity, except at severity levels V-VI (e.g., charges for Res-

idential Burglary, Simple Robbery, and 2nd Degree Criminal Sexual Conduct) where rates of multiple convictions actually decreased after the Hernandez ruling in 1981.

The impact of the Hernandez rule is more clearly documented when criminal history scores are examined simultaneously for different levels of charge severity and multiple convictions for separate behavioral incidents. As shown in Table 9, average criminal history scores among felons who were not convicted of multiple counts remained fairly stable between 1981 and 1982 at each severity level of the initial charges. However, for felons convicted of multiple behavioral incidents, criminal history scores nearly doubled from 1981 to 1982 at all severity levels except for charges in which the presumptive disposition upon conviction would be a prison sentence regardless of criminal history score (i.e., severity levels VII-X). These patterns remained in 1984, even though the criminal history scores were generally lower among felons who were charged with less serious property offenses (severity levels I-IV) and had multiple convictions than was true in 1982. Since convictions for property crimes would typically result in a stayed prison sentence, the sharp growth in multiple convictions and criminal history scores in the year immediately following the Hernandez ruling suggests that prosecutor's are using this provision to "target" presumptive prison sentences and increase incarceration rates for felons convicted of less serious property offenses.

---Insert Table 9 About Here---

While the analysis thus far has attempted to document the use of the Hernandez rule, the threat of "Hernandezing" the initial charges also affords prosecutors greater leverage in plea negotiation practices than was true before this change. Obviously, it is difficult to assess the extent to which prosecutors

"give up" the possibility of using this ruling, but some suggestive evidence can be provided by comparing rates of potential charges (based on our independent assessment of the criminal complaint), initial charges, and convictions for multiple behavioral incidents. Rates of retention of these charges for multiple behavioral incidents through conviction over time are summarized in Table 10.

---Insert Table 10 About Here---

If prosecutors are using the Hernandez decision as a bargaining tool or a means to target prison sentences, one would expect a rise over time in both rates of charging and convictions for multiple behavioral incidents. As shown in Table 10, this was clearly the case, with both rates steadily increasing since 1981. However, according to the independent assessment of the criminal complaint, it is also true that the percent of cases in which multiple counts could have been entered also increased in post-Hernandez time periods. Consequently, the growth in rates of charges for multiple counts may simply indicate a change in the nature of criminal offending, rather than a "stacking" of initial charges in post-Hernandez periods.

The nature of prosecutorial adjustments to the Hernandez rule, however, is quite evident when the ratios between potential charges, filed charges, and convictions for multiple behavioral incidents are compared over time. These comparisons reveal how prosecutors are entering more of the potential charges, but are "giving away" more convictions on multiple counts in post-Hernandez periods.

As shown in Table 10, a greater percentage of potential charges for multiple behavioral incidents are being charged out by prosecutors after the Hernandez decision. The charging rate of potential multiple counts was only 42.7% in 1981,

but increased to over 55.6% in 1982 and continued to rise to 59.0% by 1984. However, while a greater percentage of potential counts are being charged, a smaller percentage of these charges for multiple counts result in multiple convictions after the Hernandez decision, dropping from 72.3% in 1981 to only 56.3% in 1982. Since the major differences between charges and convictions on multiple counts (as well as the gap between potential counts and actual charges) occur from 1981 to 1982, we are quite confident that such effects are due to the Hernandez decision.

The results in Table 10 indicate a general process by which the Hernandez procedure has influenced initial charging and plea bargaining practices. Specificially, the Hernandez decision appears to encourage the filing of more initial charges for multiple behavioral incidents, as shown by the sharp increase in 1982 in the percent of potential multiple counts that were charged as such. Yet, these multiple charges are more likely to be "given up" after the Hernandez decision as a condition for a guilty plea. This is evident from the appreciable decrease after 1981 in the percent of multiple charges which resulted in multiple convictions and the fact that in the vast majority of cases where multiple charges did not result in multiple convictions, the other charges were dropped as part of a plea agreement.[46] Thus, it appears that prosecutors are using the Hernandez rule as both a mechanism to "target" prison sentences (by retaining multiple charges through conviction) and a bargaining tool to entice defendants to accept a guilty plea in exchange for dismissals of associated counts.

a. Summary

Changes in charging and plea negotiation practices immediately following the ratification of the Hernandez rule in 1981 have major implications on the achievement of the explicit goals underlying the Minnesota guidelines. Since the number of separate and distinct counts retained through conviction can determine the presumptive sentence, prosecutors' ability to retain or drop multiple counts in charging and plea bargaining practices can diminish gains in uniformity and proportionality achieved elsewhere under the guidelines. The widening gap between initial charges and convictions for multiple counts after the Hernandez rule is prima facia evidence of diminished uniformity in punishments. Furthermore, by failing to use the Hernandez rule when it may be appropriate (by dismissing as part of a plea agreement other separate and distinct acts), proportionality of punishments may also be undermined. However, socioeconomic biases in the type of persons who receive multiple charges and convictions for separate behavioral incidents have not increased over time.[47] Given the impact of the Hernandez rule, the long-term effectiveness of the guidelines may be seriously threatened by prosecutorial adjustments in charging and conviction practices in cases of multiple behavioral incidents.

6. Changes in Case and Statute Law

A major component of the enabling legislation which created the Commission and the structure of the sentencing guidelines was the provision for appellate review of sentences. This legislation established the right of both the defense and prosecution to appeal the appropriateness of any sentence, a grounds for appeal not previously permitted (see MSGC, 1984:111). Appellate review and evolving case law has reinforced two core principles embodied in the sentencing guidelines.

Those two key principles are that sanctions be imposed on the basis of the offense of conviction (and not on alleged, but unproven behavior) and be proportional to the gravity of the convicted offense.

While the annotation of the guidelines (MSGCA, 1985) fully documents the major changes in case law, we examine below how the growth in departure rates and the appellate courts' acceptance of several factors as reasons for departures have introduced sentencing goals and rationales inconsistent with the original thrust of the guidelines. The use of amenablility or unamenability to probation as a grounds for a departure, and the opportunity in intrafamilial sexual assault cases to mitigate the sentence if in the best interest of the family unit not only have increased rates of dispositional departures, but also pose a potential conflict with the explicit goals of the Minnesota guidelines.

Since judgments about the amenability of a felon to probation are based on an overall assessment of the person (including in many cases community ties, family stability and employment history), the acceptance of this reason as a grounds for dispositional departure clearly introduces social factors in sentencing which are otherwise prohibited under the guidelines. As echoed in a Supreme Court opinion upholding a mitigated dispositional departure (State v. Trog 1982 at 28):

> "Numerous factors, including the defendant's age, his prior record, his cooperation, his attitude while in court, and the support of friends and/or family, are relevant to a determination whether a defendant is particularly suitable to individualized treatment in a probationary setting. All these factors were present in this case and justify the dispositional departure"

However, the appellate courts have ruled that these factors may only be considered in dispositional (versus durational) departures and may not include the offender's willingness to plea bargain or any other factor which is also in-

cluded as an element of the offense or criminal history scores (see MSGCA, 1985:47-49). Yet, the tacit approval given to the use of offender characteristics in judgments regarding amenability or unamenability to probation introduces sentencing rationales which are antithetical to the retributive philosophy underlying the Minnesota guidelines.

The intrafamilial sexual abuse statutes enacted in 1981 provides for a stayed prison sentence if it is in the best interest of the victim or the family unit (see MSGC, 1984:131). While few cases fall under these statutes, rates of mitigated dispositional departures are extremely high in these cases and the number of these offenses is increasing over time. Given that offenders convicted of sex offenses against children are more likely to be older, more educated, employed and white in comparison to other serious person offenders (see MSGC, 1984:131), the high departure rate for these offenses also results in a decrease in uniformity and neutrality of punishments.

Finally, there has been a growth in dispositional departures due to defendants' request to have the courts "execute" a stayed prison sentence. If the conditions of a stayed sentence are more onerous than an executed sentence, the judge must departure from the guidelines and execute the prison sentence (State v. Randolph [1982]). The frequency of use of this reason for departure has decreased somewhat over time, with about 111 departures in 1983 involving a defendant's request compared to 84 cases in 1984. However, while requests to execute stayed sentences have been justified on grounds of proportionality (see MSGC, 1984), the very fact that defendants would request such an outcome suggests a fundamental deficiency in an otherwise logical system of punishments.

7. Summary

After the implementation of the guidelines, several changes in case law, legislative mandates, and Commission policy have given greater discretionary authority to both prosecutors and trial court judges. These changes have created new avenues through which officials may adjust their practices in order to achieve ends inconsistent with those sanctioned by the sentencing guidelines. The ability of judges and prosecutors to sentence apart from mandatory minimum sentences, to depart from the guidelines when it is felt that the offender is especially amenable or unamenable to probation, and the ability of prosecutors to "Hernandez" criminal history scores through their charging authority all allow for greater opportunities to introduce extra-guideline considerations into sentencing decisions. In some instances (e.g., "Hernandezing" charges), there is evidence that criminal justice officials are already making use of these opportunities on a widespread basis. In other areas (e.g., amenability to probation) the effects may take longer to manifest. Each of these practices, however, poses a challenge to the integrity of the Minnesota system of sentencing reform.

CHAPTER VI:

SURVEY OF MINNESOTA CRIMINAL JUSTICE OFFICIALS

A full understanding of the long-term impact of determinant sentencing reform requires information not only on sentencing and prosecutorial practices, but also on the attitudes toward the guidelines held by criminal justice officials who work with them on a daily basis. Consequently, we distributed a questionnaire (see Appendix I) to 346 prosecutors, defense attorneys, and trial court judges who handle felony cases in the eight counties from which our in-depth sample was drawn.[48] Although the overall response rate for our survey was only 57.8% (200/346), a more detailed examination revealed no jurisdictional or occupational bias among respondents.[49] Thus, while our results should be viewed with some caution, it seems reasonable to assume that they are fairly representative of the attitudes and opinions of criminal justice officials statewide.

The results from our survey largely confirm and help illuminate many of the findings from our analysis of sentencing and prosecutorial practices. In general, they show that the guidelines have become a "fact of life" in Minnesota. Over four out of five officials (82%) indicated that the guidelines "frequently" or "always" influenced their decisions regarding a case, and virtually all (95%) thought that the State Supreme Court has been "very" (74%) or at least "somewhat" (21%) supportive of guidelines' objectives and policies. However, although sentencing guidelines may have become an established part of the criminal justice process, our results also indicate that many criminal justice officials have granted them only grudging acceptance and, over time, have sought and found ways to sidestep or manipulate the stated objectives and policies of the guidelines.

Examination of our findings will begin with a description of criminal justice officials' perceptions of the extent to which the general goals of the guidelines have been attained and the impact of the guidelines on the quality of justice in Minnesota. We will then present data on criminal justice officials' agreement with and acceptance of sentencing guidelines. Finally, we examine criminal justice officials' assessment of the changes or "adjustments" in criminal justice practices that have taken place since the guidelines were implemented.

A. PERCEPTIONS OF GOAL ATTAINMENT

Three major objectives of the guidelines are to promote sentencing proportionality, sentencing uniformity, and sentencing neutrality. According to criminal justice officials, the guidelines have proven quite successful in each of these areas. For instance, 90% of the officials reported that the guidelines have been either somewhat (62%) or very (28%) successful in achieving proportionality in sentencing; 92% believed that the guidelines have been successful in promoting sentencing uniformity, either somewhat (58%) or very much (34%); and 88% said that the guidelines have been somewhat (54%) or very (34%) successful in achieving sentencing neutrality.[50]

However, there were differences among the various criminal justice officials in their perceptions of the degree of success achieved by the guidelines in each of these areas. As an occupational group, prosecutors were the least likely to report successes in sentencing proportionality. Only 12% thought the guidelines had been very successful in achieving proportionality (compared to 36% of judges and 33% of defense attorneys), while 21% (compared to only 5% of the judges and defense attorneys) thought the guidelines were "not at all successful" in this area.

Judges, on the other hand, were the group most likely to see successes in the area of sentencing uniformity. Almost half (48%) of the judges responded that the guidelines had been "very successful" in this area, compared with only 28% of the prosecutors and 26% of the defense attorneys. Judges were also most likely to perceive success in sentencing neutrality, with 51% reporting that the guidelines had been "very successful" in achieving neutrality compared with only 30% of prosecutors and 24% of defense attorneys. Moreover, judges were the least likely to perceive that the guidelines had been "not at all successful" in achieving sentencing uniformity and neutrality.

In addition to specific policy objectives, any criminal justice reform movement takes as its larger goal the improvement in the quality of justice provided under the new system. According to survey respondents, sentencing reform in Minnesota did achieve this end. Almost three-fourths (74%) of the respondents reported that the overall quality of justice achieved under the guidelines was at least satisfactory (42%) if not "good" (32%), and 59% thought that the new system was an improvement over the older system of indeterminate sentencing. Slightly over one-third (36%) felt that the system had been made worse by the guidelines, whereas only 4% thought there was no difference between the two systems.

Again, however, there were differences across occupational groups. Judges were most likely to report that the quality of justice under the guidelines was "good" (44%), while prosecutors were the least likely (18%). Moreover, prosecutors were far more apt to say that the quality of justice provided under the guidelines was "poor" (43%) than were judges (18%) or defense attorneys (21%). Similarly, prosecutors were much less likely to view sentencing guidelines

as an improvement over the older system. Only 39% of the prosecutors saw even "some" improvement as a result of the guidelines (compared with 66% for judges and 70% for defense attorneys), and only 8% of prosecutors (compared with 45% of judges and 42% of defense attorneys) thought the guidelines were a "major improvement"over indeterminate sentencing. Of all three groups, judges were the most polarized in their assessment of the guidelines. Over 70% of the judges surveyed (compared with 43% of prosecutors and 47% of defense attorneys) evaluated the guidelines as either causing the quality of justice in Minnesota to be "much better" or "much worse." While judges tended to view the guidelines in a more positive than negative light, the modal category among prosecutors was that the guidelines were "much worse" than the previous system, whereas the consensus among defense attorneys was clearly that the guidelines had made matters "much better".

These differences in the perceived effectiveness and quality of justice under the Minnesota guidelines by types of criminal justice official may be partially attributed to their differing occupational positions relative to the sentencing process and the extent to which implementation of the guidelines affected their official duties. Defense attorneys, for example, were the least consistent in their evaluation of goal attainment. Along with judges, they perceived a relatively high level of sentencing proportionality, but ranked lower, along with prosecutors, in their assessment of sentencing uniformity and neutrality. This may reflect the fact that defense attorneys work more closely with offenders and, thus, may be more sensitive to sentencing disparities associated with offender-related characteristics (e.g., race, sex). Similarly, the tendency for judges to give consistently high evaluations of goal attainment may be due to the fact that it is judicial decision-

making which has been most constrained by the guidelines. Consequently, they may be the most sensitive to the changes in sentencing policy that have resulted from the guidelines.

However, occupational differences in assessments of the guidelines appear to be more strongly influenced by broader philosophical differences among officials in their attitude toward sentencing guidelines in general and the Minnesota guidelines in particular. The responses to several survey items provide insight into these philosophical differences.

B. ACCEPTANCE OF THE GUIDELINES

As a baseline measure, it is significant that less than half (47%) of the respondents expressed agreement with a fundamental philosophical tenet of the Minnesota guidelines--namely, that punishment should be more strongly influenced by seriousness of the current offense than the offender's prior criminal conduct. When asked the relative weight that should be given to the offender's criminal history verses severity of current conviction in sentencing decisions, 47% responded that the two should be given equal consideration and another 4% thought that history should be accorded even greater weight than offense seriousness. The degree to which criminal justice officials concurred with this basic tenet of a "just deserts" philosophy varied widely by occupation, however. Agreement was greatest among defense attorneys, with 70% agreeing that severity should outweigh criminal history, but fell to 38% among judges and only 27% among prosecutors.

A majority of respondents also felt that, while offenders much preferred the guidelines to the older system of indeterminate sentencing (92% of respondents),

victims and the public are generally dissatisfied with the current system (82% and 67% of respondents, respectively). Prosecutors were not only the most likely to hold the above views, but were also the most decisive in their views (the lowest percentage of "don't know" responses).[51] Defense attorneys were less than half as likely as prosecutors to perceive dissatisfaction among victims and the general public with the guidelines. Further, a higher percentage of defense attorneys than other officials responded "don't know" to questions about the views of crime victims (43%) and the general public (36%). Judges hovered around the average on each of these measures. Given these opinions, it would appear that prosecutors clearly view the Minnesota guidelines as a "boon" to criminals but an affront to crime victims and the public, while public defenders and judges were somewhat more divided and (especially in the case of defense attorneys) indecisive in how other affected parties appraised the guidelines.

A final and highly instructive measure of criminal justice officials' attitudes toward the Minnesota guidelines is derived from an open-ended question in which respondents were asked to state what they would most like to see changed about the guidelines. Almost half of the officials (48%) responded that they would prefer to see the Minnesota guidelines either abolished outright (14%) or subjected to major changes (e.g., made more discretionary, eliminate the cap on prison population, increase severity of sanction across the board). Again, there were differences by occupational status. While just under a third of public defenders (31%) expressed a preference for abolition or major changes, over half of prosecutors and judges (approximately 57% each) held such views. Defense attorneys were much more inclined to see no or only minor changes needed in the guidelines (45% compared to 26% of prosecutors and 20% of judges). As these

findings suggest, defense attorneys are much more satisfied with the current structure of the guidelines than are judges and prosecutors.

This pattern of responses regarding criminal justice officials' more general opinions about the guidelines suggests an underlying ideological disposition for or against the guidelines that is closely associated with the respondents' organizational status. Prosecutors were the most consistent in their opposition to the guidelines and (to a lesser extent) the most skeptical regarding the extent to which the guidelines have succeeded in achieving the goals of sentencing proportionality, uniformity, and neutrality. They were also the most likely to disagree with the "just desert" concept of subordinating prior record to seriousness of current offense in setting punishment (especially in the case of longer-term property offenders), to believe that the guidelines had lessened the quality of justice provided in Minnesota, and to see the guidelines as favoring the interests of criminals over that of victims and the general public.

These attitudes seem consistent with the office of prosecuting attorney. While both judges and prosecutors are elected officials, the prosecutor is clearly the most visible of the two and the one who is typically closer to his or her constituency and more subject to the pressures and demands that entails. Prosecutors also work more closely with the victims of crime and are frequently more aware than judges and defense attorneys of the offender's "actual" (as opposed to charged and convicted) criminal activity. Hence, it is not unreasonable for prosecutors to see in the guidelines a system that is overly lenient (especially on property offenders), skewed toward the interests of the offender, and an undue encumbrance on the execution of "substantive justice." In short, the responses of prosecutors fit well with the "crime control" philosophy which the late Herbert

Packer (1968) described as a prominent ideological component of the prosecutor's office.

On the other hand, the responses of defense attorneys comport well with Packer's "due process" model. Because it is the duty of defense attorneys to represent the interests of his or her client during the course of the current proceedings, it is not surprising that they should be more disposed toward a sentencing philosophy that places greater weight on present versus past conduct, to see the guidelines as at least a qualified (if not major) improvement over the previous system, and to be the most sensitive to shortcomings in the ability of the guidelines to achieve uniformity and neutrality in sentencing. It is also consistent that public defenders should be the most divided and indecisive about victims' and the public's views on sentencing guidelines. Public defenders are not only the only non-elected official, but their work with offenders does not typically place them in contact with the victims of crime. Hence, their overall support for the guidelines and their preference for only minor alterations in the guidelines is understandable.

As the preceding results indicate, judges occupy something of a middle-ground between prosecutors and defense attorneys. Although the most consistent in their perception that the guidelines had proven successful in achieving its specific policy objectives, they more resembled prosecutors on some issues and defense attorneys on others when the question turned to broader philosophical matters or the assessment of the more general achievements of the guidelines. It is difficult to speculate on the reasons for this; however, it may be that judges, because they are chosen from a variety of legal backgrounds, may simply be a more ideologically diverse group than prosecutors or defense attorneys. This

would help explain why judges express common views on issues more directly related to their current office and duties (e.g., their assessment of the specific achievements of the guidelines, their opposition to the restraints place upon their discretion), but are divided on other areas which call for a more personal judgment (e.g., whether or not the guidelines represent an improvement in the quality of justice in Minnesota). Whatever the reason, it remains true that judges were overall the least consistent in their support for or opposition to the guidelines.

It is noteworthy that the occupational differences described above do not appear to be limited to officials' attitudes and opinions about the Minnesota guidelines alone. When asked whether they would favor or oppose the implementation of Minnesota-like guidelines at the Federal level, 66% of prosecutors opposed the idea, 61% of public defenders supported the concept, and judges split almost evenly on the question (51% in favor, 44% were opposed). As this finding suggests, the attitudes and opinions of criminal justice officials toward guidelines in general (as opposed to the Minnesota guidelines in particular) have strong organizational and occupational roots.

The major exception to this generalization derives from two questions regarding the establishment in Minnesota of prosecutorial guidelines and guidelines governing the use of jail as a condition of a stayed sentence. Here, opposition was almost uniform across offices. On the question of jail guidelines, only 19% of defense attorneys favored the idea, compared to 15% of the judges and prosecutors. Prosecutorial guidelines were favored by only 12% of judges, 11% of defense attorneys, and a mere 3% of prosecutors. It would appear, then, that regardless of criminal justice officials' degree of support for or opposition to the current Minnesota (or other felony) guidelines, they are virtually unanimous in

their belief that other, related practices should remain areas of discretionary authority.

C. ADJUSTMENTS TO THE GUIDELINES

The attitudes and opinions of criminal justice officials will obviously have consequences on how they execute their duties within the framework of the guidelines. As our earlier analyses of sentencing and charging practices have shown, initial gains in sentencing uniformity and the imprisonment rate for person offenders (i.e., sentencing proportionality) have eroded in later years. In addition, the use of jail as a condition of a stayed sentence has increased, county variations in charging practices have increased, the average criminal history score of convicted offenders have increased, and several social factors continue to influence sentencing outcomes. All of these trends suggest that criminal justice officials have adjusted their behavior in order to accomplish ends different from those specified by the guidelines. Our survey results shed further light on several of these trends and processes.

One of the clearest findings from our survey concerns the "hydraulic effect." Virtually all criminal justice officials believe that the guidelines have increased the power of prosecutors to influence sentencing outcomes through their charging decision. As one public defender observed, "the prosecutor's first and strongest effect on the ultimate sentence lies in the nature of the initial charge selection. All that follows carries out the force of the initial complaint." This was especially true of what one judge referred to as "the 'middle' cases, where prison is neither obvious nor out of the question. By charge bargaining, prosecutors can greatly affect the 'in/out' decision regarding prison." It is also true, of course, that the

same constraints on judicial discretion which increase the impact of charging decisions on sentencing outcomes greatly reduces prosecutorial influence on sentence once a conviction has been entered. As one prosecutor remarked, the guidelines "have tied our hands--we have very little 'wiggle' room in which to operate." Not surprisingly, it was this loss of discretion in sentence bargaining which was the focus of most prosecutors' comments, while judges and defense attorneys tended to emphasize increases in charging power. Regardless of emphasis, however, it was the common assessment of our respondents that under the guidelines prosecutorial power, in the words of one prosecutor, had "increased at plea bargaining, decreased at sentencing."

It was also widely believed by our respondents that this increase in plea bargaining power was being used by prosecutors to manipulate the charging process in such a way as to artificially inflate (i.e.,"Hernandezing") an offender's criminal history score and/or to otherwise adjust the charges in order to achieve some desired outcome. Analysis of prosecutors' responses to several survey items revealed several reasons why they appear to engage in such practices.

The first and most fundamental reason is that prosecutors tend to perceive that the guidelines provide for excessively lenient sentences, especially for persistent property offenders. In response to a question asking respondents to indicate what they thought was the major drawback of the guidelines, one representative prosecutor answered, "Extreme disenchantment on the part of victims. [The guidelines] enable 18 to 20 year old offenders to commit property crimes and burglarize without fear of prison, then whacks them good when they commit one too many." Yet another said, "Not strict enough. A person has to commit six felony thefts before he can go to prison. That's ridiculous." Still an-

other prosecutor expressed the sentiments of many when he stated, "property crimes get such minimal sanctions under the guidelines that it's a joke." Clearly, prosecutors feel that far too few offenders go to prison and for too short a time under the guidelines.

The perceived leniency of the guidelines appears to affect charging decisions in several ways. For one thing, it serves as an inducement (and justification) for prosecutors to retain additional charges against the defendant and to attempt to inflate criminal history scores through multiple convictions. As one prosecutor argued, the guidelines "have made sentencing so 'mechanical' and 'numbers-oriented' (i.e., the quantity of charges is critical to Criminal History Score) that they have caused prosecutors interested in getting a prison sentence to charge more crimes instead of negotiating guilty pleas to one or two crimes in lieu of other charges." Another noted that, "Prosecutors are now less willing to dismiss charges due to the necessity of increasing the criminal history score so defendants can be sent to prison." The reason for these changes in prosecutorial behavior is summarized by another prosecutor who offered that, under the guidelines, "the only influence we now have is to force pleas to accumulate criminal history points in hopes that you can eventually incarcerate the defendant and that he does minimal damage to society in the meantime."

A further incentive to modify charging practices as a result of the guidelines is prosecutors' perception that departures, and especially upward departures, are difficult to obtain and, even when granted, are often not worth the effort. As one prosecutor observed, "A prosecutor has a 'burden' of convincing a sentencing judge of departing from the guidelines when the prosecutor feels that the presumptive sentence is too lenient or inappropriate for the seriousness of the of-

fense. Often that burden cannot be met, even though without the guidelines the judge might have sentenced the defendant to more time in prison." However, another prosecutor added that "departures are meaningless because the Supreme Court has said that they can only be double [the presumptive sentence] absent extraordinary circumstances. Double these sentences is still lenient." Apparently, for most prosecutors the answer to these perceived dilemmas is to seek additional charges and convictions in order to "stack" criminal history points against the offender. By obtaining more convictions against an offender, prosecutors hope to "correct" what they believe to be unduly permissive sentencing standards.[52]

Moreover, bringing additional charges against an offender can be used as a powerful bargaining tool in obtaining guilty pleas. Under an indeterminate system, sentence bargaining often served this end. As one prosecutor explained, "prosecutors had a wide range of options in the prior system--e.g., zero to twenty years for aggravated robbery. We could offer a five year limit [in sentence negotiations] and get pleas." Under the present system, charge bargaining has become the more common medium for achieving this end. As one public defender observed, "Prosecutors have learned to overcharge and/or threaten to move for departure to coerce pleas from defendants and therefore obtain convictions for more or more serious offenses." These opinions suggest that the bargaining process has changed over time, but the end results are the same.

Criminal justice officials, moreover, appear acutely aware of what these changes in charging practices mean for the guidelines. As one judge remarked, the ability of prosecutors to influence sentencing outcomes through their charging decisions "is the great weakness in our system." Nor did criminal justice officials seem surprised by this eventuality. One public defender, for instance, stated that

"it took them longer than I expected, but they [prosecutors] finally figured out the system. Now they overcharge, artificially 'create points' and manipulate and bastardize the system."

However, it is not the case, as one public defender put it, that prosecutors "call the shots totally." Evidentiary standards limit, at least to a large extent, the number and seriousness of the charges for which a defendant may be convicted. Moreover, it is the judge, and not the prosecutor, who must ultimately accept a plea negotiation and rule on whether or not to grant a departure. Finally, prosecutors must constantly deal with defense attorneys who are not only aware of their ability to influence sentencing decisions through their charging decisions, but are also (as previous results indicate) strongly supportive of the concept of sentencing guidelines. As von Hirsch and Hanrahan (1981) correctly observe, any expansion of prosecutorial power through the "hydraulic effect" will be countermanded to some degree by the "checks and balances" provided through other criminal justice officials.

Nevertheless, it is clear from our survey results that there is much dissatisfaction with the current structure of the Minnesota guidelines. In addition to strong opposition from prosecutors, numerous comments by respondents indicate a pervasive (but difficult to quantify) belief that the sentencing guidelines, among other things, (1) are too rigid and "mechanical," (2) allow judges (and even prosecutors) to shirk their responsibilities as public officials and "hide behind" the guidelines when executing their duties, and, (3) through the cap on prison population, substitute administrative criteria for considerations of "substantive justice" when establishing standards that determine who will be incarcerated for their crimes and for how long. In addition, many respondents expressed dissatisfaction

with what were often described as the "arbitrary" rulings of the appellate courts regarding guideline policy. The implications of these beliefs, when considered within the broader context of actual charging and sentencing practices, will be examined in the concluding chapter.

CHAPTER VII:

CONCLUSIONS AND IMPLICATIONS

For most of this century, the rehabilitative ideal and the goal of individualized justice have guided sentencing policy and practices. However, by the early 1970s, these foundations of indeterminate sentencing had begun to crumble. Beginning with the publication of the American Friends Service Committee's book, Struggle for Justice, in 1971, criticisms of the disparities and inequities allowed under indeterminate sentencing systems began to mount. Others, such as Martinson (1974), focused their attacks on the rehabilitative ideal itself, claiming that empirical research had failed to demonstrate its efficacy as a sentencing rationale. Reformers increasingly began to look to determinate sentencing as a means of alleviating the twin problems of sentencing disparity and "failure of rehabilitation."

However, as indicated in Chapter I, empirical evaluations of determinate systems and guideline models have reported few if any significant changes in sentencing practices resulting from the reform effort. One explanation for these results is offered by Goodstein and Hepburn (1985:8-9), who argue that such findings do not necessarily mean that sentencing reforms have failed. Rather, they contend (with considerable justification) that the stated objectives of sentencing reform are in many cases never fully incorporated into the actual policies and laws that govern sentencing practices. Consequently, if subsequent sentencing practices are compared against these ideals, "one might mistakenly conclude 'no effect' for a reform that actually was not faithfully, consistently, and fully implemented" (1985: 9). However, a reform effort which changes little or fails to

translate its stated objectives into law is no "reform" at all; it is simply a reform that failed at the outset rather than farther down the road. Hence, a "no effects" conclusion is still warranted.

It would seem more likely that these negative findings are the result of the fact, as Feeley (1983) suggests, that many reformers fail to understand or appreciate the complex nature of the criminal courts and their interrelationships with other components of the criminal justice system. According to Feeley (1983: 149), "too often sponsors have designed [sentencing] legislation more for its symbolic appeal ... than for its actual effect." The result is programs that are limited in scope and/or substance and, thus, doomed from the outset.

As we have argued in Chapter II, reformers in Minnesota managed to avoid many of these pitfalls. The Sentencing Commission established by the Minnesota legislature was able to craft a set of comprehensive guidelines that adhered closely to the Commission's choice of a "modified just deserts" philosophy, placed tight controls on judicial discretion, limited the use of departures from the guidelines, tied sentencing policy to prison capacity, and provided for appellate review and the ongoing monitoring of sentencing practices. In this sense, the Minnesota guidelines represent a "best case" test of determinate sentencing reform. The principal aim of the present study was to determine the extent to which initial changes brought about by the guidelines were able to stand the test of time.

As our analyses of sentencing and prosecutorial practices have indicated, the Minnesota guidelines were quite successful in achieving their goals of uniformity, proportionality, and neutrality of punishment during the first two years of implementation. By 1984, the guidelines had become somewhat less effective in goal attainment; yet, sentencing uniformity, proportionality, and neutrality remained

above pre-guideline levels. And, as our survey results suggest, this was accomplished in the face of considerable opposition among criminal justice officials to both the general concept and specific policies of the guidelines. In this final chapter, we address the possible causes of the decline in goal attainment after 1982, how such trends might be reversed, and what other jurisdictions considering sentencing guidelines can learn from the Minnesota experience.

A. THE CAUSES OF CHANGE OVER TIME

As is true of any reform effort, the evolution of the Minnesota guidelines has been greatly influenced by external as well as internal dynamics. Following implementation of the guidelines in 1980, there was a period of rapid and relatively dramatic change in guideline policies, legislative statutes, case law, and composition of the Guidelines Commission. All of these factors appear to have contributed to a decline in goal attainment in later years. Among the most important of these changes are the growth in allowable departures, the more passive role assumed by the Sentencing Commission, and changes in the computation of criminal history score.

The expansion of allowable departures has come through both legislative action and developing case law. By 1982, the Minnesota legislature had granted prosecutors the right to seek to sentence apart from mandatory minimums in weapons offenses and the Minnesota Supreme Court, in Olson (1982), extended this authority to judges. Also in 1981, the legislature enacted the intrafamilial sexual abuse statute which enables the court to grant a mitigated dispositional departure when such a departure is deemed "in the best interest of the complainant or the family unit" (MN 609.3641.2). These and other legislative

actions and related case law have increased the discretionary authority of both judges and prosecutors, and pose a threat to the ongoing ability of the guidelines to achieve the goals of sentencing uniformity, proportionality, and neutrality. As discussed earlier, these increases in discretionary authority did have a noticeable impact on sentencing uniformity and account for at least some of the decline in proportionality since 1982.

However, it was the Commission's inclusion of the Court's Hernandez decision regarding computation of criminal history score that has contributed the most to increases in prosecutorial discretion. While prosecutorial practices have always posed a threat to the guidelines, prosecutors gained even greater leverage in plea negotiations and in their ability to manipulate presumptive sentences after these changes. Although there is no evidence that this has effected sentencing neutrality, charging and plea bargaining practices after Hernandez pose a serious challenge to the goals of sentencing uniformity and proportionality.

The most obvious solution to this problem is the introduction of statewide guidelines regulating prosecutorial practices. However, we feel that prosecutorial guidelines would be largely ineffective, for several reasons. First, given the level of opposition to prosecutorial guidelines found in our survey, the enactment of legislation mandating charging and plea bargaining guidelines would face stiff political resistance and, if enacted over such opposition, would simply invite circumvention. Moreover, it is difficult to imagine exactly what such guidelines would look like, how they would be implemented, and how they would be enforced. There is the additional issue of how prosecutorial guidelines would address evidentiary matters. As one of our respondents put it, it is the prosecutor who is "closest to the case" and is in the best position to determine which charges

the evidence will support. Although broad guidelines might be drafted regarding charge dismissal (e.g., regulating dismissal with or without prejudice), this would only amount to an incremental increase over current standards and would in all likelihood be perceived as simply adding another level of "bureaucracy" to the prosecutor's office.

A more reasonable solution would be to incorporate limits on the ability of prosecutors to influence sentencing practices within the sentencing guidelines themselves. Specifically, the Commission could thwart efforts to manipulate the guidelines through the "Hernandezing" of cases by placing maximum limits on the number of criminal history points which could accrue through "same day" sentencing. For instance, a maximum of two criminal history points might be allowed in such cases. The Commission has already imposed this type of upper limit in other situations (e.g., burglary and kidnapping offenses) and could presumably do the same for "same day" sentences. Another solution would be to weight criminal history points according to the type and/or gravity of the offense of conviction. For instance, property offenses might be weighted as some fraction of person offenses, and offenses involving damage to property and severe economic loss might count more than ordinary property offenses. Several proposals concerning this latter option have already come before the Commission, and our survey indicated considerable support among criminal justice officials for the weighting of criminal history points. Given its appeal to criminal justice officials, this type of solution might be an effective way to limit prosecutors' ability to "target the dispositional line" or inflate charges for plea negotiation purposes in cases involving minor property offenders.

Alternatively, the Commission might draft, with the assistance of the County Attorneys Association, a set of informal statewide guidelines which should be followed for specific charges (e.g., person offenders, major economic crimes, sexual and domestic abuse). Although such "guidelines" are already used in the larger urban jurisdictions, the establishment and dissemination of "voluntary" standards might prove effective in lessening county differences in charging and plea negotiation practices. And, by limiting the guidelines to a specific set of especially serious offenses, county attorneys would still be permitted ample discretionary authority to take into account community standards and resources in less serious offenses (i.e., offenses for which a presumptive stay is likely at any rate).

It is noteworthy that any of these solutions will require an active role by the Sentencing Commission. However, one of the factors which appears to have contributed to a decline in goal attainment since 1982 is what Knapp (1984) has termed "a decline in the innovative spirit" of the Commission. At the beginning of the reform effort, the Commission took an active and policy-oriented role in fashioning guideline policies and assuring their adoption and implementation. In 1982, however, five new members joined the Commission and a new Chair was appointed. (In addition, a new governor was elected that year and a new Attorney General and Commissioner of Corrections appointed.) It was also in 1982 that the Commission began to move away from its earlier policy orientation and began to involve itself in more limited, "technical" concerns.

Whether or not this change in orientation is a direct result of changing Commission membership is difficult to say. However, for whatever reason, it is clear that the Commission has largely retreated from major issues of policy since guideline implementation. For instance, in its 1982 "Preliminary Report" to the

legislature, the Commission expressed its intent to develop guidelines governing the use of jail as a condition of stayed sentence (MSGC, 1982:64). By 1983, this language had been stricken from the "Guidelines and Commentary" (see MSGCA, 1985:88). A review of the Minnesota Sentencing Guidelines and Commentary Annotated (MSGCA, 1985) also reveals little policy input on the part of the Commission on such major issues as sentencing departures and, with some exceptions, computation of criminal history score. And, in many cases, Commission modifications in these areas do little more than incorporate Supreme Court rulings into the guidelines (e.g., the Hernandez and Evans decisions).[53] In these and other areas, the Commission has left it to the appellate courts to define and elaborate guidelines policies.[54]

Policy decisions are the legitimate domain of the legislature and its designated agents. At present, sentencing practices are moving away from the initial policies promulgated by an earlier Guidelines Commission, and the relatively passive role assumed by the current Commission gives de facto approval to these changes. Moreover, it forces the appellate courts to continue to adapt guidelines polices to changing social and legal conditions without clear guidance from the Commission. This is a task many justices do not relish and one that the appellate courts are ill-suited to perform.[55] If the present Commission wishes to maintain the integrity of earlier policies, it must rekindle its earlier activist spirit and, with legislative support and approval, involve itself in the formulation and implementation of policies or revisions that will prevent a further erosion of sentencing uniformity and proportionality.

B. IMPLICATIONS FOR OTHER JURISDICTIONS

The direct application of our findings to other jurisdictions may be somewhat limited because the state of Minnesota is relatively unique in several respects. It has a strong progressive political tradition, has historically had one of the lowest per capita prison populations in the U.S., and is relatively homogenous demographically.[56] Although these features may limit generalizations, much can still be learned from the Minnesota experience. In our opinion, the following suggestions or recommendations can prove valuable to other jurisdictions considering Minnesota-like guidelines or even other forms of determinate sentencing.

As Minnesota's experience suggests, states that are serious about meaningful sentencing reform must place firm limits on judicial discretion. This means that the standards promulgated must be presumptive in nature. "Voluntary" guidelines or those that retain judicial discretion in dispositional decisions may be politically safe because they preserve a significant amount of discretionary authority, but they are less effective for the same reason. Indeed, the widespread dissatisfaction with the Minnesota guidelines among the criminal justice officials in our survey and the common complaint that the guidelines are "too inflexible" is evidence of the fact that they have placed tight controls on sentencing practices and reduced disparities. Moreover, even though there is dissatisfaction with the guidelines, a majority of criminal justice officials in our survey nonetheless thought the guidelines had gone a long way toward achieving their goals and were an improvement over the previous system. If the Minnesota guidelines were not presumptive, there would be much less opposition; but the gains in sentencing uniformity, proportionality, and neutrality would be less dramatic as well.

A second recommendation concerns the nature of reform and the need to maintain what we have referred to as the "innovative spirit" which helped initiate change in the first place. While the "spirit of reform" will necessarily subside over time, it must also be recognized that reform efforts do not end with passage of sentencing guidelines. As external and internal forces work to change the guidelines, there must be a sentencing commission or some other comparable agency to monitor and address those changes. By being an advocate for the guidelines, this agency will be better able to overcome the cumulative inertia and resistance from years of deeply ingrained alternative practices that may work to undermine sentencing reform. However, this commission or other regulatory body must have the support of the legislature, criminal justice officials, and the general public. Without such backing, the effectiveness of this body will be limited.

As is implied in many of our previous comments, we see great merit in the "commission approach" to guideline construction and implementation. However, the success of a sentencing commission depends on the level of autonomy and the powers granted this body in the enabling legislation. In Minnesota, for instance, the legislature included several factors the Commission should "consider", but left them considerable leeway in determining the degree of control to be imposed on sentencing practices, the philosophy which would inform guideline construction, and whether the guidelines should be tied to correctional resources. This may be contrasted with sentencing commissions in other states (e.g., Wisconsin) where the commission was designated from the outset to be more a source of administrative and technical advice than an active policy-making body. In addition, the autonomy granted the Commission in Minnesota made it less vulnerable to changing political tides and insulated it from pressures to "get tough" on crime

by escalating criminal sanctions beyond what was considered appropriate by the Commission or feasible given correctional resources.

However, caution should be exercised when granting a sentencing commission broad powers to establish sentencing guidelines. The same grant of autonomy that can help protect a commission from destructive political forces also runs the risk of turning sentencing policy over to a small cadre of "experts" and isolating the general public and elected officials from the policy process. Clearly democratic norms require that a balance be struck between the need for an autonomous sentencing commission and the desires and sentiments of the public. This should include, at minimum, hearings which allow the public to comment and make recommendations about the guidelines, and a fair and reasonable commission membership that includes a cross-section of the criminal justice community and public representatives. No reform effort can produce sentencing policies acceptable to all; however, whatever the policies adopted, they should not be imposed unilaterally upon the public and the criminal justice community. Indeed, a sentencing commission which appears to be acting unilaterally with regard to sentencing policy may quickly lose legitimacy in the eyes of the public or the criminal justice community. It is for this reason that legislatures and sentencing commissions must fashion some basis for cooperative action when creating or modifying sentencing standards.

Another recommendation concerns the "hydraulic" effect and the circumvention of sentencing guidelines through non-regulated prosecutorial practices. States considering Minnesota-like guidelines should be particularly mindful of the potentially adverse consequences prosecutorial practices can have on sentencing guidelines. As we have suggested earlier in this chapter, guidelines that attempt

to directly govern prosecutorial practices are in all likelihood unworkable. Consequently, in crafting a determinate sentencing system, special efforts should be made to include provisions within the guidelines themselves (e.g., upper limits on criminal history points) that will minimize the manipulation of sentencing practices.

We also strongly recommend that states develop guidelines that are tied to correctional resources. Calibrating sentencing guidelines to correctional capacity may be politically unpopular, but this practice seems advantageous for several reasons. First, a firm prison constraint will help guarantee the fiscal manageability of the correctional system and continues to insulate the commission from the ebb and flow of political fashion. Second, it forces the commission and/or the legislature to make critical, but often difficult, choices concerning the types of offenses or offenders for which prison is an appropriate sanction. This, in turn, would push policy-makers to be more explicit concerning the underlying justification (e.g., retribution, incapacitation, deterrence, rehabilitation) for confinement or non-confinement of convicted offenders.[57] Finally, it seems to us that goals such as sentencing uniformity and neutrality are usually given only secondary importance when states are facing fiscal difficulties or (as is unfortunately too common) under court orders to limit prison commitments. In the real world of state politics, concern with socioeconomic equality and uniformity in sentencing are often treated as luxuries which can be abandoned when other "more pressing" problems present themselves. Calibrating sentencing standards to prison capacity can help minimize this adverse affect.[58]

A final recommendation concerns provisions for appellate review of sentencing practices. For reformers, judicial review has long been viewed as a

capstone of sentencing reform. As early as 1968, for instance, the American Bar Association designated judicial review as a vital component in the effort to rationalize sentencing practices and the development of "sound sentencing principles" (ABA, 1968:29). Through appellate review, substantive sentencing policies can receive additional clarification and elaboration through challenges to particular policies and practices associated with sentencing guidelines. In Minnesota, however, the results of appellate review have been mixed. Although the appellate courts in Minnesota have taken an "activist" role in sentencing reform (an "ideal" situation from the perspective of the ABA's recommendations), the rulings issued by the appellate courts have frequently been viewed by criminal justice officials (according to our survey results) as either "arbitrary" or a usurpation of legislative or the Commission's authority.

Exactly what this means for other states contemplating sentencing reform is difficult to predict. Clearly, appellate review of sentencing practices is a necessary and desirable component in sentencing reform. Only through appellate review can "substantive due process" in the application of sentencing guidelines be fully developed. On the other hand, if rulings handed down by the courts are viewed with consternation or disdain, the legitimacy of those rulings will be called into question and, in all likelihood, circumvented if possible. One way to ameliorate this problem is for the sentencing commission (or other promulgators of sentencing standards) to be explicit in their enunciation of sentencing policies and underlying sentencing philosophy. The work of the appellate courts is made much simpler when there are clear standards to guide interpretation when reviewing sentencing practices.[59] The interpretation and enunciation of sentencing policies is also facilitated by a commission that will not "abandon" the appellate

courts. For the appellate courts to function effectively, legislatures and sentencing commissions must maintain an active level of involvement in the evolution of sentencing guidelines. Substantive sentencing standards are, after all, matters of policy, not of law. If legislatures and sentencing commissions shirk this responsibility (and, in effect, delegate it to the courts), the results could prove disastrous for the long-term viability of sentencing reform.

ENDNOTES

[1] For excellent reviews of determinate sentencing and related reform efforts (e.g. parole guidelines, sentencing guidelines), see Gottfredson et al. (1978), Wilkins et al. (1978), Orland (1979), Shane-Dubow et al. (1979, 1985), von Hirsch and Hanrahan (1981), Blumstein et al (1983), Griswald and Wiatrowski (1985), and Tonry (1987).

[2] The review provided in this chapter is limited to sentencing guidelines and determinate sentencing. Other reform efforts during the past decade which also structure sentencing decisions (e.g., mandatory sentencing, parole guidelines) are not discussed here.

At the onset, it is important to note that there is no universally accepted definitions of "determinate sentencing" and "sentencing guidelines" in past research. For instance, Singer (1978:404) notes that "flat" sentences are determinate sentences in which there is no possibility of reduction or increase during the time the offender is incarcerated, whereas "determinate" sentences only indicate, in effect, a maximum period beyond which the offender may not be confined. In contrast, Shane-Dubow et al. (1979:60-61) distinguish "determinate" sentencing from "sentencing guidelines" by referring to the latter as non-mandatory standards which provide judges information about how other judges are sentencing in similar circumstances (also called voluntary/desciptive guidelines). However, the determinate sentencing model used in Minnesota is also a "guideline" approach, but based on "presumptive" (i.e., legally mandated and binding on judges under "normal circumstances") and "prescriptive" standards (i.e., the sentences standards are established by consideration of what <u>should</u> be the appropriate amount of punishment rather than a statistical "average" of past practices). Finally, Gottfredson and Gottfredson (1984:293-294) outline the general features of a guideline model which applies to various stages of criminal processing (e.g., bail guidelines, sentencing guidelines, parole guidelines).

In this report, we will follow Tonry's (1987) definitions of determinate sentencing and sentencing guidelines. First, the essential features of "determinate sentencing" systems is that "parole release has been abolished and the length of a prison sentence can be 'determined' when the sentence is imposed" (p. 101). "Sentence guidelines" will be defined only as a system in which some body (e.g., legislature, judicial panel, sentencing commission) established sentencing standards for individual cases. These sentencing guidelines can be further distinguished in terms of whether they are "voluntary" or "presumptive", "descriptive" or "prescriptive", and invoked under an indeterminate or determinate sentencing structure. As will be discussed shortly, Minnesota uses a determinate sentencing structure in which the sentencing guidelines are both presumptive and prescriptive.

[3] After failing to establish judicially-based presumptive guidelines, Wisconsin has recently adopted the "sentencing commission" approach to guideline construction and implementation.

[4]For example, the Commission in Wisconsin is more advisory and administrative in its primary function (because considerable judicial discretion was retained in the enabling legislation), whereas Minnesota's Sentencing Commission was given the authority and took the liberty to play a more active, policy-directed role in the establishment of the scope and structure of the guidelines (see Knapp, 1984). For an excellent discussion of the differential roles, duties, and composition of the Sentencing Commissions in Minnesota and Pennsylvania, see Martin (1983, 1984).

[5]The success of the "sentencing commission" approach is also dependent upon the nature of the guidelines that are established, the authority and autonomy granted the Commission in developing and implementing the guidelines, and the proclivities and policy-role adopted by the Commission itself (see generally, Martin, 1983; Knapp, 1984; Moore and Miethe, 1986).

[6] It is important to note that previous evaluations of North Carolina's Fair Sentencing Law suggest that this system has also been quite successful in reducing disparities and maintaining current prison populations (see Clarke et al., 1983; Clarke, 1984).

[7] As will be shown later, there has been some slippage in recent years in the achievement of the goals of uniformity, neutrality, and proportionality of punishments under the Minnesota guidelines. The extent of this erosion and its possible causes are major research questions to be addressed in the present study.

[8] The concern with correctional resources and achieving a financially manageable system was apparent from the beginning of the reform movement (see Appleby, 1982; Martin, 1983; MSGC, 1984). In addition, several commentators have noted that the chances of ratification of the guidelines may have been lessened if the Commission's proposed guidelines placed undue strain on correctional resources (see von Hirsch, 1982; Knapp, 1984).

[9] The ranking of offenses on the "seriousness scale" was derived by having each Commission member rank a series of felony offenses and resolving inconsistent rankings through discussion among the Commission members (see MSGC, 1982:6-7; von Hirsch, 1982:197). While several differences are evident, the ranking of acts on this scale is also largely consistent with those obtained when members of the public rate the seriousness of crimes (see Rossi et al., 1973). As originally developed by the Commission (see MSGC, 1982), the relative weights attached to each factor which comprise of the criminal history index include "custody status" (1 point if under supervision at the time of the offense), "juvenile points" (1 point if the offender is under 21 and had two or more juvenile offenses), "prior misdemeanor/gross misdemeanor sentences" (1 point for each prior misdemeanor, 2 points for each gross misdemeanor), and "prior felony/sentences stays" (1 point for each).

[10] The greater weight given the seriousness of the convicted offense under the desert philosophy represented a radical departure from past sentencing practices which gave more attention to prior criminal activity in sentencing decisions.

However, the shift toward greater imprisonment rates for person offenders was also viewed by the Commission as consistent with the legislative intent of such policies as mandatory minimum sentences for offenses committed with dangerous weapons and the move toward community corrections for property offenders (see MSGC, 1982; Miethe and Moore, 1985).

[11] Although the enabling legislation granted the Commission the authority to develop guidelines for the terms of a non-prison sentence, the Commission chose not to do so for two apparent reasons. First, as noted by several commentators (see MSGC, 1984; Moore and Miethe, 1986), developing guidelines for stayed sentences at the onset was somewhat impractical because it would have complicated the Commission's work during the initial stages of guideline construction. Secondly, retaining judicial discretion in the disposition of cases involving less serious offenses and offenders probably lessened political resistance to the guidelines especially from those deeply committed to a rehabilitative philosophy (see, Moore and Miethe, 1986). von Hirsch (1982:208) suggests that strong opposition to the Pennsylvania guidelines was partially due to the attempt to regulate both jail and imprisonment decisions at the onset. While the issue of non-prison guidelines is still being considered by the Commission, such guidelines have not, as of yet, been developed. Finally, it is important to note that the Minnesota guidelines did not eliminate statutory maxima and minima on sentence lengths established under the Minnesota 1963 criminal code. Criminal offenses and sentencing decisions not governed by the guidelines (e.g., 1st degree murder, conditions for stayed prison sentences) continue to fall under the authority of the 1963 code (as amended).

[12] The explicit intent of the guidelines to focus on the offense of conviction as a basis for offense severity has also been reinforced in developing case law. However, there are two established exceptions to the rule that unadjudicated behavior can not be used in sentencing decisions. Specifically, unadjudicated behavior can be considered in departing from the presumptive sentence if the offense behavior is a continuous course of conduct (e.g., kidnapping and assault) or the defendant admits to unproven offenses on the record (see MSGC, 1984:113). However, generally the case law reinforces a relatively narrow limit on using unadjudicated behavior to support departure decisions.

[13] In its preliminary report (MSGC, 1982:14), the Commission indicated that the maximum acceptable rate of dispositional departures would be about 10 percent. While this threshold has been exceeded in some districts across the state, the statewide dispositional departure rate has remained lower than 10 percent up to 1983 (see MSGC,1984: Table 6). It was noted (MSGC Commentary, 1983:16) that the purposes of the guidelines cannot be achieved unless the presumptive sentences are applied with a high degree of regularity. Specifically, sentencing disparity would not be reduced nor would greater certainty of punishment be attained if departure rates exceed 20%. If departures increase imprisonment rates significantly beyond past practices, prison populations will also exceed capacity.

[14] According to von Hirsch (1982:205-206), the Commission ultimately adopted a compromise solution to the problem of enumerating the factors which may be used as reasons for departures. One option was to refrain from defining aggra-

vating and mitigating factors at all, allowing judges to develop their own reasons for departing. A second option was to provide a substantive policy governing departures and a list of some specific aggravating and mitigating factors. The Commission more closely followed the latter option by deriving a non-exclusive list of factors which may be grounds for departures (for a list of these factors, see MSGC, 1982; von Hirsch, 1982; MSGC Commentary, 1983). However, while no articulated general policy for departures was developed (see von Hirsch, 1982), the initial list does comport with a desert sentencing philosophy, since most factors relate to the harm involved in the current offense (e.g., excessive cruelty to victim) or the offender's culpability (e.g., offender played minor role, lacked substantial capacity). The limited role played by criminal history and the fact that none of the originally listed factors constituted a prediction of future behavior is also consistent with a "just-desert" philosophy (see von Hirsch, 1982:206-207).

[15] As of January 8, 1986, the decay factor for all felony convictions was set at 15 years, regardless of whether the sentence was a stay of execution or imposition. While this change is too recent to be covered in our analysis of sentencing practices up to 1984, the change in the decay factor has the effect of reducing the importance of the distinction between these two types of stayed prison sentences for current felons.

Although there are various other specific aspects of the guidelines which contribute to their uniqueness (e.g., how attempted acts are treated, conditions under which the statutory maximum sentence becomes the presumptive sentence), these issues are not addressed here. For a fuller discussion of these issues and other specific features of the scope and structure of the Minnesota guidelines, see MSGC, 1982; von Hirsch, 1982; MSGC Commentary, 1983; Knapp, 1984; MSGC, 1984).

[16] After passage of the changes in mandatory minimums, it is only necessary to have a "finding of fact" that a weapon was involved in the offense to activate the mandatory prison provision. For instance, if a person was convicted of a second degree assault or an aggravated offense for which the presence of a weapon is an element of the crime, grounds for a "finding of fact" are established. While changes in the mandatory minimums and the Olson case added discretion to the system, these changes in cases involving a weapon enhanced the discretionary authority of judges moreso than prosecutors.

[17] Specifically, the major cases which have significantly increased rates of dispositional departures are State v. Randolph (1982) (upholding defendant's request to execute a prison sentence), State v. Park (1981) (acceptance of "unamenabiilty to probation" as grounds for an aggravated dispositional departure), and State v. Wright (1981) (establishment of "unamenable to prison" was basis for mitigated dispositional departure). The primary court case for establishing the length of durational departures (generally "double" the presumptive duration of confinement) is State v. Evans (1981).

[18] The courts' reasoning in allowing felony points to accrue for same-day sentences was one of "judicial economy." Otherwise, prosecutors who wished to "stack-up" felony points from current convictions could simply seek to have sen-

tences imposed on separate days and, thus, create a burden on trial court caseload.

[19] "Single behavior incidents" refer to cases in which there is a continous course of action. "Multiple behavioral incidents" closely correspond to the image of a "crime spree" and refer to cases in which a series of separate offenses are committed over a particular time period, across different jurisdictions, or involving different victims (see MSGC, 1984: Miethe and Moore, 1986). By exercising their legal authority to retain multiple charges against a defendant and by applying the Hernandez rule, prosecutors can "target the dispositional line" and determine whether the presumptive sentence is a stayed or executed prison term through the number of separate behavioral incidents carried over to final disposition.

[20] Specifically, this measure of uniformity used by the Commission involves (1) computing the variance within each cell of the grid (i.e. P{1-P} where P = the proportion imprisoned in that cell, 1-P = proportion in that cell receiving a "stayed" sentence); (2) multiplying each variance by the number of cases in that cell; (3) summing these weighted variances across all cells; and (4) dividing by the total number of cases (see MSGC, 1984:33). The possible values for this measure range from .00 (perfect uniformity) to .25 (perfect non-uniformity). Using such a measure, the obtained levels of uniformity for 1978, 1981, 1982 and 1983 were .1041, .0499 ,.0586, and .0647, respectively (see MSGC, 1984: 34-41). The corresponding value for 1984 cases is .0693. While the Commission notes that this measure of uniformity is limited because it does not consider compliance with the presumptive sentence (see MSGC, 1984:33), we also view it as problematic because the overall values will vary depending upon the distribution of cases across the grid over time. In particular, given that criminal history scores and, to a lesser extent, offense severity have increased in post-guideline periods (see MSGC, 1984), the movement of a sizeable number of cases "toward the dispostional line" would make these comparisons over time somewhat misleading. While we will use a comparable measure of dispositional uniformity, the primary means of addressing the issue of uniformity in the current study will be through the examination of the "significant" predictors of sentencing decisions before and after the implementation of the guidelines. As will be discussed shortly, any variation in sentencing outcomes attributed to factors not prescribed by the guidelines will be indicative of the level of non-uniformity in sentencing.

[21] Ordinary least squares (OLS) was used to estimate various models of charging and sentencing decisions. There are some well-known problems with using OLS on dichotomous dependent variables. However, under conditions of large sample sizes and mean values close to .5 on the dependent variable, OLS results are similar to those obtained from alternative estimation techniques (see Miethe and Moore, 1985). Since most of our models meet these conditions, OLS was used to estimate the various models. However, in cases of extreme skewdness (e.g., Charge Reductions), logit models were also estimated. The results from this alternative estimation procedure are not presented here because they are virtually identical to the regression results using OLS.

[22] Several comments about the list of "proscribed" and "prescribed" variables are necessary. First, we have included the use of a dangerous weapon, multiple

convictions, and "person" offenses as prescribed factors along with the severity of the convicted offense and criminal history. Although the guidelines do not attach specific penalties for weapons use, the Minnesota criminal code mandates a prison sentence of specific durations in such cases. Because the guidelines outline the options available to the sentencing judge when a conflict arises between this statutory requirement and the presumptive sentence, the use of a dangerous weapon is considered a prescribed variable in this study (see also, Moore and Miethe, 1986). Similarly, "multiple convictions" is also considered a prescribed variable because in such cases policies concerning concurrent and consecutive sentencing have been established in the guidelines. Given that the Commission's intent was to increase prison commitments for person offenses, whether or not the offense involved a person victim or loss of property is also considered a prescribed variable. Second, while not explicitly noted in the structure of the guidelines, county of adjudication is considered a proscribed variable in sentencing decisions because it can be reasonably assumed that under the guidelines statewide sentencing policies should not vary by jurisdiction. Given that the execution of one's constitutional rights to a trial is prohibited as a grounds for departures (see MSGC, 1984), it follows that plea concessions (e.g. charge dismissals and reductions, sentence concessions) should also not influence sentencing decisions. Finally, it is important to note that "prescribed" variables will vary by type of sentencing decision being considered. For instance, "excessive brutality to the victim" is prescribed as a legitimate basis for dispositional or durational departures from the guidelines, whereas there are no "prescribed" variables for the conditions to be imposed on those felons who receive a stayed prison sentence since this latter decision is not regulated by the guidelines.

[23] However, greater determinancy in terms of a higher percentage of explained variation should be found for dispositional decisions than for durational decisions because of the greater latitude in the range of the permissible sentence duration (i.e., about 7% above or below the presumptive duration).

[24] For instance, the only offender data collected in the monitoring data are the race, age, and gender of the convicted felon. While information is available in the monitoring data on the method of conviction, there is no additional information on the nature of initial charging and plea bargaining practices. Furthermore, aside from the severity of the convicted offense and type of crime, there is also scant information on case attributes in the monitoring data collected on a continuous basis by the Commission.

[25] The eight counties included in the indepth samples are Anoka, Crow Wing, Dakota, Hennepin (Minneapolis), Olmsted, Ramsey (St. Paul), St. Louis (Duluth) and Washington counties.

[26] According to data provided by the Minnesota State Judicial Information System (SJIS), less than 1% of all felony charges result in acquittals on all counts in the eight county region and only about 10% result in dismissals on all counts. While there is some variation by county (e.g., 27% of all felon charges resulted in dismissals on all counts in Olmsted County in 1982 compared to 6.6% in Hennepin County), there has been little change within and across counties in rates of dismissals and acquittals on all counts from 1981 to 1983. We are espe-

cially grateful to Dale Good for providing access to these data. Unfortunately, comparable pre-guideline data are unavailable. However, given that dismissals and acquittals on all counts are relatively infrequent, the failure to include these cases in the present sampling frame should have little effect on our observed results.

[27] For cases processed in 1978, the length of pronounced confinement (CONFINE) refers to the maximum sentence duration imposed by the court under the indeterminate sentencing system. While comparisons of sentence durations under indeterminate and determinate sentences are of dubious value (primarily because the former is more "symbolic", whereas the latter is more closely linked to "real time"), the maximum sentence is used as a benchmark measure of sentence duration in 1978.

[28] This independent assessment of the criminal complaint was performed by coders who were trained in the Minnesota Criminal Code and Statutes. As described later, this measure of "potential" behavior will be compared with "filed" charges and convictions for the same offenses as charged in order to assess charge attrition over pre- and post-guidelines time periods.

[29] As noted previously, this analysis is restricted to the three most serious offenses in order to increase the comparability of the samples. While information in each post-guideline sample is available on a maximum of the six most serious charges, only three charges were included in the pre-guideline sample.

[30] "Standing silent" by not filing a motion for an aggravated dipositional or durational departure when such a departure from the presumptive sentence may be warranted is another form of sentence bargaining under the Minnesota guidelines. Unfortunately, this type of sentencing negotiation is difficult to determine from examining court and charging records. Consequently, this form of sentence bargaining is not included here.

[31] For instance, the greater harshness afforded black defendants may be due to greater prior records, a greater tendency for black defendants to be charged and convicted for more serious crimes, greater weapon use, a smaller chance of receiving a plea concession than white felons, or a greater concentration in Hennepin county. Each of these factors is associated with more severe sentences.

[32] While the values of overall cell variance differ, the patterning of the results are similar when the cell frequencies are based on the sample sizes for 1978, 1981, and 1984 as well.

[33] It is important to note that this conclusion about the greater predictibility of sentencing decisions after the passage of the guidelines would be strengthened if the presumptive disposition and duration were included in the respective models. Although not shown here, including the presumptive sentence increases the R^2 to above 90% for the "in/out" decision and over 70% for the durations of confinement at each post-guideline period. The lower R^2 for durational decisions is due primarily to the greater discretionary authority (up to 7% above or below the presumptive sentence) afforded judges in imposing sentence durations under the

guidelines. Since a measure that resembles a "presumptive" sentence could not be derived for pre-guideline decisions, the models without the presumptive sentence are contained in Table 3 in order to increase the comparability of the equations over both pre- and post-guideline periods.

[34] Several additional analyses were undertaken to examine the low proportion of explained variation in 1981 durational decisions. First, excluding extreme observations (i.e., outliers) improved the overall fit of the model, but the variation attributed to prescribed variables was still less than was true before the guidelines. Second, there was much debate in the first year of the guidelines concerning the appropriate limit of confinement for aggravated durational departures (see MSGC, 1984: 113-116). The Evans case (1981) was the basis for establishing an upward limit of "double the presumptive sentence" for most aggravated durational departures. Since the norms for durational departures (both aggravated and mitigated) were not well established and about 8.4% of the statewide cases during this time period involved durational departures, these factors may have influenced the lower explanatory power of the model of durations of confinement in 1981.

[35] Males had higher rates of both mitigated and aggravated dispositional departures than females at each year. However, for most post-guideline periods (except 1984) males were more likely to received aggravated rather than mitigated dispositional departures.

[36] Our measure of the "potential" charges that could have been filed by prosecutors was based on an independent assessment of the information contained in the preliminary complaint, arrest report, court transactions, and trial transcripts. Specifically, coders trained in Minnesota statute and criminal law read all information contained in the files and determined from this information 1) the statute for the most serious offense that could have been charged, 2) whether a weapon charge could have been filed, and 3) whether there were multiple behavioral incidents that may have been charged. Except for weapons convictions in 1978, we also have comparable data on actual convictions for each of these charges. Measures of whether multiple behavioral incidents were initially charged by the prosecutor and the statute number of the most serious charge filed are available for all post-guideline periods, but initial charging information was not collected in the pre-guideline data base. Further, whether charges were actually filed for using a dangerous weapon was not available at any time period. These differences between "potential" charges, "filed" charges and "convicted" behavior are used as another measure of whether greater proportionality has been achieved under the guidelines.

[37] For instance, a gap between "potential" charges, "filed" charges, and convictions may be due to evidentiary issues (e.g., weak evidence on an essential element of fact) or be the direct result of a plea concessions (e.g., charge reductions). Since there is a fairly high correspondence between "potential" charges (as determined by the coders) and initial charges filed by the prosecutor (around 90% for cases of aggravated robbery, 1st degree burglary and 1st degree assault) and this gap has not narrowed over post-guideline periods, it appears that vertical "overcharging" has not accelerated after the passage of the guidelines.

[38] According to the Minnesota statutes, "aggravated robbery" (MN STAT 609.245) refers to robberies in which the person is armed with a dangerous weapon or inflicts bodily harm upon another. "Burglary in the first degree" (MN STAT 609.582(1)) refers to entering a building without consent and with intent to commit a crime. To qualify in the first degree, either (1) the building must be a dwelling and another person (other than accomplices) must be present in it or (2) the burglar must possess a dangerous weapon or explosive when entering or at any time while in the building, or (3) the burglar assaults a person within the building. "Assault in the first degree" (MN STAT 609.221) refers to assaults on another which inflict great bodily harm.

[39] The issue of proportionality of punishments has also been addressed by the Minnesota Supreme Court in terms of durational and dispositional departures from the presumptive sentence. The standard of "double the presumptive sentence" as the limit of aggravated durational departures (see State v. Evans,1981) has remained controversal largely on the grounds of what is proportional punishment. Exceptions to the rule have generally been upheld on similar grounds (see MSGC, 1984:115-116). However, according to the Commission's report (MSGC, 1984:118), proportionality in dispositional decisions has diminished as a principle in case law over time. The primary contributors to this decline identified by the Commission is the introduction of "amenability or unamenability to probation" and a defendants request for an executed sentence as grounds for dispositional departures.

[40] For recent changes in the decay factor for stays of imposition, see endnote #15.

[41] Since these results are similar to those obtained from the aggregate models in Table 7, the county-specific models of various types of plea bargaining practices are not presented here.

[42] As shown in Table 8, rates of charges for multiple behavior incidents in Ramsey county are nearly twice as high as in Hennepin county during the first year of the guidelines (22.4% versus 11.5%), whereas convictions for multiple behavioral incidents are also twice as common in Ramsey county. These differences between counties dissipate over post-guideline periods and by 1984 Hennepin county actually has the higher rates of charging and retention of charges through convictions for multiple behavioral incidents. However, if adjustments are made for the higher potential rate of charges for multiple behavioral incidents in Hennepin county (see Table 8), the adjusted rate of charges and convictions for these multiple counts are higher in Ramsey county than the other counties for each time period.

[43] This particular outcome would occur if the person was convicted of each separate charge and each count involved a different victim (i.e., the counts are distinct and separate). If the defendant was sentenced on the same day for each of these seven counts, the court could legitimately use the first six offenses which occurred to compile the criminal history score associated with the last conviction for selling marijuana. At the time that the seventh conviction was "read in", the

felon's criminal history score would be 6, necessitating a presumptive prison sentence of 21 months because the sale of marijuana is at severity level 2. For a similar example and an alternative interpretation of the Hernandez decision, see Falvey (1982:265-267).

[44] Obviously, there are several limitations on the ability to "Hernandez" convictions. First, this rule can only be applied where there are sufficient evidentiary grounds for obtaining plea or guilty verdicts on multiple behavioral events. Second, even in exceptions to the "one course of conduct, one sentence" rule (e.g., burglary, kidnapping), only one criminal history point can accrue for purposes of "same day" sentencing and a limit of two points is set for multiple victims. Third, aside from the exceptions above, "Hernandezing" the case is not possible when there are multiple convictions involving a single behavioral events. Finally, since sentences are to occur in the order in which they were committed (see MSGCA, 1985), the Hernandez rule can not be used to systematically manipulate the order in which the convictions are "read in" at sentencing. For a more detailed discussion of these limitations and exceptions to the Hernandez rule, see the commentary to the anotation of the Minnesota Sentences Guidelines (MSGCA, 1985).

[45] For instance, the rise in the average age of felons over time is one explanation for the increase in criminal history scores, presuming that older felons would have greater chance to accumulate criminal history points than younger felons. However, while a change in the age distribution is a partial explanation, this factor cannot itself explain the sharp rise in criminal history scores from 1981 to 1982.

[46] Specifically, of those felons who were initially charged with multiple counts but did not receive multiple convictions, 97.8% received only one conviction because of a plea agreement to drop other charges in 1982 compared to 93.5% in 1981. These findings provide additional support for the claim that prosecutor's are "giving up" multiple charges in exchange for guilty pleas after the Hernandez decision.

[47] Although not reported earlier, time-specific models of both charges and convictions for multiple counts were estimated in order to determine whether measures of the felon's demographic profile increased in importance as determinants of these decisions after the passage of the sentencing guidelines or after the Hernandez decision in 1982. Regardless of time-periods, these regression analyses revealed that the likelihood of receiving charges and convictions for multiple counts (versus single charges and convictions, respectively) were both determined by highly individualistic and case-specific attributes. There were no indications that offender characteristics were systematically considered when initial charges were entered or convictions obtained for multiple behavioral incidents.

[48] Olmstead county uses court-appointed defense attorneys instead of a public defender system and, thus, only prosecutors and judges were survey in this county. While we use the term "defense attorney" in this section, the vast majority of these officials are actually public defenders.

[49] For example, the response rate for prosecutors was 54.9% (62/113), judges 57.4% (66/115), and public defenders 61.0% (72/118). And, the jurisdictional (county or judicial district) distribution of respondents closely matched that of the population sampled.

[50] All percentages reported in this chapter, unless noted otherwise, are based on the total number of valid responses. While the number of "no answers" and "don't knows" were usually quite small, non-responses to questions and "don't knows" were excluded.

[51] The large number of "don't knows" for these questions about crime victims' and the general public's views about the guidelines are excluded from the percents reported above.

[52] It is not always the case that prosecutors attempt to manipulate the guidelines in order to impose more severe sentences. An excerpt from a rather lengthy comment by one prosecutor describes one type of situation in which charging decisions may be entered with an eye toward rehabilitative rather than punitive ends:

"Our office has always treated most sentences as a matter to be resolved between the judge and the defendant. We generally do not wish to dump on a guy facing judgment. There are, of course, notable exceptions. Today, I think we are less successful in those exceptional cases where we would like to influence sentencing. For the past two years I have been assigned to the juvenile and family violence division. The only felonies I handle involve familial or sexual assaults.....(B)ecause we almost always seek nonprison alternatives...., I'm always joining counsel in trying to figure out how to circumvent the guidelines."

[53] For instance, there have been only two revisions in the guidelines regarding sentencing departures. One, in 1981, simply adds a list of factors to be considered in aggravated departures for controlled substance offenses. The other, in 1982, is of greater import and states that judges should attend to issues of proportionality when granting durational departures. This latter revision, however, was prompted by and largely restates the Supreme Court's 1981 decision in Evans (durational departures, absent other aggravating factors, should be double the presumptive sentence). Although there have been numerous revisions of sections of the guidelines dealing with the computation of criminal history score, most of these amount to restatements or clarifications of earlier policies or other "technical" adjustments to the guidelines (e.g., how to calculate criminal history score when sentencing consecutively as opposed to concurrently). The major exception, of course, is the Commission's 1981 inclusion of the Hernandez decision in the guidelines. However, since 1981 the only significant revision which carries a distinct policy component was in 1983, when the Commission included kidnapping along with burglary in the one point cap on criminal history points and clarified that multiple convictions for these crimes could not be used to artificially inflate criminal history scores. In adding this upper limit, the Commission explicitly noted that it was doing so in order to prevent "systematic manipulation" of sentencing practices MSGCA, 1985:17).

[54] Indeed, by the time our survey was distributed, case law had become such an important component in guidelines policies that one of our respondents characterized existing case law as a "mini-guidelines" created by the appellate courts.

[55] This problem is clear in a recent decision by the Minnesota Court of Appeals. In Mesich (1986), the court was confronted with a situation in which the sentencing court entered an upward dispositional departure that imposed the statutory maximum of twenty years confinement. This amounted to a departure five times the presumptive sentence. In Evans, the Supreme Court announced that aggravated durational departures should be limited to two times the presumptive sentence unless there were "unusually compelling" facts to justify a greater than double the presumptive sentence. However, it failed to specify what might be an appropriate factor to use in multiplying the presumptive sentence or what relationship that multiplying factor should bear to the gravity of the offense. While the majority decision upheld the sentencing court's decision, Justice Randall, in a concurring opinion, took issue with the absence of greater guidance from the legislature or the Commission in establishing some standard by which upward durational departures could be measured in terms their proportionality to the offense. To continue to decide proportionality in durational departures on a case-by-case basis, according to Judge Randall, "would emasculate the clear intent of the legislature when establishing the guidelines that the presumptive sentence had built into it due consideration for heinous elements of [the] crime" (Mesich, at CS-3).

[56] Whether or not there characteristics bear any necessary or causal relationship to the structure of the Minnesota guidelines or to the political processes which brought them into existence must remain a matter of speculation.

[57] It is easy, of course, to say that prison may be appropriate for purposes of retribution, incapacitation, deterrence, and rehabilitation. However, there is at least some differentiation among these ends of criminal law in terms of the weight given to legally relevant factors in determining the appropriateness and length of confinement. For instance, by their very nature, rehabilitation and incapacitation focus on the offender's prior criminal activity (as well as other aspects of the offender's past activities). Retribution and deterrence (at least general deterrence), on the other hand, give greater weight to elements of the offender's current offense. Thus, when a commission is forced to make critical choices concerning the relative weight to be given to past versus present crimes, they are making at least a tacit declaration of sentencing philosophy.

[58] It should also be noted that linking sentencing guidelines to prison capacity does not place an absolute limit on the number of offenders who may be imprisoned. What it does do is require that state legislatures provide for more prison space if they wish to increase the incarceration rate. While this is often politically difficult, it prevents legislators from enacting "law and order" laws that are politically useful during election campaigns but create tremendous burdens on state correctional systems.

[59] However, as Ozanne (1982) suggests, not all sentencing philosophies lend themselves equally well to judicial interpretation and appellate review. At least

insofar as appellate review is concerned, the philosophies of retribution and general deterrence are more compatible with appellate review since the emphasis on offense seriousness and proportionality of sanction is more readily consistent with extant case law doctrine (e.g., proportionality of sanction in capital punishment offenses).

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TABLE OF CASES

TABLE 1: MINNESOTA'S SENTENCING GUIDELINES GRID[1]

SEVERITY LEVELS OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
Unauthorized Use of Motor Vehicle *Possession of Marijuana*	I	12*	12*	12*	13	15	17	19 *18-20*
Theft Related Crimes ($250-$2500) *Aggravated Forgery ($250-$2500)*	II	12*	12*	13	15	17	19	21 *20-22*
Theft Crimes ($250-$2500)	III	12*	13	15	17	19 *18-20*	22 *21-23*	25 *24-26*
Nonresidential Burglary *Theft Crimes (over $2500)*	IV	12*	15	18	21	25 *24-26*	32 *30-34*	41 *37-45*
Residential Burglary *Simple Robbery*	V	18	23	27	30 *29-31*	38 *36-40*	46 *43-49*	54 *50-58*
Criminal Sexual Conduct, 2nd Degree (a) & (b)	VI	21	26	30	34 *33-35*	44 *42-46*	54 *50-58*	65 *60-70*
Aggravated Robbery	VII	24 *23-25*	32 *30-34*	41 *38-44*	49 *45-53*	65 *60-70*	81 *75-87*	97 *90-104*
Criminal Sexual Conduct 1st Degree *Assault, 1st Degree*	VIII	43 *41-45*	54 *50-58*	65 *60-70*	76 *71-81*	95 *89-101*	113 *106-120*	132 *124-140*
Murder, 3rd Degree *Murder, 2nd Degree (felony murder)*	IX	105 *102-108*	119 *116-122*	127 *124-130*	149 *143-155*	176 *168-184*	205 *195-215*	230 *218-242*
Murder, 2nd Degree (with intent)	X	120 *116-124*	140 *133-147*	162 *153-171*	203 *192-214*	243 *231-255*	284 *270-298*	324 *309-339*

Notes:

[1]The numbers in the table refer to the length and range of the presumptive sentence. Cells above the dark line represent the area of the grid in which the presumptive sentence is a stayed prison term. Below the dark line a prison term is the presumptive sentence. The presumptive durations of confinement are in months.

*One year and one day

Source: Minnesota Sentencing Guidelines Commission (1984:2).

TABLE 2A: CODING, SUMMARY STATISTICS, AND VARIABLE NAMES FOR THE STATEWIDE SAMPLE.[1]

Variable (NAMES)	CODES	Mean or Percent (Standard Deviations) 1978	1981	1982	1984
SENTENCING DECISIONS					
Prison Sentence Imposed? (PRISON)	0 No	79.7	85.0	81.4	80.4
	1 Yes	20.3	15.0	18.6	19.6
Length of Actual Prison Confinement? (CONFINE)[2]	months	x = 81.01	35.95	39.86	35.83
		sd = (78.15)	(24.56)	(27.21)	(24.32)
Dispositional Departure? (DISPODEP)	0 No departure	--	93.8	93.0	90.2
	1 Aggravated departure	--	3.1	3.4	4.0
	2 Mitigated departure	--	3.1	3.6	5.9
Durational Departure (DURATDEP)	0 No departure	--	91.6	92.8	92.3
	1 Aggravated departure	--	2.6	2.4	2.6
	2 Mitigated departure	--	5.8	4.9	5.0
Consecutive or Concurrent Sentences? (CONSCUR)	0 1 Sentence	91.4	97.5	98.4	97.0
	1 Concurrent	3.0	2.0	1.2	2.6
	2 Consecutive	.6	.5	.4	.3
Jail as Condition of Stayed Sentence? (ANYJAIL)[3]	0 No	55.3	45.2	45.6	33.9
	1 Yes	44.7	54.8	54.4	66.1
Stay of Execution of the Sentence? (STAYEXEC)[3]	0 No	54.0	52.7	54.5	54.4
	1 Yes	46.0	47.3	45.5	45.6
CASE CHARACTERISTICS					
Convicted Offense Severity (SEVERITY)	1-10 scale	x = 3.46	3.41	3.48	3.65
		sd =(1.90)	(1.79)	(1.81)	(1.91)
Crime Against the Person? (PERSONX)	0 No	86.0	81.1	81.1	76.7
	1 Yes	14.0	18.9	18.9	23.3
Convicted of Use/Possess of Dangerous Weapon? (WEAPON)	0 No	--	94.2	93.4	94.9
	1 Yes	--	5.8	6.6	5.1

TABLE 2A: [Continued]

Above or below disposition line (ABOVBLOW)	0 Above line	86.8	87.2	83.9	81.3
	1 Below line	13.2	12.8	16.1	18.7
CASE PROCESSING					
Method of Conviction (PLEA)	0 Trial Convict	5.2	4.0	4.5	5.0
	1 Guilty Plea	94.8	96.0	95.5	95.0
County of Adjudication (COUNTY)	0 Other	56.2	62.3	62.7	61.6
	1 Hennepin	27.9	23.4	20.9	23.5
	2 Ramsey	15.9	14.3	16.4	14.8
OFFENDER CHARACTERISTICS					
Criminal History Scores (HISTORY)	0 None	58.5	61.8	58.4	53.7
	1	17.7	11.5	12.3	13.8
	2	11.7	12.0	10.4	11.7
	3	5.1	6.5	7.2	8.2
	4	3.4	3.7	4.9	4.6
	5	2.0	1.8	2.8	2.9
	6 (6 or more)	1.7	2.7	4.1	5.1
	x =	.90	.951	1.12	1.25
	sd =	(1.39)	(1.52)	(1.69)	(1.75)
Offender's Gender (MALE)	0 Female	11.7	11.0	13.5	12.8
	1 Male	88.3	89.0	86.5	87.2
Offender's Race (RACE)	0 White	84.6	81.8	81.0	79.6
	1 Black	9.3	10.8	12.4	12.7
	2 Other	6.1	7.4	6.6	7.8
Offender's Age (OFFAGE)	1 < 18	21.9	16.1	14.5	12.0
	2 19-29	65.3	64.9	61.1	60.8
	3 > 30	12.7	18.9	24.3	27.2

Notes:

[1] The actual sample size in 1978 was 2332 cases. A weighting factor was used to adjust the sample to represent the 1978 statewide population of 4369 cases. No weighting factor was used in the post-guideline periods since all statewide cases were available. The sample sizes over post-guideline periods are 5500, 6066, and 5792 felons, respectively.

[2] Based only on cases in which a prison sentence was imposed. The sample sizes are 889, 827, 1127, and 1134 prison cases for 1978, 1981, 1982, and 1984, respectively. In 1978, length of actual confinement refers to maximum imposed duration of confinement.

[3] Based only on cases in which a prison sentence was stayed. The sample sizes are 3480, 4673, 4939, and 4658 nonprison cases for 1978, 1981, 1982, and 1984, respectively.

TABLE 2B. CODING OF VARIABLES, SUMMARY STATISTICS, AND VARIABLE NAMES FOR THE EIGHT COUNTY INDEPTH SUBSAMPLE.[1]

Variable (NAMES)	CODES	Mean or Percent (Standard Deviations) 1978	1981	1982	1984
SENTENCING DECISIONS					
Prison Sentence Imposed? (PRISON)	0 No	77.7	81.6	78.5	79.0
	1 Yes	22.3	18.4	21.5	21.0
Length of Actual Prison Confinement? (CONFINE)[2]	Months	x = 90.03 sd = (87.25)	37.80 (37.34)	40.25 (33.28)	37.11 (30.90)
Dispositional Departure (DISPODEP)	0 No departure	--	92.8	92.1	89.5
	1 Aggravated departure	--	3.6	4.1	4.1
	2 Mitigated departure	--	3.6	3.8	6.4
Durational Departure (DURATDEP)	0 No departure	--	90.4	92.1	91.8
	1 Aggravated departure	--	5.1	2.7	2.8
	2 Mitigated departure	--	4.5	5.3	5.5
Consecutive or Concurrent Sentences? (CONSCUR)	0 1 Sentence	91.9	97.9	98.1	97.5
	1 Concurrent	7.5	1.5	1.5	2.1
	2 Consecutive	.6	.6	.4	.4
Jail as Condition of Stayed Sentence? (ANYJAIL)[3]	0 No	50.6	44.8	46.7	33.7
	1 Yes	49.4	55.2	53.3	66.3
Stay of Execution of the Sentence? (STAYEXEC)[3]	0 No	45.3	41.0	43.2	45.0
	1 Yes	54.7	59.0	56.8	55.0
CASE CHARACTERISTICS					
Convicted Offense Severity (SEVERITY)	1-10 scale	x = 3.67 sd =(1.98)	3.58 (1.87)	3.59 (1.86)	3.70 (1.97)
Most Serious Charge Filed by Prosecutor (CHARSEV)[4]	1-10 scale	x = 3.91 sd =(2.13)	3.93 (2.05)	3.94 (2.03)	4.11 (2.11)
Above/Below Disposition Line (ABOVBLOW)	0 Above Line	83.8	83.7	18.4	29.1
	1 Below Line	16.2	16.3	18.6	20.9
Offense Against the Person (PERSONX)?	0 No	76.1	76.3	78.8	75.2
	1 Yes	23.9	23.7	21.2	24.8

TABLE 2B: [Continued]

Convicted of Use/ Possession of Dangerous Weapon (WEAPON)	0 No	--	92.5	91.7	94.2
	1 Yes	--	7.5	8.3	5.8
Alleged Weapon Use in Initial Complaint (ALEGWEAP)[5]	0 No	82.2	83.5	86.1	88.2
	1 Yes	17.8	16.5	13.9	11.8
Multiple Convictions for Separate Behavioral Incidents (MCONVSBI)	0 No	90.5	89.3	88.2	86.2
	1 Yes	9.5	10.7	11.8	13.8
Potential to Charge Separate Behavioral Incidents? (CODERSBI)[5]	0 No	63.7	69.8	65.1	60.3
	1 Yes	36.3	30.2	34.9	39.7
Separate Behavioral Incidents Noted in Initial Charge? (CHARSBI)	0 No	--	85.2	79.1	75.4
	1 Yes	--	14.8	20.9	24.6
CASE PROCESSING					
Method of Conviction (PLEA)	0 Trial	5.7	5.5	6.4	6.2
	1 Guilty Plea	94.3	94.5	93.6	93.8
County of Adjudication (XCOUNTY)	0 Other	29.5	38.1	37.4	36.4
	1 Hennepin	44.9	38.4	35.4	39.0
	2 Ramsey	25.7	23.4	27.2	24.6
Plea Involved Charge Dismissal (CHARDISM)	0 No	67.5	66.9	61.2	57.3
	1 Yes	32.5	33.2	38.8	42.7
Plea Involved Charge Reduction (CHREDUCE)	0 No	86.0	91.7	92.1	91.8
	1 Yes	14.0	8.3	7.9	8.2
Plea Bargain on Charge (PBCHAR)	0 No	58.8	60.3	54.9	52.2
	1 Yes	41.2	39.7	45.1	47.8
Plea Involved Sentence Negotiation (PBSENT)	0 No	46.1	58.3	52.9	51.4
	1 Yes	53.9	41.7	47.1	48.6
Overall Plea Negotiation (PLEABARG)	0 No	25.8	34.3	25.1	24.5
	1 Yes	74.2	65.7	74.9	75.5

TABLE 2B: [Continued]

OFFENDER CHARACTERISTICS					
Criminal History Score (HISTORY)	0 None	55.5	60.2	55.7	53.1
	1	18.4	11.4	13.1	12.7
	2	12.5	12.0	10.8	12.0
	3	6.0	7.2	8.0	9.1
	4	4.1	4.2	5.1	4.9
	5	1.9	2.0	3.1	3.3
	6 6 or more	1.6	3.0	4.2	4.9
	x =	.97	1.02	1.20	1.30
	sd =	(1.42)	(1.56)	(1.72)	(1.77)
Offender's Gender (MALE)	0 Female	13.5	12.2	15.0	14.2
	1 Male	86.5	87.8	85.0	85.8
Offender's Race (RACE)	1 White	79.2	75.1	72.7	72.5
	2 Black	14.7	17.1	20.3	20.1
	3 Other	6.1	7.8	7.0	7.4
Offender's Age (OFFAGE)	1 < 18	20.8	15.1	13.8	10.7
	2 19-29	64.5	63.8	60.8	60.9
	3 > 30	14.7	21.1	25.4	28.4
Offender's Marital Status (UNMARRIED)	0 Married	18.0	14.8	17.5	17.5
	1 Not married	82.0	85.2	82.5	82.5
Offender's Employment Status (UNEMPLOY)	0 Employed	42.0	37.0	42.7	39.2
	1 Unemployed	58.0	63.0	57.3	60.8
Offender's Educational Attainment (HSGRAD)	0 < HS Grad	45.0	47.1	42.1	36.6
	1 > HS Grad	55.0	52.9	57.9	63.4

Notes:

[1] The sample sizes are weighted to represent the eight county regions for each year. The actual sample sizes for each year were 1469, 1442, 1797 and 1817 felons, respectively. The sample sizes for each variable vary somewhat because of excluding missing data.

[2] Based only on felons who received an executed prison sentence.

[3] Based only on felons who received a stayed prison sentence.

[4] In 1978, CHARSEV is based on an independent assessment of the information contained in the criminal complaint since data for the most serious charge initially filed by the District Attorney was absent that year.

[5] Data based on an independent assessment of the criminal complaint and other documents by coders trained in the Minnesota criminal code.

TABLE 3: STANDARDIZED REGRESSION COEFFICIENTS FOR PRE- AND POST-GUIDELINE MODELS OF SENTENCING DECISIONS UNDER THE AUTHORITY OF THE MINNESOTA FELONY SENTENCING GUIDELINES.

	A. PRISON SENTENCE IMPOSED?			
Variable[1]	1978	1981	1982	1984
SEVERITY	.080**	.055**	.067***	.071***
HISTORY	.361***	.254***	.222***	.294***
ABOVBLOW	.180***	.485***	.493***	.455***
MCONVSBI	.059**	.052***	.043***	-.001
WEAPON	.052	.206***	.139***	.149***
PERSONX	.049	.016	.028	.007
HENNCO	-.031	-.042**	.007	-.022
RAMCO	-.024	-.017	-.015	.001
CHARDISM	.023	-.012	-.033**	-.001
CHREDUCE	-.001	-.003	-.014	.004
PBSENTX	-.093**	-.049***	-.070***	.006
MALE	.009	.005	-.010	.007
BLACK	-.001	.030*	.022	.031*
OTHER	-.040*	.045***	.035**	.013
OFFAGE	-.025	-.032*	-.018	-.009
UNMARRIED	-.013	.008	-.001	.006
UNEMP	.086***	.002	.048***	.034**
HSGRAD	-.015	.006	.016	.013
N=	1268	1330	1716	1673
R^2PRESCRIBED[2]=	.321	.634	.608	.565
R^2+CASE=	.330	.637	.614	.566
R^2+OFFENDER=	.340	.641	.618	.568

TABLE 3: [Continued]

B. LENGTH OF PRISON CONFINEMENT

Variable	1978	1981	1982	1984
SEVERITY	.772****	.705****	.737****	.790****
HISTORY	.056	.337****	.362****	.404****
MCONVSBI	.071	.047	-.002	.029
WEAPON	.054	-.006	.086**	.064*
PERSONX	-.205**	-.087	-.002	-.000
HENNCO	-.161**	-.054	.080**	.048
RAMCO	-.074	-.018	.016	.005
CHARDISM	.055	-.026	-.032	-.058**
CHREDUCE	.005	-.038	-.064**	-.017
PBSENTX	-.154****	-.070*	-.040	-.030
MALE	-.025	.022	-.004	-.017
BLACK	-.007	.043	.014	.074**
OTHER	.011	.111****	-.039	-.013
OFFAGE	.089	.037	-.004	.047
UNMARRIED	.145****	.048	.002	.005
UNEMP	.050	-.071*	-.026	.047*
HSGRAD	.012	-.006	.039	.065**
N=	227	582	748	690
R^2 PRESCRIBED=	.463	.302	.496	.506
R^2 +CASE=	.493	.310	.509	.516
R^2 +OFFENDER=	.516	.327	.513	.528

TABLE 3: [Continued]

Notes:

[1] See text and Table 2b for a description of the variables.

[2] "PRESCRIBED" variables are those attributes which should be considered in sentencing decisions under the authority of the guidelines. Included in this category are SEVERITY, HISTORY, MCONVSBI, WEAPON, and PERSONX. "CASE" refers to case processing atttributes and include HENNCO (Hennepin County), RAMCO (Ramsey County) and different types of plea concessions (CHARDISM, CHREDUCE, PBSENT). "OFFENDER" attributes include the felon's gender (MALE), race (BLACK, OTHER), age (OFFAGE), marital status (SINGLE), employment status (UNEMP) and educational attainment (HSGRAD).

* significant within-year difference at $p < .10$; ** = $p < .05$; *** = $p < .01$.

TABLE 4: INCARCERATION RATES BY TYPE OF CRIME AND CRIMINAL HISTORY[1]

GROUP	1978	1981	1982	1984
% Incarcerated overall	22.3	18.4	21.5	21.0
% Incarcerated who are person offenders	43.9	56.9	49.2	44.6
% of person offenders who are incarcerated	41.1	44.2	49.9	37.8
% of non-person offenders who are incarcerated	16.4	10.4	13.8	15.5
% Incarcerated with no criminal history points	19.5	23.6	20.9	15.6
% Incarcerated with 6 or more criminal history points	5.1	14.3	16.5	20.6
% of felons with no criminal history who are incarcerated	7.8	7.2	8.1	6.2
% of felons with 6 or more criminal history who are incarcerated	69.6	88.8	84.6	89.2
% of each group who are incarcerated:[2]				
Person Low CH	27.2	30.4	35.4	23.3
Person Medium CH	81.1	74.1	80.7	67.3
Person High CH	77.7	92.7	97.6	93.8
Non-Person Low CH	6.0	1.6	2.3	1.8
Non-Person Medium CH	44.6	23.6	28.0	26.9
Non-Person High CH	53.7	77.6	72.4	78.4

Notes:

[1]Data are based on the eight county subsample.

[2]"Person" refers to convictions for crimes against the person. "Low," "Medium" and "High" refer to criminal history scores (CH) of 0-1, 2-4, and 5-6, respectively.

TABLE 5: RETENTION RATES OF POTENTIAL AND INITIAL CHARGES FOR PARTICULAR OFFENSES THROUGH CONVICTION[1]

OFFENSE TYPE	1978	1981	1982	1984
Aggravated Robberies				
Potential/Charged[2]	---[3]	91.5 (193/211)	96.0 (190/198)	91.9 (124/135)
Potential/Convicted	62.7 (64/102)	73.0 (154/211)	77.8 (154/198)	67.0 (90/135)
Charged/Convicted	---	77.7 (153/197)	77.0 (154/200)	70.0 (91/130)
Burglaries, 1st Degree				
Potential/Charged	---	93.1 (27/29)	90.6 (48/53)	85.1 (74/87)
Potential/Convicted	58.0 (29/50)	72.4 (21/29)	62.3 (33/53)	42.5 (37/87)
Charged/Convicted	---	71.0 (22/31)	60.3 (35/58)	50.0 (40/80)
Assault, 1st Degree				
Potential/Charged	---	78.3 (18/23)	90.6 (29/32)	87.5 (14/16)
Potential/Convicted	52.6 (10/19)	43.5 (10/23)	28.1 (9/32)	37.5 (6/16)
Charged/Convicted	---	45.0 (9/20)	24.2 (8/33)	39.1 (9/23)
Dangerous Weapon				
Potential/Convicted	---	55.1 (216/392)	68.5 (280/409)	56.5 (179/317)
Multiple Behavior Incidents				
Potential/Charged	---	42.7 (188/440)	55.6 (343/617)	59.0 (425/720)
Potential/Convicted	26.0 (139/535)	29.2 (129/440)	30.9 (191/617)	33.5 (241/720)
Charged/Convicted	---	72.3 (156/216)	56.3 (212/376)	56.0 (251/449)

TABLE 5: [Continued]

Notes:

[1]"Potential" refers to charges for the particular act which could have been filed (according to an independent assessment of the criminal complaint). "Charged" refers to initial charges being filed for the particular act, whereas "convicted" refers to convictions on that particular offense type.

[2]The notation (X/Y) is to be interpreted as the percent of all cases that are X which are also Y. For example, "Potential/Charged" means of all those potential charges for that crime, what percentage of these potential charges resulted in charges being initially filed by the prosecutor? A comparable interpretation can be given to "Potential/Convicted" and "Charged/Convicted."

[3]The percentages are given in the table, while the fraction of cases are given in parentheses (). A blank (-) refers to the fact that this ratio cannot be computed because of missing data on one of the variables in 1978.

TABLE 6: STANDARDIZED REGRESSION COEFFICIENTS FOR PRE- AND POST-GUIDELINE MODELS OF SENTENCING DECISIONS NOT REGULATED BY THE MINNESOTA FELONY SENTENCING GUIDELINES.[1]

	A. ANY JAIL TIME IMPOSED?			
Variable[2]	1978	1981	1982	1984
SEVERITY	.096**	.126***	.128***	.116***
HISTORY	.123***	.209***	.159***	.105***
MCONVSBI	.088***	.094***	.080***	.015
WEAPON	.067*	-.005	.011	-.009
PERSONX	.022	-.060	.055	.086**
HENNCO	.093***	.066	.077**	-.041
RAMCO	.061*	-.038	-.068*	-.051
CHARDISM	.017	-.011	.050	-.026
CHREDUCE	.003	.019	.013	.044
PBSENTX	-.074**	-.018	-.097***	.006
MALE	.191***	.137***	.193***	.205***
BLACK	-.030	-.004	.039	.005
OTHER	-.004	.039	.011	-.000
OFFAGE	-.054*	-.031	-.098***	-.048
UNMARRIED	.056*	.080**	.086***	.107***
UNEMP	.094***	.095**	.047	.068**
HSGRAD	-.076**	-.082**	-.045	-.024
N=	1268	1330	1716	1673
R^2PRESCRIBED[3]=	.078	.096	.094	.053
R^2 +CASE=	.088	.112	.114	.059
R^2 +OFFENDER=	.155	.168	.186	.127

TABLE 6: [Continued]

B. STAY OF EXECUTION IMPOSED?

Variable	1978	1981	1982	1984
SEVERITY	.080*	.097***	.054	.095***
HISTORY	.200***	.339***	.336***	.366***
MCONVSBI	.130***	.161**	.079***	.072***
WEAPON	-.021	.041	.040	-.017
PERSONX	.037	.002	.052	.028
HENNCO	-.125***	.159***	.220***	.243***
RAMCO	.189***	.264***	.330***	.332***
CHARDISM	-.041	.008	.015	.007
CHREDUCE	.010	.056*	-.044	.009
PBSENTX	-.106***	-.125***	-.074**	-.032
MALE	.019	-.014	.118***	.112***
BLACK	.070**	.002	.044	.015
OTHER	.025	.050	.013	.041
OFFAGE	.064**	.046	.072**	.046
UNMARRIED	.003	.016	.067**	.029
UNEMP	.078***	.062*	.064**	.078***
HSGRAD	.060**	-.081**	-.034	-.014
N=	1268	1330	1716	1673
R^2 PRESCRIBED=	.064	.183	.168	.185
R^2 +CASE=	.138	.290	.311	.289
R^2 +OFFENDER=	.154	.305	.335	.310

TABLE 6: [Continued]

Notes:

[1] Includes only cases which received a stayed prison sentence.

[2] See text and Table 2b for a discussion of the variables.

[3] There are no prescribed variables for these decisions since they are not regulated by the guidelines. However, the proportion of variation attributed to these "prescribed" variables (see note Table 3) and the additional set of case processing (CASE) and offender attributes (OFFENDER) is included for purposes of comparability with the analysis of regulated sentencing decisions (see Table 3).

* significant within-year difference at $p<.10$; **=$P<.05$; ***=$p<.01$.

TABLE 7: STANDARDIZED REGRESSION COEFFICIENTS FOR PRE- AND POST-GUIDELINE MODELS OF CHARGE AND SENTENCE BARGAINING PRACTICES. [1]

A. CHARGE DISMISSALS

Variable[2]	1978	1981	1982	1984
CHARSEV	.111***	.127***	.176***	.092***
HISTORY	-.033	-.027	-.076***	-.029
CHARSBI	.358***	.229***	.355***	.357***
ALEGWEAP	.188***	.039	-.069***	.014
PERSONX	-.156***	-.050	-.085***	-.011
HENNCO	.008	-.096***	-.061**	-.068***
RAMCO	.146***	.222***	.328***	.330***
MALE	.086***	-.011	.031	.025
BLACK	-.006	-.019	-.002	-.012
OTHER	.018	-.025	.011	-.039*
OFFAGE	.055*	.037	.013	-.003
UNMARRIED	-.011	-.003	-.017	.013
UNEMP	-.029	.013	-.006	.002
HSGRAD	-.008	-.009	.000	.041
N=	1268	1330	1716	1673
R^2 PRESCRIBED=	.162	.078	.160	.139
R^2 +CASE=	.181	.152	.286	.271
R^2 +OFFENDER=	.191	.154	.287	.275

TABLE 7: [Continued]

B. CHARGE REDUCTION

Variable	1978	1981	1982	1984
CHARSEV	.279***	.266***	.247***	.313***
HISTORY	-.068**	-.030	-.001	-.002
CHARSBI	-.067**	-.071***	-.061***	-.028
ALEGWEAP	.115***	.110***	.040	-.022
PERSONX	-.001	-.086**	-.069*	-.179***
HENNCO	.080**	.009	.067**	-.009
RAMCO	.132***	-.000	-.057**	-129***
MALE	.011	-.020	.011	.004
BLACK	.008	.035	-.053**	.013
OTHER	.016	-.021	.046*	.022
OFFAGE	-.065**	-.075**	.009	-.016
UNMARRIED	-.018	.004	-.048*	.007
UNEMP	-.044	-.035	.027	-.034
HSGRAD	.009	.060**	.017	.017
N=	1268	1330	1716	1673
R^2 PRESCRIBED=	.141	.080	.058	.054
R^2 +CASE=	.153	.080	.069	.070
R^2 +OFFENDER=	.158	.090	.078	.072

TABLE 7: [Continued]

C. SENTENCE CONCESSION

Variable	1978	1981	1982	1984
CHARSEV	-.140***	-.039	-.086***	-.085***
HISTORY	-.034	-.050*	-.048**	-.057**
CHARSBI	-.040	.030	.021	.009
ALEGWEAP	-.006	-.007	-.051*	-.030
PERSONX	-.008	-.034	-.068**	-.066**
HENNCO	-.045	-.222***	-.168***	.005
RAMCO	.144***	-.321***	-.474***	-.253***
MALE	-.003	.036	.019	-.035
BLACK	-.039	-.028	.009	.009
OTHER	-.049*	-.041	.010	-.012
OFFAGE	.045	.016	-.016	-.018
UNMARRIED	-.013	-.022	-.003	-.024
UNEMP	.009	-.055*	-.088***	-.063**
HSGRAD	-.028	.019	-.018	-.043*
N=	1268	1330	1716	1673
R^2 PRESCRIBED=	.030	.016	.039	.029
R^2 +CASE=	.059	.108	.219	.093
R^2 +OFFENDER=	.065	.118	.227	.099

Notes:

[1] Includes only cases which received a stayed prison sentence.

[2] See text and Table 2b for a discussion of the variables.

[3] There are no prescribed variables for these decisions since they are not regulated by the guidelines. However, the proportion of variation attributed to these "prescribed" variables (see note Table 3) and the additional set of case processing (CASE) and offender attributes (OFFENDER) is included for purposes of comparability with the analysis of regulated sentencing decisions (see Table 3).

* significant within-year difference at p<.10; **=P<.05; ***=p<.01.

TABLE 8: COUNTY VARIATION IN RATES OF PLEA BARGAINING AND CHARGING PRACTICES OVER TIME[1]

GROUP	1978	1981	1982	1984
% of felons who received:				
a Plea Bargain(overall)?				
Other Counties	70.8	76.4	80.8	76.1
Hennepin County	69.8	50.6	68.2	71.3
Ramsey County	85.9	73.1	75.6	81.3
a Charge Dismissal?				
Other Counties	28.1	31.2	30.8	36.9
Hennepin County	28.8	19.9	24.3	29.3
Ramsey County	44.0	58.2	68.6	72.7
a Charge Reduction?				
Other Counties	8.3	7.2	7.6	10.1
Hennepin County	15.2	10.2	11.8	10.2
Ramsey County	18.4	6.7	3.3	2.3
a Sentence Concession?				
Other Counties	53.8	62.9	69.0	55.7
Hennepin County	46.6	32.1	48.1	55.1
Ramsey County	66.8	23.0	15.5	27.7
Charges for Multiple Behavioral Incidents?				
Other Counties	---	13.4	18.9	22.9
Hennepin County	---	11.5	19.7	26.4
Ramsey County	---	22.4	25.3	24.2
Convictions for Multiple Behavioral Incidents?				
Other Counties	13.1	9.2	12.0	12.5
Hennepin County	6.6	8.3	9.4	15.4
Ramsey County	10.2	17.0	14.6	13.1
Was There Potential Charges for Multiple Behavior Incidents (% Yes)?[2]				
Other Counties	34.3	26.7	29.1	37.1
Hennepin County	36.6	32.0	40.0	45.6
Ramsey County	38.1	33.0	36.4	34.2

TABLE 8: [Continued]

Average Severity of the Initial Charges				
Other Counties	3.56	3.79	3.71	4.02
Hennepin County	4.07	4.26	4.21	4.31
Ramsey County	3.93	3.65	3.92	4.07

Notes:

[1]Data based on the eight county subsample. The "Other" counties are Anoka, Crow Wing, Dakota, Olmsted, St. Louis, and Washington Counties.

[2]"Potential charges for multiple behavioral incidents" are based on an independent assessment of the information in the criminal complaint.

TABLE 9: AVERAGE CRIMINAL HISTORY SCORES BY SEVERITY OF INITIAL CHARGE AND CONVICTIONS FOR MULTIPLE BEHAVIORAL INCIDENTS

	1978		1981		1982		1984	
	No[1]	Yes	No	Yes	No	Yes	No	Yes
Charsev 1-2[2]	.78	.94	.75	1.31	.98	2.07	1.16	1.70
Charsev 3-4	1.04	1.24	1.15	1.13	1.17	2.18	1.23	1.91
Charsev 5-6	.79	1.11	.94	1.08	.89	2.03	1.23	2.26
Charsev 7-10	1.04	2.37	.99	1.88	1.17	1.73	1.15	1.64

Notes:

[1]"No" refers to no multiple convictions for separate behavioral incidents and "Yes" refers to multiple convictions for separate behavioral incidents.

[2]"Charsev" refers to the severity of the initial charge filed by the prosecutor. Since charging information was missing in 1978, Charsev refers to the severity of the most serious initial charge included in the criminal complaint for this year, based on an independent assessment.

TABLE 10: RETENTION RATES OF POTENTIAL CHARGES AND INITIAL CHARGES FOR MULTIPLE BEHAVIORAL INCIDENTS (MBI) THROUGH CONVICTION. [1]

GROUP	1978	1981	1982	1984
% Potential MBI Charges?	36.3	30.2	34.9	39.7
% Initial Charges for MBI?	----[2]	14.8	20.9	24.6
% Convictions for MBI?	9.5	10.7	11.8	13.8
Potential MBI/Charged MBI?[3]	----	42.7 (188/440)	55.6 (343/617)	59.0 (425/720)
Charged MBI/Convictions MBI?	----	72.3 (156/216)	56.3 (212/376)	56.0 (251/449)

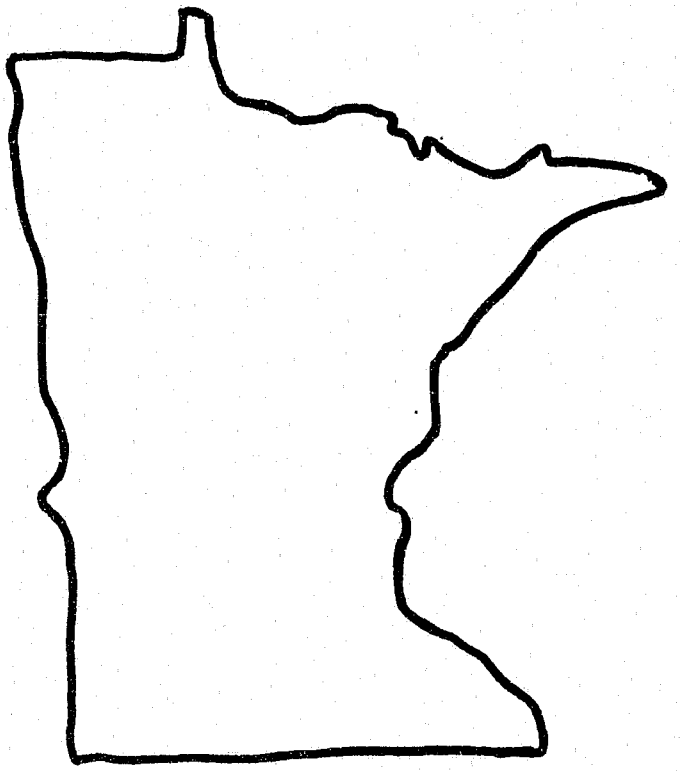
Notes:

[1]"Potential" refers to charges for the particular act which could have been filed (according to an independent assessment of the criminal complaint). "Charged" refers to initial charges being filed for the particular act, whereas "convicted" refers to convictions on that particular offense type.

[2]The percentages are given in the table, while the fraction of cases are given in parentheses (). A dash (-) refers to the fact that this ratio cannot be computed because of missing data on one of the variables in 1978.

[3]The notation (X/Y) is to be interpreted as the percent of all cases that are X which are also Y. For example, "Potential MBI/Charged MBI" means of all those potential charges which could have been entered as initial charges for multiple behavioral events, what percentage of these potential charges resulted in charges for multiple counts being filed by the prosecutor? A comparable interpretation can be given to "Charged MBI/Convictions MBI".

MINNESOTA'S SENTENCING GUIDELINES



A SURVEY OF CRIMINAL JUSTICE OFFICIALS SPONSORED BY THE NATIONAL INSTITUTE OF JUSTICE

Please return the survey in the self-addressed envelope. Direct all inquiries to:

Professor Terance D. Miethe
660 McBryde Hall
Virginia Polytechnic Institute
Blacksburg, Virginia 24061
Phone: (703)-961-5341

Thank you for your help on our project.

INSTRUCTIONS

Circle the letter that best represents your opinion or write in you opinion in the space provided below each question. Please feel free to make comments or clarifications for particular questions on the survey next to that question. There is additional space for your general comments at the end of the survey.

Q-1 One of the primary goals of the Minnesota Felony Sentencing Guidelines is to increase prison commitments for person offenders and reduce them for property offenders. How successful do you think the Guidelines have been in achieving this goal?

a) Not at all successful
b) Somewhat successful
c) Very Successful
d) Don't Know

Q-2 The Minnesota Guidelines are also designed to acheive greater uniformity in sentencing, so that offenders who commit similar offenses receive similar punishments. How successful do you think the Guidelines have been in achieving this goal?

a) Not at all successful
b) Somewhat successful
c) Very Successful
d) Don't Know

Q-3 Another goal of the Minnesota Guidelines is to reduce the influence of offender-related characteristics (e.g., employment history, education, marital status) by placing primary importance on the severity of the offense and prior criminal history in sentencing decisions. How successful do you think the Guidelines have been in acheiving this goal?

a) Not at all successful
b) Somewhat successful
c) Very Successful
d) Don't Know

Q-4 The Minnesota Guidelines are based on a sentencing philosophy that places more importance on the current offense than on past criminal conduct. What do you think should be the relative importance given to the current offense and criminal history in sentencing decisions?

a) Place more importance on the current offense than on prior criminal conduct.
b) Place equal importance on the current offense and prior criminal conduct.
c) Place more importance on prior criminal conduct than on the current offense.

In this section, we would like to know about your opinions and impressions concerning the day-to-day operation of the Sentencing Guidelines.

Q-5 Think about the felony cases you have had direct contact with in the past 2 years. How frequently have the Sentencing Guidelines influenced your decisions about how to handle these cases?

a) Never
b) Seldom (less than 20% of the time)
c) Occassionally (about 20-50% of the time)
d) Frequently (about 60-90% of the time)
e) Always
f) I have not handled any felony cases in the past two years.

Q-6 Of trial-court judges, prosecutors and defense attorneys, whose day-to-day decisions do you think have been most effected by the Sentencing Guidelines?

a) Judges' decisions
b) Prosecutors' decisions
c) Defense Attorney's decisions
d) All have been effected equally

Q-7 Overall, how would you rate the quality of justice achieved under the Minnesota Felony Guidelines?

a) good
b) satisfactory
c) poor

Q-8 In general, do you think the Sentencing Guidelines have increased, decreased, or had no affect on prosecutors' ability to influence sentencing decisions?

a) Increased
b) Decreased
c) No affect

In what particular ways do you think the Guidelines have influenced prosecutors' ability to influence sentencing decisions? (Please write in your opinion below)

Q-9 In general, do you think the Minnesota Guidelines have increased, decreased, or had no effect on judges' discretion in sentencing decisions?

a) Increased
b) Decreased
c) No effect

In what ways do you think the Guidelines have effected judges' decision-making? (Please write in your opinion below)

Q-10 In general, how suppportive do you think the Minnesota State Supreme Court has been of the goals and philosophy underlying the Minnesota Felony Guidelines?

a) Very supportive
b) Somewhat supportive
c) Not supportive at all
d) Don't know

Q-11 Do you think most convicted felons would prefer to be sentenced under the current Sentencing Guidelines or under the previous sentencing system?

a) Most would prefer the current Guidelines.
b) Most would prefer the previous system.
c) Don't Know

Q-12 Do you think that crime victims' are generally satified or dissatified with the sentences given under the Minnesota Guidelines

a) Satified
b) Dissatified
c) Don't know

Q-13 Do you think the public is generally satified or dissatified with the sentences given felons under the Minnesota Guidelines?

a) Satified
b) Dissatified
c) Don't know

Q-14 Would you favor or oppose efforts to enact guidelines similar to Minnesota's at the Federal level?

a) Favor
b) Oppose

Q-15 Minnesota's Felony Guidelines currently regulate decisions on whether or not to impose a prison sentence and the length of prison confinement, but are silent regarding confinement in jail as a condition of a stayed prison sentence. Would you favor or oppose the establishment of presumptive guidelines for jail sentences?

a) Favor
b) Oppose
c) Unsure

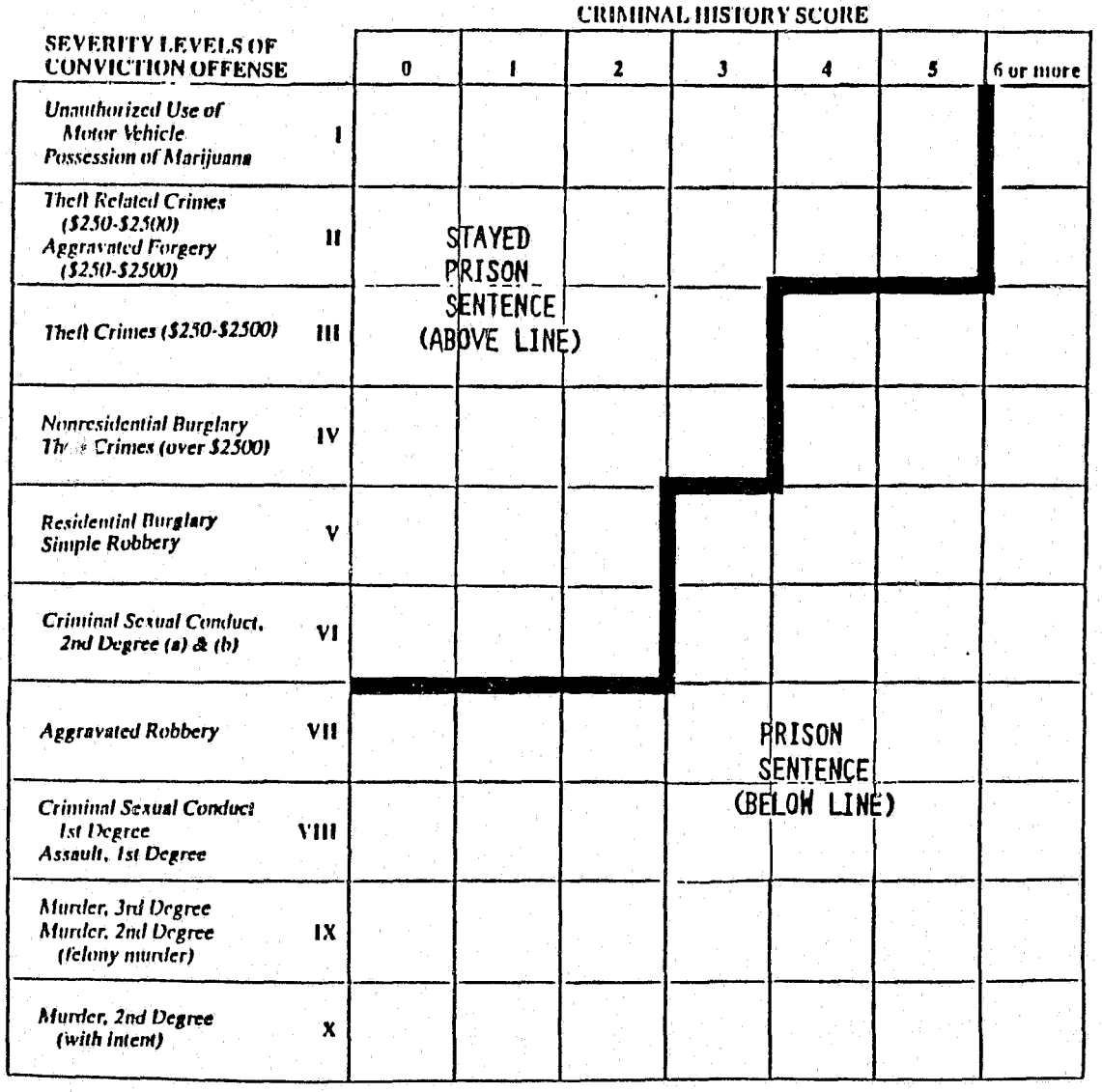
Would you please describe the reason(s) for your opinions about jail guidelines in the space below?

Q-16 Would you favor or oppose presumptive guidelines regulating prosecutors' charging and plea bargaining decisions?

a) Favor
b) Opposed
c) Unsure

Would you describe the reason(s) for your opinions about prosecutorial guidelines for charging and plea bargaining decisions in the space below?

Q-17 Below is a reproduction of the Minnesota grid and the dispositional line that determines whether a prison sentence should be stayed or executed. How would you personally change this dispositional line to reflect the combination of offense severity and criminal history that you think should result in a prison sentence? (Please draw the dispositional line you would prefer on the grid below and label the area for stayed and executed prison sentences.)



Q-18 What do you personally consider to be the major contribution of the Sentencing Guidelines to criminal justice in Minnesota? (Please write your opinion in the space below)

Q-19 What do you personally consider to be the major drawback or limitation of the current Sentencing Guidelines? (Please write your opinion in the space below)

Q-20 What do you believe has been the most significant change(s) in the Guidelines since they went into effect in 1980? Also, do you think this has been a beneficial or detrimental change? (Please write your opinion in the space below)

Q-21 What changes, if any, would you like to see made in Minnesota's Felony Sentencing Guidelines? (Please write in your opinion below)

Q-22 How much of an improvement do you think the current Minnesota Guidelines are over the previous sentencing system used in the state?

a) The new guidelines have made matters much worse than they were before.
b) The new guidelines have made matters slightly worse than they were before.
c) There is basically no difference between the new guidelines and the previous system.
d) The new guidelines are a slight improvement over the previous system.
e) The new guidelines are a major improvement over the previous system.
f) Don't know

Finally, a few questions about yourself:

Q-23 Which of the following positions do you currently hold?

a) County Attorney (Prosecutor)
b) District/County Court Judge
c) Public Defender
d) Other (Please specify:_____)

Q-24 What is the Judicial District or County in which you currently work?

_____

Q-25 When did you start working in Minnesota as a County Attorney, Judge, or Defense Attorney?

a) before 1980
b) between 1980 and 1982
c) after 1982

Do you think there are any important matters relating to the Minnesota Felony Guidelines that we may have overlooked. If so, please feel free to make any additional comments in the space below. When you have finished the survey, please return it to us in the self- addressed enveloped we have provided. Again, thank you for your time and effort on this project.