An Assessment of the Development and Outcome of Determinate Sentencing

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The number of offenders in U.S. prisons increased from 319,598 in 1980 to 1.6 million in 2008, a growth of 404%.

Approximately 725,000 inmates are being released from state and federal prisons annually.

The most recent multi-state analysis of released inmates indicates that within three years of post-release:

- 67.5% will be rearrested for a new offense
- 46.9% will be reconvicted for a new crime and
- 51.8% will return to prison for a new crime resulting from a technical violation
An Assessment of the Development and Outcomes of Determinate Sentencing

- The unprecedented growth in the number of offenders incarcerated in the U.S. over the past three decades has been attributed to the following factors:

1) Governmental dissatisfaction with parole.

2) Correctional officials significantly influenced the level of punishment or leniency an offender received by awarding liberal gain-time to manage the prison population.

3) Public perception that crime was becoming more of a serious social problem.

4) Increasing criticism focused upon indeterminate sentencing and its emphasis on rehabilitation which was considered a failure.
An Assessment of the Development and Outcomes of Determinate Sentencing

As a result, more determinate and believed to be “get tough” strategies emerged as the potential solution for dealing with offenders.

- Emphasis was directed away from offender rehabilitation programming toward more determinate sentences.
- The use of incarceration increased substantially and sentences of imprisonment became longer.
- Three-strike laws were passed to keep persistent offenders in prison for life, and mandatory minimum laws proliferated.
- “Truth in Sentencing” policies were adopted to ensure long prison terms for violent offenders.
An Assessment of the Development and Outcomes of Determinate Sentencing

- Over the past three decades, there has been an ideological change from the goal of rehabilitation for imprisoned offenders to one of longer and determinate incapacitation.

- Legislators and other criminal justice policymakers were no longer willing to support the parole system and were unwilling to rely upon the judgment of an administrative body of correctional experts to determine when a prisoner is ready to return to society.

- The national trends in sentencing and release policies are reflected in Florida’s transition from indeterminate to determinate sentencing.

- Ultimately, the goal of these policies was to reduce the amount of crime that sentenced offenders commit following their release from prison.
An Assessment of the Development and Outcomes of Determinate Sentencing

This paper is focused upon the following interrelated purposes:

1) To describe how Florida shifted its method of criminal sentencing over the past three decades from an indeterminate policy with an emphasis on offender rehabilitation to a determinate system that emphasized punishment.

2) To explain the reasons why Florida was able to move to a true determinate punishment policy.

3) Provide an assessment of the trends in sentencing and punishment practices over the past three decades to ascertain whether determinate sentencing is more punitive than indeterminate policies.

4) Assesses how Florida’s shift from indeterminate policies to a determinate punishment model in 1995 has impacted the likelihood of post-prison recidivism.

5) Explain the policy implications for these findings.
An Assessment of the Development and Outcomes of Determinate Sentencing

I. Florida's shift from indeterminate to determinate sentencing:

1) Prior to 1983 - Indeterminate sentencing with parole and gain-time

2) 1983 to 1987 - Sentencing guidelines, significant gain-time, without early release

3) 1987 to 1994 - Sentencing guidelines, significant gain-time, with early release

4) 1994 to 1995 – New sentencing guidelines, without early release, reduced gain-time

5) 1995 (October) - Determinate sentencing: minimum 85% of sentence served for all felons sentenced to prison
II. What was the impetus for Florida to implement a true determinate sentencing policy with the minimum 85% of sentence served law in 1995?

1) A series of highly publicized tourist killings that rocked the state’s biggest industry and “tarnished the state’s fun-and-sun image”.

2) Widely publicized crimes committed by early prison releasees.

3) The formation of Stop Turning Out Prisoners (S.T.O.P) in 1993. A grassroots organization that pushed for a state constitutional amendment that would require prisoners to serve nearly their entire sentence.

The law passed on a unanimous vote from both political parties and this law remains in place today.
An Assessment of the Development and Outcomes of Determinate Sentencing

III. Is the determinate 85% law passed in 1995 more punitive than the previous indeterminate policies?

1) Prison Population - The growth in Florida’s prison population is consistent with national trends over the past three decades. The number of prisoners in Florida increased from 26,471 in 1984 to 98,192 in 2008 and was 102,019 in April 2010.

2) Felony Convictions - With some annual fluctuations, the number of felony convictions has increased steadily from 67,018 in FY1983-84 when parole was eliminated to 186,161 in FY2007-08. The rate per 1,000 residents was lower during the 85% period than during some of the prior indeterminate periods.

3) Prison Incarceration Rate - The percent of convicted felons sentenced to prison has ranged from a low of 15.7% in FY1995-96 to a high of 30.3% in FY1988-89. The percent of felons receiving a prison sentence during the minimum 85% of sentence served period from FY1996-97 to FY1997-2008 was lower than during two of the three periods in which Florida’ punishment system was arguably indeterminate.
III. Is the determinate 85% law passed in 1995 more punitive than the previous indeterminate policies (continued)?

4) Prison Admissions – As expected, have increased over the past three decades, however, was higher during some years prior to the 85% law than the 40,274 level in the most recent year of the 85% policy period.

5) Average Sentence Lengths – Lower during the determinate 85% period compared to the indeterminate parole period.

6) Percentage of Prison Sentences Served – As expected is highest during the 85% period with releases in November 2009 serving 86.7% of their sentences.

7) Length of Time Served in Prison - The 85% policy has not resulted in significant changes in punitiveness when measured by actual time served in prison.
IV. Has Florida’s shift from indeterminate policies to a determinate punishment model in 1995 impacted the likelihood of post-prison recidivism?

- Assess how Florida’s shift from indeterminate policies to a determinate punishment model in 1995 has impacted the likelihood of post-prison recidivism.

- Determine whether Florida’s determinate minimum 85% sentence served law is more effective at reducing recidivism than the state’s prior policies which involved different levels of sentence reductions through gain-time and early release credits.
An Assessment of the Development and Outcomes of Determinate Sentencing

Data Sources:

- Data Sources – (1) Florida Department of Correction’s (FDC) Offender Based Information System (OBIS); (2) Florida Department of Law Enforcement (FDLE), Computerized Criminal History (CCH) files. Specifically, the Florida Statistical Analysis Center (FSAC).

- FDC’s Prisoner Recidivism File - The recidivism dataset used for this study included 209,288 male inmates released from Florida prisons between January 1, 1995 and December 31, 2005.

- FDLE’s Arrest Data – 4,431,294 arrest records were merged with the prison release recidivism records using seven identifiers - a 98% match rate.
An Assessment of the Development and Outcomes of Determinate Sentencing

Factors Examined:

- **Dependent Variables** - Time to reconviction for a new crime and time to re-imprisonment, each measured in days.

- **Independent Variable** - Sentenced under the 85% law (65% of the cases).

Control Variables:

- **Demographics** – gender, age at release, race, Hispanic.

- **Current Release Offense** - murder/manslaughter (3%), sex offense (5%), robbery (9%), other violent (13%), burglary (17%), property (13%), drugs (29%), weapons (4%), and other offenses (7%).
Factors Examined (continued):

Prior Criminal Record –

- Number of prior felony arrests within each specific offense category.
- Number of prior supervision violations.
- Length of criminal career (measured by number of months from the first arrest to prison admission and release commitment (mean = 9.15 years).
- Number of prior recidivism events (measured by number of times inmates were previously released from Florida’s prisons and subsequently convicted of a new offense resulting in a state prison commitment (mean = .96).
- Age at first arrest (mean = 33.14 years).
An Assessment of the Development and Outcomes of Determinate Sentencing

Factors Examined (continued):

Institutional Measures:
- Time served in prison, disciplinary history, and custody level at release.

Post-Prison Release Measures:
- Supervision following release (37%) and population density of the county of release.
An Assessment of the Development and Outcomes of Determinate Sentencing

Analytic Strategy – Propensity Score Matching (PSM)

- Approximates an experimental design to obtain equivalency between the experimental group (85% cases) and the control group (pre-85% cases).
- Balanced the 85% and pre-85% groups using the average treatment of the treated weights derived from the propensity score.
- To increase our confidence that the 85% and non-85% groups were optimally matched, the sample of 164,485 male offenders was divided into 10 time served groups of one year each.
- Separate analyses using Cox regression procedures were conducted within each time served “bandwidth” of one year to estimate the 85% effect on the time to reconviction for a new crime and time to re-imprisonment.
An Assessment of the Development and Outcomes of Determinate Sentencing

Percent Reduction in Reconviction under 85 Percent Time Served

Prison Time Served

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<th>5 YR</th>
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An Assessment of the Development and Outcomes of Determinate Sentencing

Percent Reduction in Reimprisonment under 85 Percent Time Served

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An Assessment of the Development and Outcomes of Determinate Sentencing

Analytic Results

- The only entry in the graphs that is not statistically significant is the two-years time served band for reconviction.
- The analysis across all time served bands shows a 12.5% reduction in reconviction and a 20% reduction in re-imprisonment for offenders sentenced under the 85% sentencing law.
- However, looking at the individual bands, there is a larger impact of the 85% variable the greater the time served.
- The one year effect is about a 9% reduction in the hazard of reconviction and an 18% reduction in the hazard of re-imprisonment.
- The 10-year band shows a 52% reduction in the hazard of reconviction and a 60% reduction in the hazard of re-imprisonment.
Summary and Conclusion

- Florida intended to implement a determinate punishment system in 1983 when parole was eliminated. However, this goal was not realized for another 12 years because of prison bed capacity constraints which forced policy makers to legislate generous gain-time and early prison release credits to stay within lawful prison population levels.

- Only through a grassroots initiative resulting from a public outcry over inmates serving minimal portions of their court imposed sentences did the state pass the minimum 85% sentenced served law in 1995.

- The 85% determinate sentencing policy is not as punitive as anticipated.

- Inmates released from prison that served the same amount of time and were equivalent on a host of characteristics that have been shown to influence recidivism, were significantly less likely to recidivate if they had been sentenced under the 85% law than had they been sentenced under prior versions of Florida’s indeterminate sentencing laws.
An Assessment of the Development and Outcomes of Determinate Sentencing

Policy Implications:

1. States contemplating the enactment of determinate sentencing and punishment strategies to crime control will not necessarily become more punitive.

2. What is leading to the increases in the prison population is the number of offenders convicted of felony crimes rather than the determinate sentencing policies.

3. States considering transforming their sentencing and punishment policies to a determinate approach will not necessarily experience increased prison populations and the inevitable increase in correctional expenditures.

4. A determinate sentencing policy could result in a decrease in the recidivism rates of inmates upon prison release even though the punitiveness and cost of incarceration remains essentially the same.
An Assessment of the Development and Outcomes of Determinate Sentencing

Limitations:

- The research presented here is limited to the experience of one state, namely Florida.

- Therefore, additional research is needed in other states that have altered their sentencing and punishment policies from indeterminate towards more determinate sentencing to determine if other state experiences and outcomes are consistent with those in Florida.

- In any issue addressed through empirical research, replication is essential before determining whether the initial findings are validated and generalizable.