IMPACT OF MANDATORY DRUG TREATMENT ON PLEA BARGAINING


WHY WAS THE STUDY DONE?

Drug offenders comprise a growing proportion of the nation's prison population; in 1998, 21% of all state inmates were imprisoned for drug offenses. Some states, including Arizona, California, Kansas, and Maryland, reacted to this trend by prohibiting the imprisonment of low-level drug offenders under specified conditions. Proponents of these laws claim they divert nonviolent drug offenders from incarceration that is inappropriate for their low-level offenses. Critics claim that in practice, low-level drug offenders who receive prison sentences usually have records of more serious offenses and prison is appropriate.

This study examines the process by which low-level drug offenders were prosecuted before and after implementation of Arizona's mandatory drug treatment law. Proposition 200, passed in 1996, mandates that first- and second-time offenders convicted of personal possession or use of a controlled substance be sentenced to probation and drug treatment rather than prison (with a few exceptions). The study assesses how prosecutors increased or decreased charges at different points in the prosecution process pre- and post-Proposition 200 based on drug offense and prior record. In particular, three questions are examined:

1) How often do prosecutors modify or adjust drug offense seriousness through plea bargaining to produce a low-level drug offense at conviction (e.g., drug possession) from a more serious offense at arrest (e.g., drug sale)?
2) What is the role of marijuana and prior record in the plea bargaining of low-level drug cases?
3) What offender and case-specific characteristics influence plea bargaining processes?

WHAT DID THE STUDY FIND?

Overall, findings show plea bargaining practices play a significant role in the classification and imprisonment of low-level drug cases. Pre-proposition findings seem to support prosecutors' contentions that Arizona's low-level offenders have more serious and extensive criminal histories than the “low-level” label suggests: these arrestees averaged 8.3 prior arrests involving an average of 17 offenses. In addition, 216 (17%) of these arrestees had actually been arrested for the sale, transportation, or importation of drugs. Of these, 190 eventually pled guilty to a lesser offense. Dangerous drug and narcotic drug cases comprised more than three fourths of these drug cases. Most plea bargaining activity occurred between arrest and prosecution, and not after prosecution. Analyses exclusive to marijuana offenders show that their prior records were lengthy in nature; however, marijuana offenders with more extensive prior records did not appear to be treated more severely by prosecutors.
Post-Proposition 200, the percentage of low-level drug offenders who were arrested for a drug sale offense remained the same as pre-proposition. There was no evidence that prosecutors began to handle drug sale offenses that resulted in the imprisonment of a low-level drug offense any differently after Proposition 200. Consistent with the pre-Proposition 200 findings, most case adjustments post-proposition occurred between arrest and prosecution, not after prosecution. In general, offenders incarcerated post-Proposition 200 had lengthier and more severe prior records than offenders in the pre-proposition period. Among marijuana offenders, no cases had the number of charges increase post-proposition. Moreover, the higher the number of prior arrests, the more likely marijuana offenders were to have the number of charges dropped by prosecutors.

Gender, employment status, and legal criteria (e.g., drug sales, paraphernalia cases, dangerous drugs, and prior record) were found to be the significant predictors of plea outcomes. While no racial/ethnic disparities were found in plea outcomes before Proposition 200, post-proposition. Moreover, the higher the number of prior arrests, the more likely marijuana offenders were to have the number of charges dropped by prosecutors.

From a policy perspective, plea bargaining, a widely accepted practice, appeared not only to be widely used in the prosecution of drug offenses, but was generally used in a manner consistent with prosecutorial practices aimed at incarcerating those drug offenders who are perceived to present a greater threat to the community due to their more extensive criminal involvement and their involvement in more serious forms of drug offenses. The pre-Proposition 200 findings from this study would seem to support prosecutors’ contentions that Arizona low-level offenders have more serious and more extensive criminal histories than the low-level label would suggest. Also, some low-level offenders were arrested with relatively large quantities of drugs and then were allowed to plead down to low-level offenses, distorting the true characterization of some low-level drug offenders in prison. With the exclusion of vapor-related cases, marijuana cases represent the smallest proportion of low-level drug cases in Arizona’s prisons.

**Expanded Syringe Access Program in New York City and State**


**Why Was the Study Done?**

In May 2000, the NYS Legislature created the Expanded Syringe Access Demonstration Program (ESAP). The program permits the sale or furnishing of up to 10 syringes per transaction to persons 18 years of age or older without a prescription by pharmacists and health care practitioners who registered with the NYS Department of Health. The program, first implemented in New York City and State in January 2001, made needles and syringes legally available to injection drug users, among others. The program was not without controversy; however, as some thought that this new policy would substantially increase crime and substance abuse. This study is part of a larger effort, required by law, to evaluate the impact of ESAP on
drug use and crime. The analysis focuses upon whether ESAP was having an effect on injection behaviors, particularly injection of heroin, and related crime problems in New York City and New York State. Three hypotheses were proposed and indicators selected to use in testing them:

1) Hypothesis: Increased legal availability of syringes increases the use of hard drugs, including heroin, cocaine, or methamphetamine. Entries into state drug treatment programs for heroin use and for drug injection were examined to test this theory.

2) Hypothesis: If the syringe access program were being effectively implemented, police might be less likely to arrest persons for syringe possession.

3) Hypothesis: Legal needles might result in more heroin users and injectors being arrested and processed by the criminal justice system.

WHAT DID THE STUDY FIND?

Long-term trends for heroin admissions to New York State drug treatment programs, including admissions for heroin injection, seemed unaffected by ESAP. The trends in admission for heroin injectors remained stable during the three years before and the three years after ESAP was implemented.

Data from New York State and City suggest that implementation of ESAP in 2001 did not increase arrests for syringe possession or for controlled substances, as there was no upward movement in any related arrest trends. Substantial declines in arrests for syringe possession and controlled substances occurred between 1990 and 2000, and this continued after implementation of ESAP in 2001, although police continued to arrest some persons for syringe possession despite ESAP. In Manhattan, the prevalence of heroin usage remained relatively stable over time, with self-reported heroin injection by arrestees ranging from 15% to 21% from 1989 through 2000, followed by a modest decline to 15% in 2002-2003. The availability of legal syringes resulting from the ESAP did not seem to increase heroin injection among arrestees.

Three policy implications were drawn from these findings. First, since none of the trends suggest increases in injection, heroin use, or illegal drug use behavior, ESAP should be continued. Second, the law criminalizing the possession of syringes, which remained on the books despite passage of legislation establishing legal distribution of syringes through ESAP, should be repealed. Finally, other states and localities seeking to address their HIV/AIDS problems may find the benign impact of syringe sales to addicts in New York State helpful when forming a response to their own situation.

Methodology. Annual data from the 1980s through 2003 are presented in graph format in order to identify prevailing trends and place pre-ESAP levels in context. Data sources include the following: Tables of aggregated data on admissions to publicly funded drug and alcohol treatment programs occurring in New York State were obtained from the New York State Office of Alcohol and Substance Abuse Services. The New York State Division of Criminal Justice Services provided an anonymous dataset (all personal identifiers excluded) that provides a near census of all state adult arrests from 1980 through 2003. Of importance is that charges for criminal possession of a hypodermic instrument are explicitly called for by the state penal code. Finally, a dataset from the Arrestee Drug Abuse Monitoring (ADAM) program that documents trends in illicit drug use among booked arrestees was obtained for the ADAM-Manhattan program for 1987-2003. It includes self-reported information about drug use as well as actual drug test results for 19,714 adult arrestees.

COST-BENEFIT ANALYSIS OF POLICING EVALUATIONS


WHY WAS THE STUDY DONE?

Program evaluations provide important information to policymakers on the kinds of interventions likely to yield effective results, but because state and local budgets are highly constrained, adding a program generally means dropping or cutting back on another. Evaluations need to provide information not only about the outcomes and benefits a program is likely to produce but also information about the investment necessary to achieve them.

The purpose of this study was to assess whether it is possible to analyze costs and benefits in completed, published evaluations of a variety of policing interventions. The purpose was not to audit past evaluations.
against a criterion that the authors never imagined, but to learn how to enhance the prospects of cost-benefit analyses in future evaluations.

The assessment looked at several issues:

- Do evaluations routinely contain the information needed for a cost-effectiveness analysis (CEA) or a cost-benefit analysis (CBA)?
- Which traditional outcomes of policing interventions are most readily monetized?
- Which nontraditional costs and benefits of policing interventions should evaluators be wary of?
- How can evaluation designs be modified to improve the measurement of program costs and the valuation of benefits?
- Which outcomes should a cost-benefit research agenda target for measurement and monetization?

WHAT DID THE STUDY FIND?

Of the 17 outcome evaluations sampled (chosen from 124 originally considered), only 5 contained the minimal data necessary to support cost-benefit analyses. Only 6 of the evaluations quantified inputs and 13 quantified outcomes. Inputs included the labor of police officers, social service providers, task-force participants, problem-solving partners, and clergy. For the most part, however, these were not quantified by either the number of people participating or the hours of time they contributed. Outputs (rather than outcomes) included count data such as arrests, treatment and counseling services, referrals to prosecution, cases accepted for prosecution, and lighting improvements. Evaluators rarely tackled the question of whether these outputs are costs (incurred by police agencies) or benefits (in the form of expressive action taken by police agencies) or surrogate outcomes. Outcomes included crime, disorder, and fear reduction, citizen perceptions of the police, and quality of life indicators. These were often presented as count or rate data (e.g., arrests per patrol hour). None of the evaluators attempted to monetize outcomes, though this would be a simple task for those that measured changes in crime and victimization. Monetizing outcomes such as disorder, fear of crime, and quality of life measures would be more difficult. Two of the five evaluations deemed capable of cost-benefit analysis used outcome measures that had not yet been monetized.

Responses to the study questions, listed above, led to a number of conclusions. The outcomes of police interventions are as difficult to measure as those of any other criminal justice agency. Many influential parameters go unmeasured because of cost considerations, so that it is difficult to assess the external validity of police experiments under any design. Embedding cost-benefit frameworks in evaluation designs may encourage evaluators to approach the challenges of measuring police interventions with more discipline. Evaluators may think more carefully about the connections between surrogate measures of outcome and actual outcomes, and choose more thoughtfully between subjective and objective measures. Finally, evaluations may become more relevant—if not more valid—to policymakers.

Methodology. A search was conducted through the National Criminal Justice Reference Service for all law enforcement evaluations commissioned by the National Institute of Justice between 1994 and 2004. The results included 124 reports. Repeated studies of the same intervention implemented in different locales were removed, as well as studies that were explicitly identified as process evaluations. In all, 17 studies that appeared to be outcome evaluations and also covered a diverse range of police interventions were selected. The reports were read in full to determine how amenable the interventions were for retrospective cost-benefit analysis. The qualifying factors included specification of changes in inputs, outputs, and outcomes. The researchers looked for quantified labor and capital costs as well as crime reduction and other benefits. Ideally evaluations would provide extensive data on costs and benefits, both incurred and avoided, by criminal justice agencies and society at large. Scoring was generous, erring in favor of feasibility rather than against. For example, a study was considered feasible with respect to costing out resources if the authors specified the number of police officers assigned to the intervention as compared to the status quo. It was assumed that an average police cost could be constructed and that even absent the specification of capital costs, it might provide an adequate cost comparison.
Sentencing and Conventional Number Preferences


Why Was the Study Done?

Since the 19th century, research has shown that judges strongly prefer certain sentences, specifically, sentences that correspond with whole, often round numbers. More recently, research in Michigan found a similar pattern of preference for certain sentences (12, 18, 20, 24, 30, 36, etc.), despite the fact that judges are allowed to assign any term they wish. Profound policy consequences can follow from judicial preferences for particular sentences: disproportionate sentences, racial disparity, and pressure on available prison space. This study looked at sentencing practices in Wisconsin to see whether judges rely on conventional number preferences. The policy implications of sentencing choices are also examined and discussed.

What Did the Study Find?

A total of 23,000 non-probation felony sentencing decisions from 2005, encompassing 12,000 prison sentences and 11,000 extended supervision decisions, were reviewed. In these cases, Wisconsin judges consistently imposed 10 “standard” sentences: 12 months, 15 months, 18 months, 24 months, 30 months, 36 months, 48 months, 60 months, 72 months, and 120 months. These “preferred” terms accounted for 88% of the non-probation felony sentences reviewed. The data also showed that judges have especially strong preferences for certain numbers.

Similar patterns emerged, with some important variations, when comparing violent vs. nonviolent crimes, and cases in which the defendant pled guilty vs. cases with not-guilty pleas. Though each situation produced the same pattern of “preferred” sentences, “violent” sentences were distributed more uniformly than “nonviolent” sentences, and defendants who pled guilty were more frequently given short sentences, i.e., terms of two years or less.

In regard to race/ethnicity, Wisconsin judges appear to utilize the same small collection of “preferred” sentences for white, black, and Hispanic offenders.

However, differential participation in certain crimes, including robbery and armed robbery, child sexual assault, and cocaine offenses, affected the frequency with which judges dispense low-, medium- and high-severity sentences to each group. The study was not able to draw any conclusions, however, regarding the relationship between race/ethnicity and sentence length. There was no indication that judges were systematically treating nonwhite defendants differently than white defendants.

Conclusions and Policy Implications

Judges and those who participate in the sentencing process exhibit strong conventional number preferences in their choice of sentences. The study concluded that this could have substantial effects on sentence disparity and correctional resources and raise questions about the use and value of judicial discretion in sentencing decisions. The study concluded that more research is needed regarding the application of judicial discretion in sentencing, and the linkages between judicial reasoning and positive public outcomes. Other parties in the sentencing process, such as prosecutors, defense attorneys, and probation agents, should also be studied, since judges often accept sentence recommendations contained in plea bargains and presentence investigations.

Numerous implications for policymaking are discussed. Among these are the following:

• In 2004, Wisconsin corrections spent nearly $28,000 housing each adult prisoner. Sentencing patterns based on conventional number preferences have serious financial implications, since Wisconsin sentences carry no possibility of parole, and it is likely that some, perhaps many, offenders will return to prison because each prison sentence carries an extended, revocable period of community supervision.

• When costs per offender, per month, are high, small differences in sentence length can yield significant cost savings. If judges thought in multiples of 5 and 10 months, instead of 6 and 12, correctional bedspace needs might be dramatically different, with no demonstrable difference in public safety.
Case law in Wisconsin requires that judges state the connection between their goals in issuing a sentence and the sentence imposed. When only 10 of a possible 108 sentences between 1 and 10 years are consistently chosen, it is not clear that this requirement is being filled.

Mandatory minimum sentences consistently use conventional number preferences, raising the possibility that they are chosen because of their ease and familiarity rather than a rational connection between goal and outcome.

Methodology. A total of 23,000 non-probation felony sentencing decisions from 2004–2005, encompassing 12,000 prison sentences and 11,000 extended supervision decisions, were reviewed. The frequency with which judges select “preferred” sentences (sentences in whole, round numbers) was determined by calculating “peaks” and “valleys” in the distribution of the sentences imposed. “Peak strength” was calculated (and charted) by dividing the magnitude of each peak—the frequency with which that sentence was imposed—by the total number of cases, or data points, found within the preceding valley.