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EFFECTS OF SENTENCING

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ABSTRACT

The sentencing of offenders is perhaps the most important issue facing a criminal justice system. The deterrent effect of imprisonment continues to be debated from living rooms to legislatures.

The research reported here attempts to examine the recidivist impacts of probationary sentences versus incarceration. Statistically controlled comparisons were run on a probability sample of 100 offenders sentenced for residential or commercial burglary convictions in 1971. Subsequent arrest, conviction, and imprisonment data were gathered from official agency records through March of 1975.

The results of this study indicate that for persons sentenced for burglary, the likelihood of subsequent conviction for a felony or for any crime is less for probated offenders than for any other sentence type.

The strongest predictors of recidivism (defined as subsequent conviction for crime) were age, previous incarceration experience, and sentence type. Length of sentence, type of release, and number of previous arrests were essentially unrelated to subsequent rates of recidivism.

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METHODOLOGY

Burglary offenders sentenced in 1971 were chosen for this study of the effects of sentencing for several reasons. First, it was known that burglary offenders constitute the highest number of commitments and releasees at the State Penitentiary in any given year, and thus provide a large population from which to draw a sample for intensive analysis. Second, while the normal sentence for convicted burglars is 2-10 years, first-time offenders probably average about a year in prison. It was felt that choosing a group of offenders convicted for burglary in 1971 would thus allow ample time for possible recidivism. Third, it was known from other sources that burglary convictions in the Second Judicial District result in roughly equal numbers of probated and incarcerated sentences. This latter characteristic was extremely beneficial since we were mainly interested in comparing the long-term effects of these two types of sentences on offenders.

The data collection effort (see Appendix for copies of data collection forms) began at the District Attorney's Office where all burglary cases presented in 1971 were accessed for the case number, offense charged, the offender's name, and date of birth. Next, rap sheets for each offender were accessed at the Albuquerque Police Department and Bernalillo County Sheriff's Department to obtain background information on prior arrests and dispositions, as well as information on any arrests and convictions that may have occurred subsequent to the 1971 burglary conviction. Information on any subsequent imprisonment was then obtained for all persons in

the sample at the State Department of Corrections. Names, aliases, and dates of birth were cross-checked on each offender to assure reliable data. Once the data forms were completed and keypunched, all identifiers were removed so as to protect confidentiality of information and anonymity of subjects during computer analysis.

Information was gathered on a total of 149 burglary cases. Of this number 45 cases were dropped from analysis because they resulted in either acquittals or dismissals. Of the remaining 104 cases, four cases could not be tracked through the files due to insufficient identifying information.

Description of the Sample Population

Forty-five of the 100 cases included in the analysis resulted in probation, 34 offenders were imprisoned, and 21 offenders were given some other sentence (such as fines, restitution, drug and alcohol rehabilitation, community service, suspended or deferred sentences). Persons receiving split sentences were combined with probationers for purposes of analysis. Forty-seven percent of all offenders were in the age group 18-21. Ninety-seven percent of the subjects were male, and 75% had pleaded guilty to the charge. Seventy-two percent of the offenders had at least one prior misdemeanor arrest in 1971, and 54% had at least one prior felony arrest. However, only 35% had ever been previously arrested for burglary and only one-fourth of these had prior burglary convictions.

DETERMINANTS OF SENTENCE TYPE

Multiple regression analyses indicate that offenders are more likely to get incarcerated sentences if: (a) they have a higher number of previous arrests; and (b) they are older. This relationship held true controlling for the possible effects of such alternative explanations as the types of burglary committed (whether residential or commercial), the arresting agency, plea, number of prior burglary arrests or convictions, number of prior convictions or incarcerations for any crime, and number of prior burglary incarcerations. The R^2 or variance explained by this equation was a respectable 22%.

DETERMINANTS OF RECIDIVISM

In order to determine the effects of alternate sentencing types for burglary offenses in 1971, we have analyzed four distinct types of recidivism: subsequent arrests for any felony, subsequent arrests for burglary, subsequent convictions for any crime, and subsequent convictions for burglary. The reader is cautioned that subsequent arrests by law enforcement authorities can simply be a function of the labeling process whereby convicted felons are often the first suspects in any new case. In general, we tend to regard convictions as a somewhat "harder" measure of actual recidivism.

Felony Arrests

The single best predictor of subsequent arrest for a felony was age. Younger persons were significantly more likely than older offenders to be arrested on a felony charge. Interestingly enough, compared to those receiving "other" sentences, both probated and incarcerated offenders were less likely to subsequently be arrested on a felony count. The effects of imprisonment were somewhat stronger statistically than probation, indicating either a deterrent effect due to experience with incarceration, or the relatively shorter time the incarcerated group has had back out on the streets and consequently a lower chance of being arrested.

These relationships held controlling for number of prior arrests for burglary or all crimes, number of prior convictions for burglary or all crimes, number of prior incarcerations for burglary or all crimes, number of months imprisoned on the 1971 conviction, and manner of release from prison on the 1971 convictions (whether paroled, discharged, or maxed-out).

Burglary Arrests

The two best predictors of subsequent arrest for burglary were the number of prior arrests for burglary and age. The larger the number of prior burglary arrests, the greater the probability that the offender would subsequently be arrested for burglary. Also, the younger the offender, the higher the likelihood of some subsequent burglary arrest. Type of sentence (whether probation, incarceration, or other) appeared to have no significant effect on the probability of later arrest.

In fact, these relationships held controlling for the possible effects not only of sentence type, but also of number of all prior arrests, number of prior convictions for burglary or all crimes, number of prior incarcerations for burglary or all crimes, number of months imprisoned on the 1971 conviction, and manner of release from prison.

Convictions

The best predictor of subsequent conviction for any crime (including both felonies and misdemeanors) was age, with younger offenders more often being convicted of a subsequent offense. Two other variables that were related to subsequent conviction were previous incarceration for burglary and a probationary sentence. Persons with prior incarceration experience for burglary were less apt to be convicted of another crime. Also, offenders who were probated were less likely to subsequently be convicted of another crime. The same set of control variables was utilized in these regressions as for the equations predicting arrest.

When felony convictions were isolated for further analysis, it was found that the same relationships described for all convictions were obtained. However, one important difference was evident. The strongest

predictor of lack of subsequent conviction for a felony became probation rather than age. Probated offenders were substantially less likely to subsequently be convicted of a felony, controlling for previous arrest record and the like.

Burglary Convictions

The most important predictor of subsequent burglary convictions was the number of previous incarcerations for any crime. Persons with higher numbers of previous incarcerations were more likely to subsequently be convicted of burglary. Persons incarcerated for the 1971 conviction were also more likely to subsequently be convicted of burglary, a fact that reinforces the general observation that prisons are breeding grounds for crime. Age was once again found to be significantly related to convictions, with younger persons more often experiencing subsequent burglary convictions. These relationships held controlling for other possible influencing effects. The overall variance explained was 30%.

Descriptive Statistics

In addition to the analytic procedures described above, a number of descriptive tables were run to obtain information and data suitable for display purposes. For example, the simple bivariate relationship discussed earlier between number of prior arrests and sentence type is displayed in Table 1.

TABLE 1

SENTENCE TYPE BY NUMBER OF PREVIOUS ARRESTS

	No Arrests	1-4 Arrests	5 or more Arrests
Probation	66.7%	48.9%	25.0%
Incarceration	9.5	27.7	59.4
Other	23.8	23.4	15.6
	(21)	(47)	(32)

Table 2 shows overall differences in recidivism between the three sentence types. As can be noted in the table, the recidivism rates of probationers and persons incarcerated were identical, while persons given "other" sentences had slightly higher rates of failure.

TABLE 2

SUBSEQUENT CONVICTION FOR ANY CRIME
BY SENTENCE TYPE

	Probation	Incarceration	Other
No	71.1%	71.9%	61.9%
Yes	28.9	28.1	38.1
	(45)	(32)	(21)

The findings for subsequent felony and burglary convictions, however, are somewhat different. Offenders who were probated had lower rates of subsequent felony convictions as indicated earlier in our discussion of the regression analysis. In fact, as can be seen in Table 3, their rates for a subsequent felony conviction were roughly half those encountered for incarcerated and "other" offenders.

TABLE 3

SUBSEQUENT CONVICTION FOR FELONY
BY SENTENCE TYPE

	Probation	Incarceration	Other
No	84.4%	72.7%	66.7%
Yes	15.6	27.3	33.3
	(45)	(33)	(21)

The same general relationshiop held true for subsequent burglary convictions, with probated offenders evidencing approximately half as many later convictions as incarcerated offenders. However, in the case of subsequent burglary convictions, offenders given "other" sentences more nearly resembled probationers in recidivism (see Table 4).

TABLE 4

SUBSEQUENT CONVICTION FOR BURGLARY
BY SENTENCE TYPE

	Probation	Incarceration	Other
No	88.9%	73.5%	85.7%
Yes	11.1	26.5	14.3
	(45)	(34)	(21)

One area of considerable interest to judges and correctional authorities is the degree to which the combination of prior arrest record and sentence type predict to recidivism. Table 5 reports the probability of any subsequent conviction based on the combination of these two characteristics alone. The results are quite striking. We see, for example, that the highest risk groups tend to be persons with no prior arrests who get incarcerated (50% recidivate), and persons with 1-4 arrests who are given sentences other than probation or incarceration. The lowest risk groups

TABLE 5

PROBABILITY OF SUBSEQUENT CONVICTION FOR ANY
CRIME BY NUMBER OF PREVIOUS ARRESTS AND
SENTENCE TYPE

	No Arrests	1-4 Arrests	5 or More Arrests
Probation	35.7%	21.7%	37.5%
Incarceration	50.0	25.0	27.8
Other	0.0	63.6	20.0

tend to be persons with no prior arrests who are given "other" sentences, persons with 1-4 arrests who are probated, and persons with 5 or more arrests who are given "other" sentences. It is somewhat disturbing to find that persons with no arrests and persons with many arrests both do best on "other" sentences.

In point of fact, as we noted earlier, prior number of arrests is <u>not</u> a very good predictor of recidivism. Better predictors are age,

sentence type, and the number of previous incarcerations for burglary. Using these variables should produce better and more realistic prediction tables. Tables 6 and 7 contain predicted failure rates employing these offender characteristics.

Table 6 indicates that: (a) the lowest risk groups appear to be persons with one or more prior burglary incarcerations regardless of sentence used in 1971; (b) there are no significant differences between the failure rates of probated and incarcerated offenders; and (c) persons given sentences other than probation and incarceration have slightly higher failure rates than those probated or imprisoned.

TABLE 6

PROBABILITY OF SUBSEQUENT CONVICTION FOR ANY CRIME BY NUMBER OF PRIOR BURGLARY INCARCERATIONS AND SENTENCE TYPE

	No Prior Burglary Incarcerations	One or More Prior Burglary Incarcerations
Probation	30.2%	0.0%
Incarceration	33.3	0.0
Other	40.0	0.0

Similarly, Table 7 indicates that: (a) the lowest risk groups appear to be offenders aged 28 and over regardless of sentence type (with the one exception of incarcerated persons aged 28-34 who have somewhat higher recidivism rates); (b) probated offenders consistently do better than persons given other sentences, particularly when they are under 22 years of age; and (c) the highest risk groups are offenders aged 18-21 who are given sentences of imprisonment and "other."

TABLE 7

PROBABILITY OF SUBSEQUENT CONVICTION FOR ANY CRIME BY AGE AND SENTENCE TYPE

	18-21	22-27	28-34	35 and over
Probation	35.7%	18.2%	0.0%	*
Incarceration	50.0	21.4	25.0	0.0
Other	62.5	33.3	0.0	0.0

*Too few cases for meaningful statistic.

The comparable data for predicting subsequent felony convictions are contained in Tables 8-9. The same general relationships were obtained for felony conviction as described previously for convictions for any crime.

TABLE 8

PROBABILITY OF SUBSEQUENT CONVICTION FOR FELONY BY NUMBER OF PRIOR BURGLARY INCARCERATIONS AND SENTENCE TYPE

	No Prior Burglary Incarcerations	One or More Prior Burglary Incarcerations
Probation	16.3%	0.0%
Incarceration	32.1	0.0
Other	35.0	0.0

The one important exception to this generalization was the striking difference that appeared in the subsequent recidivism rates of offenders with no prior burglary incarcerations, where probated offenders were observed to have failure rates half as great as incarcerated and other offenders (see Table 8).

TABLE 9

PROBABILITY OF SUBSEQUENT CONVICTION FOR FELONY BY AGE AND SENTENCE TYPE

	18-21	22-27	28-34	35 and Over
Probation	25.0%	0.0%	0.0%	*
Incarceration	44.4	21.4	25.0	0.0
Other	50.0	33.3	0.0	0.0

*Too few cases for meaningful statistic.

CONCLUSION

The results of this study indicate that for persons sentenced for burglary from the Second Judicial District, the likelihood of subsequent conviction for a felony or for any crime is less for probated offenders than for any other sentence type. Length of sentence, type of release, and number of previous arrests are essentially unrelated to subsequent rates of recidivism.

The strongest predictors of recidivism (defined as subsequent conviction for a crime) were age, previous incarceration experience, and sentence type. Age was inversely related to recidivism, with younger offenders consistently experiencing relatively higher rates of subsequent conviction.

The findings for previous incarceration were mixed. Whereas previous incarceration <u>for a burglary</u> depressed recidivism rates for felonies and other offenses, prior incarceration <u>for any crime</u> appeared to have the reverse effect on subsequent burglary convictions. In the latter case number of previous incarcerations for any crime, and having been incarcerated for the specific burglary conviction in 1971, both appeared to increase rates of subsequent burglary conviction.

One interpretation of these findings has to do with the normal progression through criminal careers. Young offenders who first get arrested and imprisoned for other crimes acquire the techniques and motivation for burglary while in prison. Upon release they are more likely to commit a burglary. If apprehended and incarcerated for this burglary conviction,

they are more likely to subsequently be convicted of another burglary but less likely to be convicted of any other crime.

The findings for sentence type are clear and unequivocal. Probated offenders consistently had lower rates of subsequent conviction than offenders given incarcerated and other sentences. This was true despite the fact that probated offenders theoretically had more time to recidivate than incarcerated offenders since they were on the streets the full four years. The beneficial effect of probation was most pronounced among younger offenders.

These findings raise serious questions about the efficacy of current sentencing practices in New Mexico and throughout the nation. Burglary offenders, as we have seen, are more likely to receive incarcerated sentences if they are older and have a large number of previous arrests. However, we have demonstrated that prior number of arrests is unrelated to subsequent conviction and that older offenders are less likely to recidivate, regardless of sentence type. In fact, the one exception to this generalization for older offenders was the group aged 28-34 who actually were more likely to recidivate when incarcerated.

When one additionally estimates the economic costs of such practices--in terms of the custodial costs for large numbers of inmates who if not incarcerated would put society at no greater risk, and in terms of the increased likelihood of subsequent burglary due to the social learnings acquired in prison--the implications are truly staggering. We strongly urge a thorough and systematic reconsideration of current sentencing practices in New Mexico in the light of these research findings.

POSTSCRIPT

The findings of the present study suggest the desirability of extending the present research effort to: (a) other crime types; (b) larger samples of cases for each type of conviction investigated; and (c) include the entire state. One weakness of the present research was a financial limitation that prevented us from tracking offenders into other states to obtain information on possible recidivism. We have assumed equal underreporting of subsequent convictions for each of the three sentence types. However, this is an assumption that needs to be tested.

The State Supreme Court might consider funding an extended research effort at some future time that would delve into the effects of sentencing for various major crimes throughout the state. The present research constitutes a pilot study for such an effort.

APPENDIX

List of Variables for Data Analysis

1. Sentence
3. Age
4. Date of Birth
5. Sex
6. Arresting Agency
7. Date of Arrest
8. Offense (type)
9. Plea
10. Sentence
11. Released from prison on 1971 conviction
12. How long incarcerated
13. Release status
14. Prior incarcerations - all
15. Prior incarcerations - burglary
16. Subsequent incarceration - all
17. Subsequent incarcerations - burglary
18. Prior arrests - all
19. Prior arrests - burglary
20. Prior convictions - all
21. Prior convictions - burglary
22. Prior arrests - misdemeanors
23. Prior arrests - felonies
24. Prior convictions - misdemeanors
25. Prior convictions - felonies
26. Subsequent arrests - misdemeanors
27. Subsequent arrests - felonies
28. Subsequent convictions - misdemeanors
29. Subsequent convictions - felonies
30. Subsequent arrests - burglary
31. Subsequent convictions - burglary

Researcher's Initial____

Date_____

Effects of Sentencing

Data Collection Format A

Name _____

Age_____ Date of Birth _____ Sex _____

Address_____ Telephone_____

Arresting Agency: APD BCSD Other

APD Case No._____ BCSD Case No._____ D.A. Case No._____

Date of Arrest_____

Offense: Res. Comm.

Plea:

Final Disposition: Incarceration: Penitentiary Co. Jail

Probation

Length of Sentence:_____

Arrest Report: Yes No

Res. Initials _____

Date _____

EFFECTS OF SENTENCING

Data Collection Format B

Name _____

Data Collection Format A # _____

1. Present Status (circle): ON PROB/ OFF PROB/ ON PAROLE/ OFF PAROLE/ IN PRISON/ FUGITI

   OTHER: SPECIFY _____

   Date _____

2. Was defendant incarcerated for 1971 burglary offense?

   YES _____ GO TO 3

   NO _____ GO TO 8

3. When incarcerated (date) _____

4. Has subject been released from prison?

   YES _____ GO TO 5

   NO _____ GO TO 8

5. When released (date) _____

6. How long incarcerated? _____ years _____ months

7. Release status _____

8. Been to Santa Fe prior to 1971 bust?

   YES _____ GO TO 9

   NO _____ GO TO 10

9. Prior Offenses: Charge(s) Date LOS* RS** P&C***

   A. _____

   B. _____

   C. _____

   D. _____

10. Been to Santa Fe since 1971 bust?

    YES _____ GO TO 11

    NO _____ GO TO 12

KEY: *Length of stay
**Release status
***Partners and codefendants

11. Offenses since 1971 bust: Charge(s) Date LOS RS P&C

    A. _____

    B. _____

    C. _____

    D. _____

12. Out of state detainers

    A. _____

    B. _____

    C. _____

    D. _____

Researcher's Initial_____

EFFECTS OF SENTENCING

Data Collection Format C

(A) Code #_____

Name_____

D.O.B._____ S.S. #_____

APD #_____ BCSD #_____ FBI_____

Charge	Date of Arrest	TOT	Disposition