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83-2 • JUNE 1985

STATISTICAL ANALYSIS CENTER BULLETIN

AN OVERVIEW OF MANDATORY SENTENCING

ACQUISITIONS

Introduction

In recent years, the public has placed considerable pressure on state governments to scrutinize the structure of their criminal sanctions. Many state legislatures have enacted measures intended to make criminal sentences less disparate, more certain, more definite in length, or more severe. In general, the objective of these statutory changes is to reduce the judicial and parole board discretion over criminal penalties that is now permitted under indeterminate sentencing schemes. It is believed that such changes will increase the effectiveness of sentencing policy.

A common legislative response has been to institute mandatory minimum sentencing for certain offenses. At the beginning of 1983, 37 states had some sort of mandatory minimum sentencing statutes.¹ With few exceptions, these states added mandatory sentencing to their criminal codes on a piece-meal basis. In some cases, however, state legislatures included mandatory sentencing within more comprehensive statutory changes. In either event, the effect has been to shift from indeterminate sentencing schemes and their perceived failures toward determinate sentencing and the promise of decisions that more closely address public concerns about crime.

A mandatory minimum sentence may be defined as the minimum incarceration sentence that must be given by a judge or jury after a defendant's conviction, without an option for probation, suspended sen-

tence, or early parole eligibility.² There are four basic mandatory sentencing structures. Mandatory sentencing may be applied after conviction for a specific offense (e.g., armed robbery), for an offense within a given class of offenses (e.g., violent felonies), due to the presence of a particular element during the commission of an offense (e.g., possession or use of a firearm, or serious injury to the victim), or when an offender accumulates a predetermined number of convictions for the same offense or same class of offenses within a specified number of years. Maryland's Habitual Offender Law (Article 27, Section 643b) mandates the latter sort of "repeat offender" sentencing. Depending on the state, convictions under one of these four forms may carry the same mandatory sentence for the first offense and all subsequent offenses, or the minimum sentences may escalate with the second and subsequent convictions.

The primary goals of mandatory sentencing are to deter specific, sanctioned individuals from further involvement in similar crimes and, by example, to reduce the likelihood that other members of the public will commit offenses carrying mandatory sanctions. Theoretically, deterrence is enhanced by increasing either the severity or certainty of criminal penalties, or both.³ Most

mandatory sentencing laws now attempt the latter. Sentence severity is increased by establishing a minimum term of incarceration significantly longer than current actual minimum lengths of stay. The certainty of punishment is increased by attempting to restrict discretion at all stages of the criminal justice process. Mandatory sentencing aims to eliminate a great deal of the discretion of judges and parole boards to "individualize" sentences or shorten prison sentences. In some instances, it also restricts the plea bargaining of prosecutors and defense attorneys. Of course, increasing sentence severity also increases the incapacitation effect of sanctions by guaranteeing that all offenders convicted of specified crimes will serve definite, minimum terms of incarceration.

The remainder of the Bulletin examines some empirical information from four states that have different forms of mandatory minimum sentencing—Massachusetts, Michigan, Florida, and New York. These states were selected in part because their experiences have been subject to relatively intense statistical research, supported by excellent state criminal justice system information. These states also widely publicized their sentencing statutes, trying to enhance the deterrent effect of their laws. That publicity helped create ideal statistical settings for testing each law's effectiveness.⁴ The focus

²Survey, p. 2.

³Peter Greenwood notes that "...the only sentencing guidance provided by empirical deterrence studies...is that increasing the probability of arrest, the conviction rate, or the incarceration rate appears to reduce crime rates more than do comparable changes in sentence length. Research on deterrence tells us nothing about the relative effects of sanctions on different types of offenders." Peter W. Greenwood, *Selective Incapacitation*, (Santa Monica, Ca., The Rand Corporation), 1982, p. viii.

¹Thirty-two of these states are covered in *A Survey of Mandatory Sentencing in the U.S.*, Criminal Justice Statistics Division, Pennsylvania Commission on Crime and Delinquency, September 1981.

⁴In each state, mandatory sentencing was implemented with significant publicity. The abruptness of the policy change facilitated statistical testing of hypotheses. Nevertheless, problems arise "in the real world" that threaten a statistical test's validity. The most relevant is that which Campbell *et al.* label "history"—the possibility that other events occurring at about the same time as the policy change were actually responsible

of the discussion will be to provide some insight into the following important policy questions:

- (1) Has mandatory sentencing enhanced deterrence?
- (2) How has mandatory minimum sentencing affected the police and the courts?
- (3) Does mandatory sentencing mean more predictable, just, or severe punishment?
- (4) Have more people gone to prison because of mandatory sentencing?

The Massachusetts Gun Law

The Bartley-Fox amendment, passed by the Massachusetts legislature in July of 1974 and effective April 1, 1975, strengthened the criminal penalty for illegally carrying a firearm by requiring convicted offenders to serve a minimum of one year in prison without sentence suspension, parole, or furlough. The bill's authors stated that its purpose was to halt "...all unlicensed carrying of guns...and to end the temptation to use a gun when it should not even be available."⁵ Thus, the law aimed not at those intent on carrying a firearm for a specific criminal act, such as robbing a store, but at individuals who illegally carry a firearm without a specific purpose in mind. By reducing the number of guns carried illegally, the law would also reduce the incidence of other gun-related crime. An intensive media campaign preceded the amendment's effective date and emphasized that punishment for convicted offenders would be swift and certain.

for any observed changes. History's threat to a test's validity can be mitigated somewhat by using other statistical controls. For more information on quasi-experimental statistical testing and accompanying problems, see Donald T. Campbell and Julian C. Stanley, *Experimental and Quasi-Experimental Designs for Research* (Chicago, Ill.: Rand McNally, 1966).

⁵Glen L. Pierce and William J. Bowers, "The Bartley-Fox Gun Law's Short-Term Impact on Crime in Boston" in *The Annals of the American Academy of Political and Social Science* 455, (May 1981): 122.

Research on the implementation of Bartley-Fox revealed that the law and/or the publicity about the law produced a substantial deterrent effect on gun crime, at least in the short run.⁶ Between 1974 and 1976, police arrests for illegally carrying guns fell 23%, and reports of other gun incidents, including robbery with a gun, declined similarly. The incidence of criminal homicides dropped dramatically in the two years following implementation, as did the rate of gun assaults (See figure 1). On the other hand, reports of non-gun armed robberies and assaults increased substantially. Thus, although the law apparently deterred individuals from using a firearm in a crime, it did not discourage them from acts with other dangerous weapons.

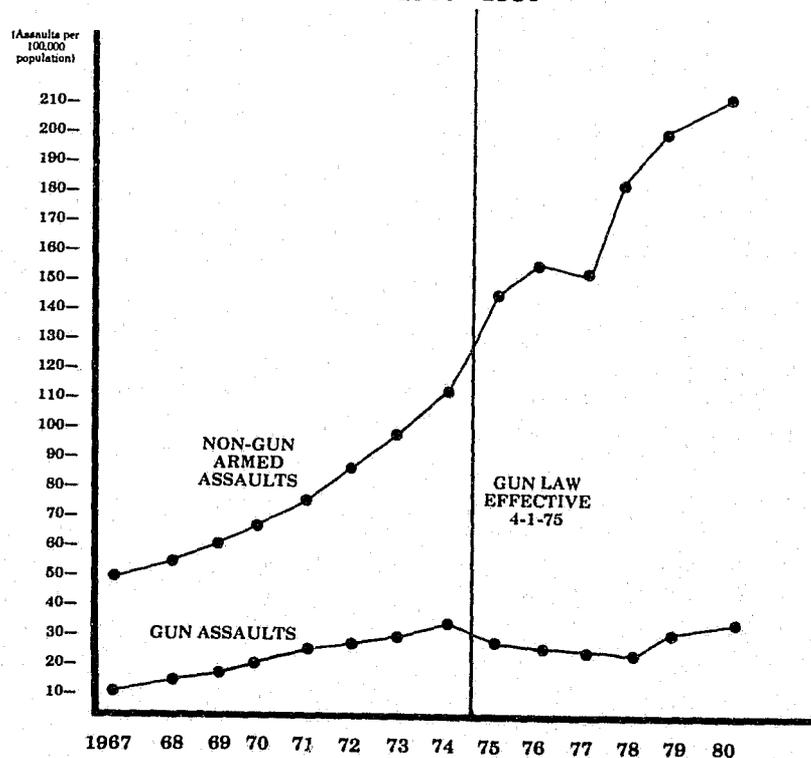
⁶More information on Bartley-Fox's deterrent effects can be found in Kenneth Carlson's, "Mandatory Sentencing: The Experience of Two States," National Institute of

Implementing Bartley-Fox significantly affected the operation of the Massachusetts criminal justice system. The law's greatest impact was on the operation of the courts, as defendants increased their efforts to avoid incarceration. The proportion of defendants who failed to appear increased 60% after the law's enactment. In those cases that went to trial, judicial decisions at both the Municipal and Superior Court levels became more favorable for defendants: both not guilty verdicts and dismissals increased more than 100%. Of the Municipal Court defendants judged guilty, the proportion who appealed their cases for a trial *de novo* increased from 21% in 1974 to 94% in 1976. The increase in appeals created a serious backlog of cases and added, on average, more than a

Please turn to page 3.

Justice Policy Brief, (Washington, D.C., May 1982). Pierce and Bowers are now working on an analysis of the law's long-run deterrent effect.

FIGURE 1
RATES OF ARMED ASSAULTS IN MASSACHUSETTS
1967-1980



Source: Glen L. Pierce, continuation of research after publication of Pierce and Bowers, "The Bartley-Fox Gun Law's Short-Term Impact on Crime in Boston."

year of adjudication to each defendant's case. A sample of Boston defendants showed that the number of defendants sentenced fell from 110 to 26 between 1974 and 1976, but the likelihood of incarceration rose from 23% to 100%.⁷

Three points about Boston's experience merit further attention. First, the Harvard study attributes much of the dramatic rise in dispositions favorable to defendants to more careful presentation and consideration of legitimate legal defenses rather than to attempts to "let off" sympathetic defendants. Second, although the number of offenders incarcerated for illegally carrying a firearm was not especially large, the number of people incarcerated for at least one year for that offense increased considerably after Bartley-Fox was enacted. Finally, many researchers attributed the decline in gun-related offenses after the law's enactment to the widespread publicity that preceded the law.

Michigan's Felony Firearm Law

The Michigan Felony Firearm Law created a new offense—committing a felony while in possession of a firearm—and required convicted offenders to serve a mandatory minimum two-year prison sentence consecutively with the sentence imposed for the underlying felony. The law also forbade parole, probation, or suspended sentences.⁸ Prior to the law's January 1977 effective date, a state-wide publicity campaign announced that "One With A Gun Gets You Two," and the Wayne county (Detroit) prosecuting attorney declared that there would be no plea bargaining on the Michigan gun law.⁹

⁷Carlson, "Mandatory Sentencing," p. 10.

⁸Colin Loftin and David McDowall, "One With A Gun Gets You Two: Mandatory Sentencing and Firearms Violence in Detroit," in *The Annals of the American Academy of Political and Social Science* 455, (May 1981): 150-167.

⁹Loftin and McDowall, "One With A Gun," p. 151.

The analysis of violent crime in Detroit concentrated on the armed and unarmed incidence of homicide, robbery, and assault. Employing a time-series analysis of no less than 10 years of monthly data (8 years before and two years after the law was enacted) to control for any extraneous influences on crime, researchers focused on two issues. First, did the law reduce the number of serious violent crimes? The expectation was that gun offenses would decline and non-gun offenses would remain stable or rise slightly (if weapons substitution occurred) after the gun law went into effect. And second, did the law alter the certainty and severity of criminal sanctions?

Loftin and McDowall noted a substantial drop in violent crime in Detroit at about the time the law went into effect. Between 1976 and 1977, homicides fell 31%, robberies dropped 27%, and aggravated assaults declined 2.5%. However, a closer analysis of the data revealed several patterns inconsistent with their expectations.

First, the decline in all three offenses originated several months before the law's effective date, suggesting the presence of a downward trend in violent crime that the law did not seem to accelerate or impede. Second, the only statistically significant decrease found in any offense category was for gun homicides. But since gun assaults, the possible equivalent of unsuccessful gun homicides, did not also decrease, the authors concluded that the decline in gun homicides was precipitated by factors other than the gun law. The incidence of both armed and unarmed robbery declined by similar amounts, while gun and non-gun assaults remained almost unchanged. Thus, with the use of sophisticated statistical methodology, researchers found that the law's threatened two-year mandatory sentence apparently failed to produce a noticeable decrease in violent gun crime in Detroit. What appeared to be the result of the gun law seems

instead to have been the result of other simultaneous and extraneous influences on crime in general.

Was the law too weak? The only statistically significant difference in sentence length was found in cases of aggravated assault, where the sentences imposed after the law went into effect became significantly longer than those sentences given before the law's enactment, although only by 4 months. For murders and robberies, there was no change in expected sentence lengths. Sentencing judges apparently reduced the traditionally long sentences given for murder and robbery to compensate for the additional two-year mandatory sentence. Thus, the system "absorbed" the mandatory two-year term and softened the gun law's potential impact.

The Florida Gun Law

Under Florida's 1975 Felony Firearm Law, individuals convicted of possessing a firearm while committing or attempting to commit one of eleven specified felonies were to receive mandatory sentences of at least three years in prison. The law's intent was to increase the certainty of imprisonment and thereby reduce gun crime.¹⁰

Analysis of the Florida Felony Firearm Law focused on the law's deterrent impact on three violent crimes—homicide, assault, and robbery. Based on statistical research using thirteen years (1968-1980) of monthly Uniform Crime Report data, Loftin found little evidence that the law produced a systematic decline in violent gun crime in Florida's three largest cities—Miami, Jacksonville, and Tampa.

The strongest finding was a statistically significant decrease in gun homicide in Tampa following the law's enactment. However, Loftin found no significant decreases in gun homicides in the other two cities. In addition, there were no sig-

¹⁰Colin Loftin, "The Deterrent Effects of the Florida Felony Firearm Law," unpublished manuscript, p. 6.

nificant decreases in gun assaults in any city. In fact, gun assaults increased in Tampa after the law became effective. Arguing that the law should exert a similar influence on the incidence of both gun homicides and gun assaults, Loftin then concluded that it was not the fire-arm law, but probably an extraneous influence that produced the decline in Tampa gun homicides.

The robbery results were somewhat different. The number of armed robberies in Miami and Tampa remained constant after the law was enacted, but the number of unarmed robberies increased. Expecting that patterns of armed and unarmed robbery would be similar in the absence of the law, Loftin speculated that the law may have stalled the growth in armed robberies in these two cities. He suggested that additional empirical information is required to support this conclusion.

The mixed results led Loftin to conclude that early reports of the law's success were overly optimistic and that, overall, the Florida gun law did not have a measurable deterrent effect on violent crime.

New York's Drug Law

The New York State legislature in 1973 enacted the New York State Drug Law. Known then as the "nation's toughest drug law,"¹¹ it provided mandatory minimum sentences of between one and fifteen years in prison for offenders convicted of the sale or possession of certain controlled substances, particularly heroin. The law's purpose was to frighten both dealers and users away from drugs and thereby reduce the incidence of those crimes

¹¹Association of the Bar of the City of New York and the Drug Abuse Council, Inc., Joint Committee on New York Drug Law Evaluation, *The Nation's Toughest Drug Law: Evaluating the New York Experience*, National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, (Washington, D.C.: U.S. Government Printing Office, 1978). For a condensation of this work's findings, see also Carlson, "Mandatory Sentencing."

commonly associated with drug addiction—robbery, burglary, and theft. As originally enacted, the law also severely restricted plea bargaining in the newly-created "class A" felony drug cases.¹² This restriction was eased in 1973.

Though a higher percentage of convicted offenders were incarcerated and for longer periods under this law than in the past, the law failed to reduce either drug use or drug-related crime. In 1976, heroin use was as widespread as it had been in 1973, and police and drug experts agreed that supplies were plentiful. Moreover, the types of serious property crime usually associated with heroin addiction rose 15 percent per year between 1973 and 1975. Arrests of narcotics users for non-drug felony crimes remained stable over the period.

The Joint Committee on New York Drug Law Evaluation attributes the failure of the law to the New York criminal justice system's inability to use the law to increase the threat to the offender.

Especially in New York City, law enforcement officers exhibited little enthusiasm for enforcing the law. They felt that engaging in mass drug arrests would inundate the courts without producing a noticeable impact on the drug trade. Therefore, after the law became effective, New York City police did not change their drug arrest policy.¹³

¹²Unrestricted prosecutorial discretion can subvert the goals of mandatory sentencing proposals. For example, a Creighton University study of the application of the Nebraska Habitual Criminal Statute in Douglas County (Omaha) between 1971 and 1973 revealed that only four defendants out of 133 eligible offenders were tried and convicted under the statute. The researchers speculated that prosecutors may have had problems locating the information to support the charge of an offender's being "habitual" and that they may have simply used the threat of being able to prove habitual criminality to negotiate guilty pleas. William J. Cook, "The 'Bitch' Threatens, But Seldom Bites," *Creighton Law Review* 8 (July 1975): 893-919.

¹³Association of the Bar of the City of New York and the Drug Abuse Council, Inc., *Nation's Toughest*, p. 14.

As in Massachusetts, the law's greatest impact was on the courts. Although the state legislature appropriated an additional \$76 million for 49 new judges, the backlog of pending cases grew to over 2600 by the middle of 1976, and the time required to adjudicate drug cases increased from 172 to 351 days.¹⁴ There were two reasons for this. First, the demand for trials nearly tripled, from 6% of all drug case dispositions in 1973 to 17% of all drug dispositions in 1976.¹⁵ Trials in non-drug cases simultaneously doubled, from 6 to 12% of all dispositions. Second, the productivity of the new courts, as measured by dispositions per court day, fell far short of that of older, established courts.¹⁶

For defendants arrested for a drug felony, the chances of being incarcerated did not change: the proportion of arrests ending in conviction dropped, but the proportion of convicted offenders incarcerated increased (See figure 2). Between 1973 and 1976, the proportion of felony drug offenders who were eventually convicted fell from 33% to 20%. Once convicted, however, the likelihood of being sentenced to incarceration increased from 33% to 55%. The result of these shifts was that both before and after the 1973 law, the chances of a felony drug arrest's ending in imprisonment remained one in nine.

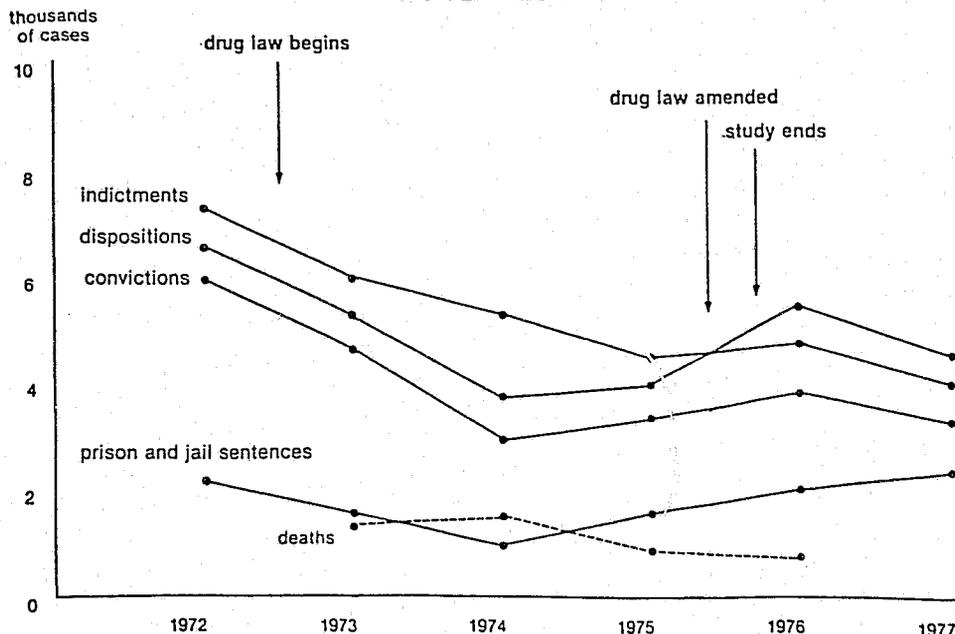
As a result of the law, the proportion of drug offenders who received long sentences increased. Between January 1972 and August 1974, only

¹⁴Because these new judges spent a considerable amount of time on cases brought under existing laws, the cost attributed to enforcing the new drug law was estimated at closer to \$32 million. Association of the Bar of the City of New York and Drug Abuse Council, Inc., *Nation's Toughest*, p. 76.

¹⁵When the legislature removed the restrictions on plea bargaining, the proportion of cases going to trial decreased almost immediately to approximately 6%. Association of the Bar of the City of New York and the Drug Abuse Council, Inc., *Nation's Toughest*, p. 76.

¹⁶Association of the Bar of the City of New York and the Drug Abuse Council, Inc., *Nation's Toughest*, p. 17.

FIGURE 2
NEW YORK STATE
PROCESSING OF DRUG CASES
1972-1977



Source: from Kenneth Carlson, "Mandatory Sentencing: The Experience of Two States," National Institute of Justice Policy Brief (Washington, D.C. May 1982), p. 9.

3% of those sentenced to prison for drug felonies received terms of more than three years; between September 1974 and December 1975, 22% received sentences greater than three years. In addition, as the courts worked their way through the backlog of pending "class A" felony cases, the number of prison commitments were expected to increase and severely tax correctional resources. Also, because "class A" convictions carried a life sentence maximum, many of those convicted and incarcerated could remain under parole supervision for the rest of their lives.

Overall, only Erie County (Buffalo) produced significantly more felony drug arrests, indictments, convictions, and prison sentences after the law's enactment. The county's success was attributed to efficient administration throughout the criminal justice system. Nevertheless, there was no evidence of a sustained decrease in the use or availability of heroin, or in the incidence of drug-related crime in the county.

Summary

Judging by the experience of these states—and we have no reason to

believe that other states' experiences differ significantly—there are few clear and easy answers to questions about mandatory sentencing. This final section reviews the four original policy questions and highlights the key issues.

(1) *Does Mandatory Sentencing Enhance Deterrence?* Sometimes. In Massachusetts, gun crime declined in the two years after Bartley-Fox, although use of other weapons in the commission of offenses increased. In Michigan, Loftin and McDowall concluded that, though violent crime did decrease somewhat in Detroit, the law was not responsible for that decline. In Florida, Loftin's research left open the question of whether the law deterred certain types of crime. In New York, the drug law failed to deter either drug use or drug-related crime.

These mixed findings could result from several different factors. First, the amount of coordination throughout a state's criminal justice system may influence a law's effectiveness as a deterrent. Massachusetts seemed to differ from other states in the degree to which the various components of the criminal justice system

cooperated to enforce Bartley-Fox. Second, a mandatory sentencing law may be a more successful deterrent when applied to a very narrow range of criminal conduct, as it was in Massachusetts. Finally, using different evaluation techniques, researchers can produce different findings. Research needs to be replicated with sophisticated statistical techniques before any conclusions about the deterrent impact of laws are drawn.

(2) What Has Been the Effect on Law Enforcement and the Courts?

a. *Police.* In both Massachusetts and New York, the mandatory sentencing laws tended to increase the importance of police actions and arrest decisions. As a result, police discretion at arrest and in the initial descriptive reporting has become a topic requiring further research.

b. *Courts.* Implementing mandatory sentencing in Massachusetts and New York affected the courts more than any other part of the criminal justice system. In New York, despite the \$76 million additional appropriation for new judges, the median time to disposition increased from 172 days to almost a full year. In Massachusetts, the legislature provided no additional resources for the courts. Consequently, although the absolute number of cases subject to mandatory sentencing was relatively small, court backlogs increased and the time required to reach final adjudication in these cases also rose to nearly one full year.

By eliminating judicial discretion and increasing the probability of imprisonment, mandatory sentencing laws may encourage defendants to demand trials and appeal convictions, especially if plea bargaining is legislatively restricted. Thus, mandatory sentencing laws can produce immediate and dramatic impacts on court resources and operations.

(3) Does Mandatory Sentencing Mean More Predictable, Just, or Severe Punishment?

Predictable or severe, maybe. In attempting to produce more certain and more equal sentencing struc-

tures, the laws in all four states concentrated on eliminating the discretion of judges and parole boards. And the probability of imprisonment for a set period in both Massachusetts and New York increased substantially. All sentenced offenders in Boston were imprisoned, and in New York, the proportion of sentenced offenders who were incarcerated increased 22%. Compared to those sentenced before the enactment of the laws, these offenders also tended to be sentenced to incarceration for significantly longer terms.

(4) Have More Individuals Been Imprisoned Because of Mandatory Sentencing?

In New York, drug law commitments increased 23% between 1972 and 1976, but this rise paralleled a 33% overall increase in the New York State prison population. In Massachusetts, about the same number of offenders were incarcerated as a result of Bartley-Fox in 1974 and in 1976. Nevertheless, in both states mandatory sentencing may have caused some offenders who would not have been incarcerated ordinarily to be imprisoned, and some to be sentenced to longer terms of imprisonment than they might have been otherwise. Therefore, mandatory sentencing seems to have increased the demand for scarce prison space.

"Sentence inflation," the gradual escalation of terms of confinement, might further aggravate this problem. Sentence inflation may occur

when, in response to public pressure to "get tough on crime," a legislature increases sentence ranges or the mandatory minimum sentences for a particular crime or class of offenses. Parole boards can also keep inmates incarcerated for longer periods. That could then force some offenders to remain incarcerated well beyond the current average length of stay, thereby using already scarce prison space for longer terms. As correctional facilities become more crowded, prison space will become an even scarcer resource to be used only in extreme circumstances. Unless additional correctional facilities are built or law enforcement, prosecutorial and sentencing policies altered, mandatory sentencing may seldom be used successfully.

Conclusion

These states' experiences indicate that different approaches to mandatory sentencing produce different results in terms of their impacts on crime and on the criminal justice system. Much research still needs to be done to determine which policies and conditions facilitate effective implementation, and how deterrence can be improved and sustained. For instance, how does widespread publicity on mandatory sentencing affect deterrence? Why did publicity seem to work better in Boston than it did in Detroit or Florida? Would sustained publicity of the results of mandatory sentencing laws promote deterrence?

Evidence from these states also

illustrates an absence of coordination among the different parts of the criminal justice system, and how the system can be resistant to change. Though sentencing is only one aspect of the entire criminal justice process, its revision produces system-wide consequences.

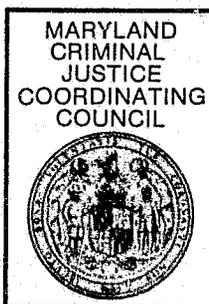
Therefore, the lessons from these states' experiences are these: (1) for mandatory sentencing laws to be more successful in achieving desired objectives, comprehensive coordination of the entire criminal justice system is needed, (2) mandatory sentencing can only be as effective as available resources permit, and (3) there are more questions about the effectiveness of mandatory sentencing than there are answers. Many issues—particularly involving prosecutorial discretion and the effects of publicity—need further study.

Maryland Criminal Justice
Coordinating Council

Honorable Harry Hughes, Governor
Nathaniel E. Kossack, Chair
Richard W. Friedman, Executive Director
Sally F. Familton, Director of Planning

The Statistical Analysis Center Bulletin
is prepared by the Staff of the Statistical
Analysis Center of the Maryland Criminal
Justice Coordinating Council:

Catherine H. Conly,
Chief of Research and Statistics
Steven C. Martin, Research Analyst
Janet B. Rosenbaum, Research Analyst
Darla M. Cook, Secretary



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COORDINATING COUNCIL
SUITE 700, 1 INVESTMENT PLACE
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