

POLICY ESSAY

Assessing determinate and presumptive sentencing—Making research relevant*

Rodney L. Engen

University of Arkansas

As of 2002, 17 states had switched from “indeterminate” to “determinate” sentencing (i.e., eliminating parole and requiring judges to order definite-length sentences), 18 states and the federal courts operated “presumptive sentencing” systems restricting judicial discretion (9 “offense-based” systems like that in Ohio and 9 with grid-based “guidelines”), and 8 states had developed “voluntary” guidelines (Stemen, Rengifo, and Wilson, 2005).¹ In addition, every state had one or more “mandatory minimums” (most often for drug and weapon offenses) and minimum time-served requirements (i.e., “truth in sentencing”), and 80% of states had adopted habitual offender statutes (e.g., “three strikes”). The most sweeping of these reforms, the determinate and presumptive sentencing systems, sought a variety of policy objectives, most notably to eliminate racial and ethnic disparities (gender disparity has been of less concern to lawmakers) and to ensure that punishment is based primarily on offense severity, criminal history, or other factors deemed legally relevant by state legislatures. In some instances, lawmakers explicitly sought to increase imprisonment for certain offenders, and some states sought to use guidelines as a tool for limiting growth in their prison populations (Marvell and Moody, 1996). With the exception of changes in parole and truth-in-sentencing laws, these reforms have been aimed at regulating the sentencing practices of judges.

* Direct correspondence to Rodney L. Engen, Department of Sociology and Criminal Justice, 211 Old Main, University of Arkansas, Fayetteville, AR 72701 (e-mail: rengen@uark.edu).

1. The terminology scholars use to describe sentencing systems often varies and has evolved over time. Whereas Wooldredge (2009, this issue) describes Ohio’s sentencing laws as “presumptive guidelines,” others reserve the term “guidelines” for the more elaborate grid-based systems used in some states (e.g., MN, WA, PA, and NC) and in the U.S. courts (Stemen et al., 2005; Tonry, 1999). To add to the confusion, sentencing systems developed in the 1970s that look much like Ohio’s (e.g., AZ, CA, and CO) often were called simply “determinate sentencing” (Marvell and Moody, 1996; see also Austin, Jones, Kramer, and Renninnger, 1996).

Regrettably, seemingly straightforward policy questions such as whether these sentencing reforms achieved any of these objectives, or about the likely consequences of subsequent changes to these laws, are difficult to answer. There is, simply, little relevant research. My goals in this essay are to (1) summarize briefly what we know (and what we do not know) about the effects of these sentencing reforms and the implications for policy, (2) propose a broader research agenda with the aim of developing a body of knowledge that can better inform both policy decisions and theory, and (3) offer suggestions for dealing with some methodological challenges this research agenda presents. I will comment briefly on the importance and implications of research like that of Wooldredge (2009, this issue) in the context of these larger issues.

Do Sentencing Guidelines Reduce Unwarranted Sentencing Disparity?

Some scholars (e.g., Tonry, 1996, 1999) concluded that presumptive guidelines reduce sentencing disparities, but this conclusion is largely based on evidence, much of it from state sentencing commissions, that judges generally comply with guidelines and that indicates small or negligible disparities associated with offenders' race or ethnicity. Also, as noted by Wooldredge (2009), research under sentencing guidelines consistently finds that legal variables are the strongest predictors of sentencing outcomes. Although many studies also find significant effects of race, ethnicity, age, or gender, these effects are highly variable and typically are modest. In other words, the findings of research under determinate or presumptive sentencing do not differ much from those in states with indeterminate sentencing (see reviews by Chiricos and Crawford, 1995; Spohn, 2000), although a recent meta-analysis found that direct race effects are "somewhat smaller [but] still statistically significant" (Mitchell, 2005: 457) in states with structured sentencing and are somewhat *larger* in the federal courts after 1987 (i.e., postguidelines).

Although it may be reasonable to infer that sentencing guidelines have probably not made matters worse at the sentencing stage, and even may have reduced unwarranted disparity somewhat, at least in some states, there are two caveats—and they are crucial. First, research like that of Wooldredge (2009) comparing sentencing practices with and without guidelines in place is *exceptionally* rare; second, the bulk of research on sentencing under guidelines only examines disparities for offenders *convicted* of similar crimes with similar criminal histories. We know little about whether offenders arrested and *charged* with similar crimes receive

similar punishment. Almost from the inception of determinate and presumptive sentencing, critics have argued that unregulated prosecutorial discretion would undermine these policies; discretion and disparities would simply shift from the sentencing stage to charging and plea bargaining, where it would be hidden from public view (Alschuler, 1978; Miethe, 1987).

The research by Wooldredge (2009) is the latest in a series of articles examining the effect of presumptive sentencing in Ohio (Griffin and Wooldredge, 2006; Wooldredge and Griffin, 2005; Wooldredge, Griffin, and Rauschenberg, 2005), and it is essential to filling this void. Prior to the work by these authors, the most direct test of the effect of sentencing guidelines on disparity, including the displacement of disparity, was conducted more than 20 years ago in Minnesota, where Miethe and Moore (1985) found that significant effects of race and employment on imprisonment were eliminated postguidelines. They found no effects of race or employment on sentence length either preguidelines or postguidelines, and no gender disparity was found in either decision.² Furthermore, and contrary to the displacement hypothesis, these researchers found that charge reductions were relatively rare preguidelines and did not increase postguidelines; also, unwarranted disparity did not increase at this stage (Miethe, 1987; Miethe and Moore, 1985). Overall, the conclusion from Minnesota is that offender status characteristics made little difference to begin with, and guidelines probably reduced the disparity that did exist.

The collective findings from the Ohio studies (including the full sample of 5,000 cases representing 24 counties) led to a similar conclusion in that the factors predicting both charging and sentence severity changed little with the introduction of guidelines. Although sentencing disparity in imprisonment (by race, sex, and employment) seems not to have decreased in Ohio generally as it did in Minnesota, the authors concluded that it was fairly modest to begin with and some changes postguidelines worked to the advantage of minority defendants (e.g., shorter sentence lengths). The collective findings also indicate some changes consistent with the displacement of discretion; most notably, an increase was observed in charge reductions from 54% to 58% (Wooldredge and Griffin, 2005) and in the effect of plea agreements on imprisonment (Wooldredge et al.,

2. Two subsequent studies examined sentencing over time in Minnesota. Stolzenberg and D'Alessio (1994) found that "disparity" defined as variation in sentencing that was not explained by offense seriousness and criminal history (i.e., residual error) was reduced in the prison/no prison decision by 18% overall and in sentence length by 60%. Koons-Witt (2002) found that leniency toward women with dependent children declined initially, before reverting to pre-existing levels, and that a significant effect favoring nonwhite offenders became nonsignificant postguidelines.

2005). Although no consistent pattern of displacement of unwarranted racial or ethnic disparities was found, the statewide analysis found that African Americans who pled guilty postguidelines were convicted on more serious charges.

Research postguidelines in other states and federal districts also lends plausibility to the displacement hypothesis. Several studies found that prosecutors charge crimes carrying mandatory minimums and “third-strike” offenses in a minority of eligible cases, and that race, ethnicity, and sex affect these decisions (e.g., Crawford, Chiricos, and Kleck, 1998; Farrell, 2003; Ulmer, Kurlychek, and Kramer, 2007; U.S. Sentencing Commission, 2004; Zimring, Hawkins, and Kamin, 2001). Also, recent studies of charging practices under guidelines in North Carolina (North Carolina Sentencing and Policy Advisory Commission, 2002; Wright and Engen, 2006, 2007) and Washington (Engen, Gainey, and Steen, 2006), as well as one comparing counties in Washington and Maryland (Piehl and Bushway, 2007) found that charge reductions are frequent (e.g., 50% of felony indictments in North Carolina) and have *substantial indirect effects* on sentencing outcomes. In addition, a recently published ethnographic study in King County, WA, revealed that prosecutors routinely impose an explicit “trial penalty” by *increasing* charge severity unless defendants plead guilty (Bowen, 2009). Similarly, qualitative research in federal districts found that prosecutors frequently bargain over offense severity and other “facts” that affect the presumptive sentence (Ulmer, 2005). None of these studies compared practices before and after guidelines, but they provide strong evidence that prosecutors exert a substantial (and quantifiable) indirect effect on sentence severity in these jurisdictions.

Summary and Implications

The Ohio studies provide little reason to expect that the shift from presumptive to voluntary guidelines will increase racial disparity, largely because no clear pattern of disadvantage to minority defendants existed in the first place (unemployed defendants seem to be at a disadvantage that persisted under the guidelines). In addition, the consequences of repealing major reforms may be different from the consequences of imposing them in the first place. Presumptive sentencing was in place in Ohio for 10 years, the guidelines remain (in an advisory status), and sentencing is still determinate. Any prosecutors, public defenders, and judges who began working in Ohio since 1995 have only worked under this sentencing scheme, and veteran court actors have long since adapted to it. Furthermore, the guidelines were based largely on existing practices when they were introduced

(Wooldredge and Griffin, 2005). Even if the guidelines had produced significant changes, would we expect court actors to alter their decision-making strategies radically just because the law is no longer binding? Probably not, but this is conjecture on my part. I am aware of *no* research examining the repeal of presumptive sentencing.

So, what do we know that can inform policy debates beyond Ohio? Currently, little evidence is available suggesting that determinate and presumptive sentencing laws have substantially reduced unwarranted racial, ethnic, or gender disparity in sentencing generally, but they may have made sentencing more predictable. These reforms probably also increased prosecutorial control over some sentencing outcomes, at least in some kinds of cases. It is difficult to draw conclusions beyond these, however. The larger point I want to make is that current empirical knowledge is simply not adequate to warrant stronger conclusions about the likely impact of major sentencing reforms. It is clear, however, that prosecutors exercise substantial discretion when deciding the severity of charges under presumptive guidelines. This has important implications irrespective of disparity. As Nagel and Schulhofer (1992: 551) observed, when prosecutors bargain around the guidelines, “the sentencing decision is not being made by the judge, as the guidelines contemplated. It is being made exclusively by the parties.” Although this may be an overstatement, it reveals the crux of the matter. Independent of how that discretion is used, *who really controls sentencing under guidelines?* In my view, this is *the* critical policy question. Unfortunately, it is one that extant research cannot answer. Although it is self-evident that prosecutors control certain crucial decisions that are directly relevant to sentencing under guidelines, little research explicitly tests what effect this has on actual sentencing or whether it results in sentencing disparities that are any greater or smaller than they would be otherwise.

Making Research Relevant: Where Do We Go from Here?

Why is so little research available on these substantively important and theoretically interesting questions? I do not know, but the hydraulic displacement of discretion thesis has generated less empirical research than one might hope, perhaps because it has been framed narrowly in terms of moving from indeterminate to determinate presumptive sentencing and with a focus on unwarranted disparity in the process, leaving more general questions unexamined. I will use the remainder of this essay to encourage researchers to pursue a broader agenda, one that includes research on disparity and the displacement of discretion, but that examines the effects of

sentencing reforms in a more comprehensive way. Restating the problem in terms of three core questions that transcend specific sentencing systems and specific hypotheses about disparity can facilitate this effort and provide a framework for organizing diverse studies.

1. How is the exercise of discretion by criminal justice actors related to the structure of sentencing laws?

If it is to be relevant to policy debates regarding sentencing reforms, research must move beyond only asking whether the effects of legal factors increased or extralegal factors decreased with the advent of structured sentencing, and must explore more broadly how judges and prosecutors exercise their discretion under various types of laws. This means examining not only the effects of switching from indeterminate to determinate sentencing but also the differences among *all* types of sentencing systems (e.g., presumptive v. voluntary, offense-based v. grid-based “guidelines”). It also implies research that examines the effects of specific features of sentencing laws, such as the *amount of judicial discretion* (e.g., breadth of sentence ranges, judges’ ability to depart from guidelines, availability of disposition alternatives, and hard v. soft disposition lines), the *presence of mandatory minimums*, the *breadth of criminal codes*, the *depth of charging options*, the *construction of guideline as “descriptive” versus “prescriptive,”* or lest we overlook the obvious, the *severity of the prescribed penalties*. Several legal scholars have offered ideas and some empirical evidence about the structure of sentencing laws that can inform this effort (Frase, 1993, 2005; Knapp, 1993; Miethe, 1987; Reitz, 1998; Tonry, 1996; Wright and Engen, 2006, 2007).

***2. How is the distribution of discretion/sentencing authority among criminal justice actors related to the structure of sentencing laws?*³**

The displacement hypothesis is often stated in terms of absolutes (e.g., “sentencing guidelines shift discretion to the prosecutor”). The fact is that judges do not have complete control under indeterminate sentencing any more than prosecutors have complete control under presumptive guidelines (Miethe, 1987; Wooldredge and Griffin, 2005). Also, the term “displacement of discretion” is imprecise. Laws that limit judicial discretion do not literally increase prosecutorial discretion; instead, they affect prosecutors’ ability to *control sentencing indirectly* by manipulating the

3. I am borrowing language here from Reitz (1998), who shows how, in theory, different sentencing reforms differentially allocate sentencing authority among prosecutors, judges, correctional officials, and legislators.

factors that determine presumptive sentences. The empirical question, then, is to what degree various structural features of sentencing laws affect the prosecutor's ability to determine sentencing outcomes indirectly. Structural differences such as breadth of sentencing ranges and availability of dispositional options may prove to be more important for understanding the allocation of discretion than the mere presence of guidelines.

3. How have sentencing reforms affected the severity of punishment for convicted offenders?

Although not the main focus of his analysis, Wooldredge (2009) reports that the proportion of offenders sentenced to prison and average sentence lengths both decreased in Ohio postguidelines, and he speculates that this may have contributed to a decline in the imprisonment rate. This may be one of the most important questions pertaining to the effects of sentencing policies, but it is one that researchers studying the sentencing process with case-level data seldom address. The conventional wisdom among criminologists seems to be that the increase in imprisonment in the United States is a result, at least in part, of the sentencing reforms of the last 30 years. However, little evidence is available to substantiate this. Imprisonment rates increased in every state (not just in those that enacted major reforms), as did the practices that directly affected imprisonment rates (e.g., increases in drug arrests, commitment rates, and length of stay) (Blumstein and Beck, 1999). The empirical question, then, is whether sentencing laws had anything to do with these changes in practice. In fact, several state-level studies concluded that determinate sentencing laws either have *no consistent effect* on incarceration rates or have a *negative effect* (Greenberg and West, 2001; Jacobs and Carmichael, 2001; Marvell and Moody, 1996; Stucky, Heimer, and Lang, 2005).

Methodological Considerations

Shifting the focus from the displacement of discretion and disparity to the broader questions of the relationship between the structure of sentencing laws, sentencing authority, and sentencing practices poses some challenges and also opens up many opportunities for research. Among the analytic challenges are (1) how to operationalize and test empirically the effect of sentencing laws and reforms on punishment, (2) how to operationalize the distribution of sentencing authority, and (3) what to do in the absence of opportunities for natural prereform and postreform evaluation research.

Testing the Impact of Sentencing Laws on Punishment

The major challenge for research testing the effects of sentencing reforms is to disentangle the effects of the reforms (e.g., the “presumptions” and “factors” that direct sentencing decisions in Ohio) from the effects of the variables on which they are based (i.e., offense severity and criminal history) and from discretionary changes in sentencing practices that might coincide with changes in the laws. This is important because offense severity and criminal history will legitimately affect sentencing severity irrespective of sentencing reforms and because the same social and political forces that lead states to adopt stricter sentencing laws might produce changes in charging and sentencing practices irrespective of those laws. Unfortunately, simply testing whether the effects of legal variables increase after the introduction of sentencing guidelines (or some other reform) does not directly test the impact of the sentencing laws on sentences. Likewise, one would not necessarily expect to observe a direct effect of a dummy variable for cases sentenced “under guidelines” in a model that controls for the legal factors that, per the guidelines, should determine sentences.

However, one could test directly whether the guidelines affect sentencing by including the presumptive sentence type or duration postguidelines and the (hypothetical) presumptive sentence preguidelines (i.e., what the guidelines would prescribe *had they been in effect*) in statistical models that predict sentencing outcomes. If the guidelines affect sentencing outcomes, then the presumptive sentence should have a stronger effect postguidelines than it does preguidelines. If it is an equally strong predictor in both periods, then this would suggest that the guidelines merely encode what the courts are already doing. To examine the total impact of the reforms on sentence severity one could also compute predicted probabilities of imprisonment or predicted sentence lengths, preguidelines and postguidelines, holding constant other predictors. Of course, one can substitute “state A and state B” for “prereform and postreform” and apply the same analytic strategy. Operationalizing precisely what the sentencing reforms require (the presumptive or “mandatory” sentences) is especially important when comparing jurisdictions with different laws.

Testing the Impact of Sentencing Laws on Sentencing Authority

The displacement hypothesis predicts an increase in *prosecutorial control over sentencing*. Research should also test whether prosecutors have more control when cases are subject to mandatory minimums, under presumptive versus voluntary guidelines, or under a variety of other conditions. Each of these predictions rests on the assumption that discretionary

charging decisions (reductions or enhancements) affect sentences indirectly because they change the presumptive/recommended disposition choices and sentence ranges that limit what judges can do. The empirical questions, then, are as follows: How large is the indirect effect of charging decisions, is it larger under one sentencing system (or law) than another, and is it larger than the effect judges exert over the sentence? Little empirical research has examined these questions.

How can we test the indirect effects of charge reductions on sentences? Simply controlling for plea bargaining or charge bargaining in a model that also controls for the offense level or presumptive sentence at conviction (i.e., after it has been changed) will not reveal the hidden indirect effect of a charge reduction. However, the indirect effect of charge reductions (or enhancements) will be revealed if one first estimates a model controlling for the *indictment* offense or presumptive sentence, and then controlling for the offense level/presumptive sentence for the *conviction* (Engen et al., 2006). If charge reductions affect sentences indirectly, then we should find a larger effect of the plea bargain in the former model and a significant increase in explanatory power in the latter. By performing this test both preguidelines and postguidelines, one could also examine whether the indirect effect increases postguidelines. This test would constitute an even stronger and more direct test of the displacement thesis. Examining whether the effects of offender characteristics decrease across these models would also reveal whether charging decisions indirectly increase disparity.

Study Design Issues

Unfortunately, opportunities for pre-post reform analyses (natural quasi-experiments) of major reforms like the one in Ohio are rare, and waiting for new opportunities to examine the implementation (or repeal) of sentencing guidelines is simply not practical. However, research need not be limited to examining major changes such as these. Relevant *longitudinal pre-post designs* can be employed whenever and wherever changes to sentencing laws have occurred, such as enacting mandatory minimums, changing the offense severity level of some offense, or changing the disposition options for certain categories of offenders (e.g., Engen and Steen, 2000). *Comparative research*—cross-sectional studies comparing outcomes for similar kinds of crimes in states with different sentencing structures—if carefully constructed, could be extremely useful as well. Comparative research poses methodological challenges, such as devising common measures of legally relevant variables and presumptive sentences as well as controlling for contextual differences that might affect outcomes, but could prove exceptionally valuable in lieu of pre-post designs (e.g., Piehl

and Bushway, 2007). For many relevant research questions, a comparative approach may be the only viable option. Finally, *case studies* of charging and sentencing at a single point in time and under a single sentencing system have a role as well. Case studies have been the mainstay of research on court processes for decades and could provide essential evidence of the relative sentencing authority of judges and prosecutors and the indirect effects of prosecutorial decisions on sentencing and on sentencing disparity in different contexts. They could also examine the effects of sentencing structures by comparing what happens with cases or offenders that are subject to different requirements in the same state or district (e.g., mandatory minimums or above v. below the disposition line). Perhaps this is the place to start. Conducting comparative studies will be difficult until, as a scholarly community, we develop some comparable cross-jurisdictional datasets and arrive at some agreement as to the most appropriate methods of operationalizing key concepts, quantifying the relative impact of judges versus prosecutors, and quantifying the indirect effects of charging decisions.

Conclusions

A national (uncontrolled) experiment in criminal sentencing has been underway now for more than 30 years in the United States. Laws that govern the sentencing process continue to change as state and federal courts strike down some aspects of these laws (e.g., *Blakely v. Washington*, 2004) or rule them “advisory” and thus unenforceable, as in Ohio and in the federal system (*U.S. v. Booker*, 2005), and as state legislatures begin to roll back some of the “get-tough” policies of the 1980s and 1990s (Listwan, Jonson, Cullen, and Latessa, 2008). Yet we can scarcely answer essential policy questions such as whether presumptive sentencing laws reduce unwarranted disparity or merely “displace” it, much less what the likely consequences will be of decisions to repeal or scale back those laws. Unfortunately, this is not because of the difficulty of distilling the many nuanced findings from myriad studies but because we simply have few well-designed studies like that of Wooldredge (2009) or other compelling evidence on which to base policy recommendations. In the absence of a knowledge base regarding these fundamental questions, broad policy recommendations would be largely speculative and premature.

This need not be the case. Scholars of criminology and criminal justice could generate such a knowledge base, but we must expand research on prosecutorial and judicial discretion beyond the question of unwarranted disparity that has dominated the research agenda for the last 25-plus years and beyond the “hydraulic displacement of discretion” hypothesis. We

must include an explicit focus on sentencing laws and their impact. This expanded agenda could be organized around a set of generic research questions. Specifically, how are (1) the exercise of discretion, (2) the distribution of sentencing authority, and (3) the severity of punishment related to the structure and content of sentencing laws? This expanded agenda will also require theoretical development. The preoccupation with detecting and explaining unwarranted disparity in sentencing research has been accompanied by a near-exclusive emphasis on individual-level social psychological theories of decision making and, to a lesser extent, on contextual theories (e.g., racial threat) that still emphasize subjective decision making as the central causal mechanism. Theorists must devote equal attention to understanding the institutional features, such as sentencing laws, that provide the context in which these decision-making processes take place.

References

- Alschuler, Albert. 1978. Sentencing reform and prosecutorial power: A critique of recent proposals for fixed and presumptive sentencing. In *Determinate sentencing: Reform or regression*. Washington, DC: U.S. Government Printing Office.
- Austin, James, Charles Jones, John H. Kramer, and Phil Renninnger. 1996. *National assessment of structured sentencing*. Washington, DC: U.S. Department of Justice, Bureau of Justice Assistance.
- Blumstein, Alfred and Allen J. Beck. 1999. Population growth in U.S. prisons, 1980–1996. In (Michael Tonry and Joan Petersilia, eds.), *Crime and justice: A review of research*, Volume 26: Prisons. Chicago: University of Chicago Press.
- Bowen, Dierdre M. 2009. Calling your bluff: How prosecutors and defense attorneys adapt plea bargaining strategies to increased formalization. *Justice Quarterly*, 26: 2–29.
- Chiricos, Ted and Charles Crawford. 1995. Race and imprisonment: A contextual assessment of the evidence. In (Darnell Hawkins, ed.), *Ethnicity, race, and crime*. Albany: State University of New York Press.
- Crawford, Charles, Ted Chiricos, and Gary Kleck. 1998. Race, racial threat, and sentencing of habitual offenders. *Criminology*, 36: 481–511.
- Engen, Rodney L., Randy Gainey, and Sara Steen. 2006. *The role of race/ethnicity in prosecutorial decisions about drug offenders*. Presented at the annual meetings of the American Society of Criminology, Los Angeles, CA.
- Engen, Rodney L. and Sara Steen. 2000. The power to punish: Discretion and sentencing reform in the war on drugs. *American Journal of Sociology*, 105: 1357–1395.
- Farrell, Jill. 2003. Mandatory minimum firearm penalties: A source of sentencing disparity. *Justice Research and Policy*, 5: 95–115.

- Frase, Richard S. 1993. Implementing commission-based sentencing guidelines: The lessons of the first ten years in Minnesota. *Cornell Journal of Law and Public Policy*, 2: 278–337.
- Frase, Richard S. 2005. State sentencing guidelines: Diversity, consensus, and unresolved policy issues. *Columbia Law Review*, 105: 1190–1232.
- Greenberg, David and Valerie West. 2001. State prison populations and their growth, 1971–1991. *Criminology*, 39: 615–653.
- Griffin, Timothy and John Wooldredge. 2006. Sex-based disparities in felon dispositions before versus after sentencing reform in Ohio. *Criminology*, 44: 893–923.
- Jacobs, David and Jason T. Carmichael. 2001. The politics of punishment across time and space: A pooled time-series analysis of imprisonment rates. *Social Forces*, 80: 61–91.
- Knapp, Kay. 1993. Allocation of discretion and accountability within sentencing structures. *University of Colorado Law Review*, 64: 679–705.
- Koons-Witt, Barbara. 2002. The effect of gender on the decision to incarcerate before and after the introduction of sentencing guidelines. *Criminology*, 40: 297–328.
- Listwan, Shelley Johnson, Cheryl Lero Jonson, Francis T. Cullen, and Edward J. Latessa. 2008. Cracks in the penal harm movement: Evidence from the field. *Criminology & Public Policy*, 7: 423–465.
- Marvell, Thomas B. and Carl E. Moody. 1996. Determinate sentencing and abolishing parole: The long-term impacts on prisons and crime. *Criminology*, 34: 107–128.
- Miethe, Terence D. 1987. Charging and plea bargaining practices under determinate sentencing: An investigation of the hydraulic displacement of discretion. *Journal of Criminal Law and Criminology*, 78: 155–176.
- Miethe, Terence D. and Charles A. Moore. 1985. Socioeconomic disparities under determinate sentencing system: A comparison of preguideline and postguideline practices in Minnesota. *Criminology*, 23: 337–363.
- Mitchell, Ojmarrh. 2005. A meta-analysis of race and sentencing research: Explaining the inconsistencies. *Journal of Quantitative Criminology*, 21: 439–466.
- Nagel, Ilene H. and Stephen J. Schulhofer. 1992. A tale of three cities: An empirical study of charging and bargaining practices under the federal sentencing guidelines. *Southern California Law Review*, 66: 501–561.
- North Carolina Sentencing and Policy Advisory Commission. 2002. *Sentencing practices under North Carolina's structured sentencing laws*. Raleigh: North Carolina Sentencing and Policy Advisory Commission.
- Piehl, Anne M. and Shawn D. Bushway. 2007. Measuring and explaining charge bargaining. *Journal of Quantitative Criminology*, 23: 105–125.
- Reitz, Kevin. 1998. Modeling discretion in American sentencing systems. *Law & Policy*, 20: 389–428.
- Spohn, Cassia. 2000. Thirty years of sentencing reform: The quest for a racially neutral sentencing process. In (Julie Horney, ed.), *Policies, processes, and decisions of the criminal justice system*, Vol. 3. Washington, DC: National Institute of Justice.
- Stemen, Don, Andres Rengifo, and James Wilson. 2005. *Of fragmentation and ferment: The impact of state sentencing policies on incarceration rates, 1975–2002*. New York: Vera Institute of Justice.

Policy Essay**335**

- Stolzenberg, Lisa and Stewart D'Alessio. 1994. Sentencing and unwarranted disparity: An assessment of the long-term impact of sentencing guidelines in Minnesota. *Criminology*, 32: 301–310.
- Stucky, Thomas D., Karen Heimer, and Joseph P. Lang. 2005. Partisan politics, electoral competition, and imprisonment: An analysis of states over time. *Criminology*, 43: 211–247.
- Tonry, Michael H. 1996. *Sentencing matters*. New York: Oxford University Press.
- Tonry, Michael H. 1999. *Reconsidering indeterminate and structured sentencing*. Papers from the Executive Sessions on Sentencing and Corrections (No. 2). Washington, DC: National Institute of Justice.
- Ulmer, Jeffrey T. 2005. The localized uses of federal sentencing guidelines in four U.S. district courts: Evidence of processual order. *Symbolic Interaction*, 28: 255–279.
- Ulmer, Jeffrey T., Megan C. Kurlychek, and John H. Kramer. 2007. Prosecutorial discretion and the imposition of mandatory minimum sentences. *Journal of Research in Crime and Delinquency*, 44: 427–458.
- U.S. Sentencing Commission. 2004. *Fifteen years of guidelines sentencing: An assessment of how well the federal criminal justice system is achieving the goals of sentencing reform*. Washington, DC: U.S. Sentencing Commission.
- Wooldredge, John. 2009. Short- versus long-term effects of Ohio's switch to more structured sentencing on extralegal disparities in prison sentences in an urban court. *Criminology & Public Policy*. This issue.
- Wooldredge, John and Timothy Griffin. 2005. Displaced discretion under Ohio sentencing guidelines. *Journal of Criminal Justice*, 4: 301–316.
- Wooldredge, John, Timothy Griffin, and Fritz Rauschenberg. 2005. (Un)anticipated effects of sentencing reform on the disparate treatment of defendants. *Law & Society Review*, 39: 835–874.
- Wright, Ronald F. and Rodney L. Engen. 2006. The effects of depth and distance in a criminal code on charging, sentencing, and prosecutorial power. *North Carolina Law Review*, 84: 1935–1982.
- Wright, Ronald F. and Rodney L. Engen. 2007. Charge movement and theories of prosecution. *Marquette Law Review*, 91: 9–38.
- Zimring, Franklin E., Gordon Hawkins, and Sam Kamin. 2001. *Punishment and democracy: Three strikes and you're out in California*. New York: Oxford University Press.

Cases Cited

- Blakely v. Washington*, 542 U.S. 296 (2004).
- U.S. v. Booker*, 543 U.S. 220 (2005).

Rodney L. Engen, Ph.D., received his doctorate in sociology at the University of Washington in 1996 and is an associate professor in the Department of Sociology and Criminal Justice at the University of Arkansas (beginning August 2009). His research interests include race and gender disparities in sentencing, the effects of prosecutorial discretion under sentencing guidelines, and the influence of state sentencing policies on imprisonment. His research has appeared in peer-reviewed journals such as *American Journal of Sociology*, *Criminology*, *Justice Quarterly*, and *Social Problems*.