

# The Influence on Judges' Sentencing Practices of a Mental Evaluation

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The sentence which a judge passes on an individual convicted of a crime depends, in addition to the nature of the crime itself, on a number of other explicit factors. These factors are usually contained in the presentence investigation which the judge orders and may include prior convictions and incarcerations, home situation, employment situation, and mental condition. The purpose of the present study is to focus primarily on one area, the effect on the judge's sentence of a referral for mental evaluation. The authors have conducted several prior studies on the strategies leading to such referrals<sup>1</sup> and on how the outcome of the evaluation may be affected by such factors as race.<sup>2</sup> The present study represents a continuation in the effort to understand the role of the competency evaluation in the criminal justice system.

A number of writers have directed themselves to the question of the way in which various facts concerning the offender and his crime affect the sentence. It is well documented that the judge's sentencing power is practically one of "unbounded discretion" and that the result is wide disparity in sentences imposed for similar crimes.<sup>3,4,5</sup> Though the reason for the sentence imposed is not always known, because the judge is not required to set forth his reasoning, it is clear that the pre-sentence report is one of the factors influencing sentencing. Slovenko<sup>6</sup> is concerned that a mental evaluation is often requested post-sentence and thus is unable to affect sentencing. While several writers, particularly those citing the Model Sentencing Act,<sup>7,8</sup> have stressed that individualized sentencing must differentiate the offender from others by motivation and personality, no one has systematically studied how the impact of these variables affects sentencing. Some systematic research is available on other variables<sup>9,10</sup> which indicates that some factors (extensiveness and seriousness of prior criminal activity, severity of the previous equivalent case, presence of a private attorney or public defender) do consistently affect sentencing and that other factors (age, sex, race) do not. Therefore, sentencing is not a totally arbitrary practice and some factors can be expected to have a consistent effect. The present authors could find no systematic study of a mental evaluation variable, but anticipate that it too would have a consistent effect on sentencing practices; hence, the present study.

## Method

Data was collected from two sources. The source for the mental evaluation sample was all referrals to the Michigan Forensic Center in 1969, a total of 347. The source for the non-referred group was a selection of 347 cases from the 1969 commitments to the Michigan Department of Corrections. The sample was random except that those who had been referred for mental evaluations were excluded and the sample was chosen so that the total number of Blacks and Whites was the same as for the mental evaluation sample. The following data was available for both groups: (1) Offense; (2) Minimum and Maximum

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Sentence in months—for cases where a life sentence was given, calculations were based on a value of 15 years for the minimum (which is approximately the point at which an individual becomes eligible for commutation) and 40 years for the maximum. Though it is recognized that this value is arbitrary, the same values were assigned in both samples; therefore the comparisons are not affected by the arbitrary values: (3) Race; (4) Marital Status; (5) Age; (6) Prior Convictions. Additional data available for the mental evaluation population was Competency or Incompetency to Stand Trial and Diagnosis.

Statistical comparisons of the data were made using t- tests or Chi-Squares, depending on the appropriateness for the particular comparison at the  $\alpha = .05$  level.

### Results and Discussion

Of the 347 individuals evaluated at the Forensic Center, only 207 eventually received sentences and of these only 130 were sentenced to prison; the remainder received suspended sentences, probation or fines. Thus, 59.7% of those referred for evaluation remained in the criminal justice system until sentencing but only 37.5% were sentenced to prison. This can be compared with available State Police figures for 1969. In that year the total number of persons in Michigan charged with offenses of all types was 250,908. Of these 28% did not receive a disposition within 1969. Of those who did receive a disposition, 75% were found guilty as charged; 8% were found guilty of a lesser offense and 17% were dismissed or acquitted. Thus, 83% of persons not referred for mental evaluation remained in the criminal justice system until sentencing as compared to 59.7% of those who were referred. Unfortunately no further breakdown of the State Police Statistics was available.

The distribution by offense for the Forensic Center and Corrections Samples is presented in Table 1. Inspection of the table indicates that the distribution by offense of the samples is different; therefore, comparisons must be within offense. In addition, the small numbers in some cells make comparisons for those offenses inappropriate. Thus, comparisons are made for only certain crimes.

Demographic comparison of the two samples is presented in Table 2. Though the

**TABLE 1**  
**Distribution of the Prison and Mental Evaluation Samples by Offense**

	Mental Evaluation		Prison	
	N	%	N	%
Homicide*	24	18.6	24	6.9
Rape, Assault w/l. Rape	5	3.9	9	2.6
Robbery, Assault w/l. Rob	21	16.3	59	17.0
Aggravated Assault*	21	16.3	7	2.0
Burglary*	14	10.9	64	18.4
Larceny*	7	5.4	55	15.9
Auto Theft*	2	1.5	27	7.9
Other Assaults*	1	.8	15	4.3
Arson	3	2.3	3	.9
Forgery	4	3.0	18	5.2
Counterfeiting*	0	0	10	2.9
Stolen Property	3	2.3	3	.9
Weapons	4	3.0	11	3.2
Prostitution	1	.8	2	.6
Sex Offenses (excl. rape)	6	4.6	12	3.5
Narcotics	4	3.0	11	3.2
Other	10	7.9	17	4.9
	130	100.6	347	100.3

\*  $X^2$  for offense significant at  $p < .05$

**TABLE 2**  
**Demographic Comparison of Mental Evaluation and Prison Samples**

	Mental Evaluation*	%	Prison	%
Race: White	82	64	193	56
Black	47	36	154	44
Age	25.8	—	25.0	—
Single	69	56	177	51
Married	26	21	89	26
WDS, Other	28	23	81	23
Prior Convictions	71	55	140	40

\* N's vary due to missing data.

prison sample was chosen to have the same racial balance as the mental evaluation sample, the mental evaluation group which was eventually sentenced had a higher proportion of Whites. Also, the mental evaluation sample contains a higher percentage of individuals with prior convictions. Minimum and Maximum Sentence means and variances in months for the two samples are presented in Table 3.

None of the differences between the Mental Evaluation and Prison samples by crime reached statistical significance (all *t* values were less than one, except for maximum sentence for Burglary-Larceny *t* = 1.16 and Sex Offenses *t* = 1.26). Also, it appears unlikely that the sample demographic differences would have altered the means enough to overcome the large variances. Thus, while referral influences an individual's chances of remaining in the system to sentencing, it appears that for those who are eventually sentenced the referral for a mental evaluation does not, independent of evaluation findings, significantly alter the sentence imposed by the judge.

The next step undertaken was to investigate within the mental evaluation sample the effects of the mental evaluation finding. The primary evaluation findings communicated to the judge are first, competency to stand trial, and second, the presence of psychosis as opposed to character disorder. Thus, when an individual has initially been found incompetent and has been treated and returned to competency, the judge is aware of this fact at sentencing. Table 4 presents the minimum and maximum sentences by initial competency finding, and for the two most frequent diagnostic categories: Schizophrenia and Personality Disorder. Also presented are the figures for those found competent who are diagnosed Schizophrenic or Personality Disorder. It is important to note in interpreting this table that of the total sample of 347 there were 216, or 62%, who were found competent, while the competent individuals constitute 81.5% of the group eventually sentenced to prison. Thus, being found incompetent lessens the probability of remaining in the criminal justice system until sentencing, as would be expected. Also, these comparisons are made for all offenses pooled in order to maintain sufficient N's for stable difference, since differences in competency and diagnosis within offense were non-significant except that the Burglary-Larceny category contains more competent individuals and Aggravated Assault contains more schizophrenic individuals. Inspection of Table 4 reveals that all differences are in the expected direction, with those diagnosed as Personality Disorder receiving significantly longer maximum sentences.

The next analysis undertaken was designed to control for the effects of prior convictions. The Schizophrenic and Personality Disorder groups were further broken down by the presence or absence of prior convictions. Because of the reduced N in each cell, this analysis was made only for the two categories with the highest original N's, homicide and robbery. For purposes of this analysis only minimum sentence was evaluated. This data is presented in Table 5. The first part of this analysis consisted of investigating

TABLE 3

## Means and Variances in Months for Minimum and Maximum Sentences by Offense for Mental Evaluation and Prison Samples

Offense	Minimum						Maximum			
	Mental Evaluation			N	Prison		Mental Evaluation		Prison	
	N	$\bar{X}$	S <sup>2</sup>		$\bar{X}$	S <sup>2</sup>	$\bar{X}$	S <sup>2</sup>	$\bar{X}$	S <sup>2</sup>
Homicide	24	135.0	16205	24	121.3	8044	250.8	2959	290.8	38555
Rape, Assault w/l. Rape	5	103.4	16712	9	75.3	4267	170.4	59141	153.3	16300
Robbery, Assault w/l. Rob	23	92.6	10235	59	82.3	7409	184.7	23596	200.3	13664
Aggravated Assault	21	46.9	4218	7	50.3	583	83.8	12924	101.1	1049
Burglary-Larceny†	20	30.6	257	119	33.9	843	64.1	2872	78.8	2142
Sex Offenses (Excl. Rape)	7	38.7	1160	12	40.9	1006	70.4	2637	99.2	1708

† Forensic Center data was pooled for these charges.

**TABLE 4**

Minimum				Maximum					
Comp. (106)		Incomp. (24)		t	Comp.		Incomp.		t
$\bar{X}$	S <sup>2</sup>	$\bar{X}$	S <sup>2</sup>		$\bar{X}$	S <sup>2</sup>	$\bar{X}$	S <sup>2</sup>	
68.5	9272	53.7	2504	1.07	135.5	25195	102.8	10025	1.27
Per. Dis. (67)		Schiz. (31)		t	Per. Dis.		Schiz.		t
$\bar{X}$	S <sup>2</sup>	$\bar{X}$	S <sup>2</sup>		$\bar{X}$	S <sup>2</sup>	$\bar{X}$	S <sup>2</sup>	
71.0	8482	54.9	4169	<1	150.0	23970	102.7	11753	1.74*
Comp. Per. Dis. (63)		Comp. Schiz. (12)		t	Comp. Per. Dis.		Comp. Schiz.		t
74.6	8818	58.1	6485	<1	158.4	23573	106.6	15767	1.23

\* p < .05

those who did not receive prison sentences. As can be seen from the table, for both offenses the majority of those who receive some disposition less than incarceration have the Schizophrenic diagnosis. The absence of prior convictions also leads to alternative dispositions for homicide but not for robbery. The Chi-Squares for both frequency tables are statistically significant. Of those who receive a prison sentence the effect of diagnosis and of prior conviction is observed; however, the effect of diagnosis is actually the stronger of the two. There is a clear trend for both offenses for those with prior convictions to receive longer sentences. However, both for those with prior convictions and those without, there is a clear trend (the only exception being a cell with an N of one) for those diagnosed Schizophrenic, even if they remain in the criminal justice system, to receive considerably shorter sentences than those diagnosed Personality Disorder. For Robbery the difference between diagnostic categories reaches statistical significance. While these conclusions must be regarded as tentative because of the small N's involved, there is a definite indication that, for those referred for a mental health evaluation, diagnosis is an important factor in determining sentence, possibly as important or even more important than the record of prior convictions.

Thus, while a mental evaluation influences the probability of remaining in the system until sentencing, for those who receive a sentence the presence of an evaluation, independent of finding, does not influence the sentence. However, it seems that a person who is initially found incompetent, or who receives a diagnosis of schizophrenia, is less likely to remain within the criminal justice system and, if he does, receives a lighter sentence than an individual for whom no mental problems have been diagnosed. Thus, though neither his intent nor his responsibility have officially become a matter of testimony, his sentence tends to be mitigated by the report of the evaluation indicating that mental illness is present.

### Summary

Minimum and Maximum sentences were compared for a sample of 347 prison commitments and for 130 of 347 mental evaluation referrals who finally received prison sentences. It was found that referral for evaluation influenced the probability of remaining in the system until sentencing, but for those sentenced, did not influence the sentence imposed. However, the findings of the evaluation did show a tendency to affect the sentence. Individuals who were found incompetent were less likely to remain in the criminal justice system until sentencing. Those individuals who were initially found incompetent and then became competent and were sentenced, and those individuals who,

**TABLE 5**  
**The Effects of Diagnosis on Sentence Type and Length Controlled for Prior Convictions**

		Homicide		Robbery					
		Schiz.	Per. Dis.	Schiz.	Per. Dis.				
Unsentenced	Prior Convictions	N = 7	N = 1	N = 5	N = 2				
	No Prior Convictions	N = 14	N = 8	N = 4	N = 2				
Sentenced Minimum Sentence	Prior Convictions	N = 2 $\bar{X} = 108$	N = 6 $\bar{X} = 143$	Totals $\bar{X} = 120.8$ $S^2 = 20576$		N = 4 $\bar{X} = 43.5$	N = 9 $\bar{X} = 142$	Totals $\bar{X} = 111.7$ $S^2 = 17643$	
	No Prior Convictions	N = 5 $\bar{X} = 98.6$	N = 5 $\bar{X} = 122.4$	$\bar{X} = 110.5$ $S^2 = 4173$		N = 1 $\bar{X} = 78$	N = 4 $\bar{X} = 66$	$\bar{X} = 68.4$ $S^2 = 1887$	
Totals		$\bar{X} = 101.3$ $S^2 = 7658$	$\bar{X} = 133.6$ $S^2 = 12687$			$\bar{X} = 50.4$ $S^2 = 983$	$\bar{X} = 118.6$ $S^2 = 17108$		

though found competent, were diagnosed schizophrenic, tended to receive shorter sentences. These findings held even when comparisons were controlled for presence of prior convictions. The implication is that the referral for and findings of the mental evaluation, though not officially a part of trial testimony as to intent or responsibility, do in fact influence the probability of a sentence and, if sentenced, the sentence imposed.

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