

Mandatory Minimum Sentencing and Drug-Law Violations: Effects on the Criminal Justice System

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Society often seeks to impose simple solutions on complex problems. One such attempted "simple solution" to the problem of drug-law violations has been the creation of mandatory minimum-sentencing laws at both federal and state levels. Essentially, mandatory minimum sentencing involves Congress or a state legislature mandating a specific minimum punishment for a given violation of law. Mandatory minimum sentencing is not a new phenomenon, but it has reemerged as a significant issue in current drug-policy debates. Today, most states, as well as the federal government, have some form of mandatory-sentencing laws for drug violations. Although these laws were designed to eliminate sentencing disparities and toughen violation penalties, many unintended consequences

have resulted. This chapter will examine mandatory minimum-sentencing laws using the following framework:

1. Current context of mandatory sentencing,
2. Discussion of expected effects,
3. Description of unanticipated consequences,
4. Evaluation of overall impact, and
5. Proposal of a framework for alternatives.

THE CONTEXT OF CURRENT MANDATORY SENTENCING

In its current manifestation, mandatory sentencing appears to have arisen within the framework of four social currents: (a) the drug revolution of the 1970s, (b) the rapidly increasing crime rates of that era (often associated with increasing drug use), (c) the growing mistrust of the judicial branch of government by federal and state legislators, and (d) the expectations implied by general deterrence theory.

The Drug Revolution

A wide variety of data indicate that during the 1970s, U.S. society experienced a significant increase in drug use. By the end of the decade, the use of marijuana was about as common as tobacco use among high school seniors (Johnston, O'Malley, & Bachman, 1999). At the same time, in many communities, the majority of those arrested for property crimes were illegal drug users (McBride & McCoy, 1992). The apparent "drug-crime connection" provided a major impetus for increased funding in drug research, prevention, and treatment (McBride & McCoy, 1992), and supported the reemergence of mandatory sentences for drug-using criminals.

The Crime Revolution

The 1950s was an era of perceived relative social calm in the United States. The experience of most citizens was one of limited danger from criminal activity. The crime index rate in 1960 was 1,116 per 100,000 population. By 1966, the rate was 1,656, an increase of 48.4% (Federal Bureau of Investigation [FBI], 1967). This rapid increase in crime was well covered

in the media, and prompted, coupled with other things, a powerful conservative response culminating in the election of Richard Nixon in 1968.

Legislative Reaction to Judicial Discretion

During the 1960s, mandatory minimum sentencing had largely disappeared, and judges had considerable discretion in sentence imposition. During this time period, the dominant criminal justice philosophy focused on increased mental health treatment, general rehabilitation, and the necessity of changing the social conditions that contributed to criminal and drug-using behaviors (Ryan, 1971). By the early 1970s, there was considerable state-level reaction to what was perceived to be generous and capricious judicial discretion in sentencing application. In the 1970s, New York passed two very strong mandatory-sentencing laws focused primarily on drug violations. These laws have come to be known as Rockefeller's Drug Law and the Second Felony Offender Law. Rockefeller's Drug Law mandated prison terms of at least 15 years (with a maximum of life imprisonment) for those convicted of violating a variety of drug laws. The Second Felony Offender Law likewise mandated specific minimum-sentence lengths for those convicted of a second felony. These laws are widely believed to have influenced the development of other state and federal mandatory minimum-sentencing laws, most of which were directed at drug-law violations. By 1984, Congress had become an enthusiastic initiator of mandatory minimum sentences that superseded previously adopted flexible sentencing guidelines. This congressional support culminated in the passage of the 1984 Federal Sentencing Reform Act, which established the U.S. Sentencing Commission. The Commission's primary responsibilities were to create sentencing guidelines to be applied to offenders in federal court. However, the act also created mandatory minimum sentences for drug offenses committed near schools, provided "sentencing enhancements" for all drug and violent offenses involving possession or use of a firearm, and mandated prison sentences for all serious felonies (United States Sentencing Commission, 1991). Two years later, Congress expanded the scope of mandatory minimum penalties with the passage of the Anti-Drug Abuse Act of 1986. This act included offenses involving crack or powder cocaine found in a defendant's possession (Musto, 1999). By 1997, 26 states and the federal government had enacted laws imposing mandatory sentences and reducing judicial discretion (Austin, Clark, Hardyman, & Henry, 1999).

Deterrence Theory and Mandatory Sentencing

The underlying philosophical rationale for severe mandatory punishment for those who violated specific laws was drawn from general deterrence theory. Deterrence theory assumes that human beings make rational choices based on the benefit to be gained from a choice compared with the potential costs. If the costs are significantly higher than the total benefits, then the behavior is much less likely to occur (Becker, 1968). Criminologists have argued that deterrence is most likely to work if the severity of punishment is coupled with both certainty and swiftness of punishment.

Evaluations of deterrence theory have been mixed. Those who argue against it note that deterrence theory rests on a faulty assumption about the rationality of criminal behavior. In particular, they argue that such a rationally based theory does not apply to drug use, which often involves physical and psychological dependency or addiction. Advocates of deterrence theory maintain that if society would successfully and uniformly increase the severity of consequences for drug-law violations, there would, indeed, be less use and, thus, less crime and violence (Kahan, 1997).

EXPECTED EFFECTS OF MANDATORY SENTENCING

Supporters of mandatory minimums were originally enthusiastic about the potential of the laws. The penalties were expected to accomplish a broad range of objectives, including retribution, incapacitation, elimination of sentencing disparity, inducement of cooperation, and inducement of pleas (United States Sentencing Commission, August 1991, pp. 13-14).

Retribution or "Just Desserts"

Congress primarily created the Anti-Drug Abuse Act of 1986 as a response to public frustration with serious offenders receiving relatively short sentences or not serving full sentences. Proponents argued that longer sentences were generally deserved, but that many judges were reluctant to impose appropriately stiff penalties for reasons that have been discussed. The United States Sentencing Commission estimated that this law more than doubled the average time being served for federal drug offenses at the time (United States Sentencing Commission, August 1991, p. 114).

Deterrence

Proponents claimed that mandatory minimum-sentencing laws would deter drug offenses by discouraging offenders from repeating their crime (specific deterrence) and, by example, preventing others from committing similar offenses (general deterrence) for fear of long prison sentences. Proponents maintained that both certainty and severity of punishment were guaranteed through this more focused approach.

Incapacitation

Supporters of mandatory sentences argued that the laws would increase public safety by incapacitating drug dealers and violent criminals for long periods of time. For example, in the most extreme form of mandated sentencing, convicted drug kingpins would be given a mandatory life sentence without the possibility of parole.

Elimination of Sentencing Disparity

Sentencing guidelines historically allowed judges to choose from a range of penalties, depending on the offense and various individual factors. Proponents of mandatory sentencing argued that criminals convicted of the same sentence could receive vastly different penalties, depending on a judge's leniency and perhaps the defendant's ethnicity or gender. Mandatory sentencing was designed to eliminate this disparity by removing judicial discretion over the lower end of the sentencing range. To a significant extent, mandatory minimum sentencing was seen as guaranteeing "truth in sentencing."¹

Inducement of Cooperation

Supporters claimed that mandatory minimums could be used in a "carrot and stick" fashion (Caulkins, Rydell, Schwabe, & Chiesa, 1997) to induce

¹First enacted through the Violent Crime Control and Law Enforcement Act of 1994, federal Truth in Sentencing laws require offenders to serve 85% of their prison sentence. Parole eligibility and good-time credits are restricted or eliminated.

the cooperation of offenders in identifying the criminal conduct of others. The "carrot" refers to a judge's discretion to reduce a mandated sentence below the minimum threshold if the offender is determined to have offered "substantial assistance" in the prosecution of another individual. The otherwise mandatory "stick" is viewed as being both a certain and severe enough incentive to induce the offender's cooperation.

Inducement of Pleas

Proponents argued that guilty offenders might wish to plead guilty to a lesser charge in the hopes that they could avoid a conviction that would trigger a mandatory minimum sentence. Such guilty pleas would save trial costs.

Supporters of mandatory minimums point to the dramatic declines of both crime and drug use in the general population during the 1980s and 1990s as evidence of their success (Levitt, 1998). However, while mandatory minimum penalties promised a great deal, critics contend that they have, in many ways, failed to accomplish their intended objectives. In some situations, the laws have had significant unintended consequences. Such consequences have included a dramatic increase in drug arrests, a rising proportion of drug offenders in prison, inappropriate incarceration of many drug offenders, prison overcrowding, a shifting of power from judge to prosecutor, a breakdown of Truth in Sentencing laws, unintended benefits for large-scale dealers, and an unfair and disproportionate effect on female and African American drug offenders.

UNANTICIPATED CONSEQUENCES OF MANDATORY SENTENCING

Increased Drug Arrests

During the 1980s, the Reagan Administration's "war on drugs" resulted in funding reductions for treatment and research. At the same time, the Administration's demand reduction strategy resulted in a dramatic increase in the number of arrests for drug offenses. At the federal level, a total of 581,000 drug arrests in 1980 nearly tripled to a record high of 1,584,000 in 1997. By this time, 79% of drug arrests were for possession and 21% were for sales (FBI, 1999). Overall, 44% of drug arrests were for marijuana offenses (FBI, 1999) and drug defendants comprised 42% of felony convic-

tions (Bureau of Justice Statistics [BJS], August 1999). Since these arrests have included many low-use users and low-level dealers, critics have argued that the stiff sentences are inappropriate to the level of the offense.

Rising Proportion of Prisoners Who Are Drug Users

State and federal prison inmates also reported high levels of drug use while committing their offenses. In the 1997 Survey of Inmates in State and Federal Correctional Facilities, more than 570,000 of U.S. prisoners (51%) reported the use of alcohol or drugs while committing their offense. Additionally, more than 80% of state and 70% of federal prisoners reported past drug use (Mumola, 1999). Such increases have driven up prison costs since drug-involved offenders generally have poorer health status and higher recidivism rates (Leukefeld, Logan, Martin, Purvis, & Farabee, 1998) than nondrug offenders.

Rising Proportion of Drug Offenders in Prison

As arrest rates have risen, so have incarceration rates. By 1998, overall incarceration rates in federal and state prisons, as well as local jails, were more than three and a half times higher than rates in 1980 (501,900 persons vs. 1,802,496 persons; Brown, Gilliard, Snell, Stephan, & Wilson, 1996; Gilliard, 1999). This figure may have turned the United States into the world leader in per capita prison incarceration rates (The Sentencing Project, 1999a, 1999b). Drug offenses are cited as one of the leading causes for the recent population increases in federal and state prisons. In 1980, there were 19,000 offenders in state prisons for drug offenses and 4,900 in federal prisons, which represented 6% and 25% of all inmates, respectively (Brown et al., 1996). However, by 1997, drug offenders in federal and state prisons had swelled to more than 250,000 persons, now representing 21% of state and 60% of federal prisoners (BJS, April 1999; Mumola, 1999). A similarly rapid increase occurred in jail inmates held for any drug offense, rising from an estimated 20,400 in 1983 to 109,200 in 1996, or 22% of the estimated total jail population (Harlow, 1998).

Prison Overcrowding

A consequence of such high incarceration rates has been prison overcrowding. By the end of 1998, state prisons were operating between 13% and

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22% above capacity, whereas federal prisons were operating 27% above capacity (BJS, August 1999). As a result, both state and federal corrections agencies currently contract with local jails, privately operated facilities, and other facilities to incarcerate sentenced inmates. Most states, as well as the federal government also have been rapidly constructing new prisons in an attempt to keep up with the high volume of inmates being sentenced. At the beginning of 1998, more than 1.2 million beds were either planned or under construction in the United States, for a total estimated cost of \$3.9 billion (Camp & Camp, 1998).

Shifting of Power from Judges to Prosecutors

Minimum sentencing mandates that a judge can rarely depart from a statutory minimum to take mitigating circumstances into account. Prosecutors, on the other hand, are not required to charge offenders with a count carrying a mandatory minimum penalty if other options are possible. Prosecutors often use this flexibility to convince a defendant to offer "substantial assistance" in the conviction of another person in exchange for a reduced sentence. Some have questioned the wisdom of transferring this power away from the judge (Stewart, 1999), arguing that private deals between prosecutors and defense attorneys do not allow for proper public accountability of sentencing decisions. Others, however, like having a prosecutor who is "tough on crime" and willing to make decisions to seriously punish those who have broken the law.

Breakdown of Truth-in-Sentencing Laws

Perhaps as a result of prison overcrowding, mandatory sentencing has not resulted in truth in sentencing. Estimates from the BJS reveal that the mean prison sentence for drug offenses is 51 months, but the mean time served is only 21 months (Bonzar & Beck, 1997). Further, state definitions of mandatory sentence lengths also vary significantly. Ditton and Wilson (1999) found that state definitions of Truth-in-Sentencing laws range between 50% and 100% of time sentenced.

Unintended Benefits for Large-Scale Dealers

Researchers have concluded that there has been an increase in plea bargaining as a means of circumventing mandatory sentences (Weinstein &

Turner, 1997). It appears that defendants are willing to plea just below a charge that would require a mandatory sentence. At the federal level, the prison sentences for individuals convicted of drug crimes declined significantly between 1992 and 1998—from 86 to 67 months (Transactional Records Access Clearinghouse [TRAC], 2000). This likely occurred because defendants pled to a lesser first-offense drug charge that did not require the imposition of mandatory sentencing (TRAC, 2000). Declines may also have occurred due to the development of "safety valve" provisions,² which are used in about 20% of all federal drug cases (United States Sentencing Commission, 1998). Many have argued that this has also reduced the number of sentences that are imposed. Although mandatory sentences may cause an expected behavior in this area (an increased willingness to plea), they may not result in the expected increased consequences for drug law violations. Large-scale, wholesale-level dealers are often able to plea bargain for lower level sentences (Caulkins, Rydell, Schwabe, & Chiesa, 1998). Kane (1995) has argued that this willingness to plead guilty to a lesser offense and prosecutorial willingness to accept such lower pleas may be allowing dangerous individuals to serve less time and avoid treatment interventions than could occur with mandatory sentencing. In contrast, the street-level dealer (who is often unable to offer substantial assistance to prosecutors) is given a mandatory sentence. Such individuals are easily replaced, thus perpetuating the continued arrests of dealers and users with few, if any, high-level convictions.

Differential Impact by Gender

The increases in the numbers of individuals incarcerated were dramatic for both men and women. However, the impact appears to be greater for women. Although the number of males imprisoned for drug offenses rose 48% between 1990 and 1997, the number of female inmates serving time for drug offenses nearly doubled (BJS, August 1999). This increase has resulted in large numbers of both pregnant women in prison, as well as children who are removed from maternal care because their mothers are imprisoned (Alexander, 1997; Rader, 1993).

²In 1994, the U.S. Congress adopted a safety valve provision that allows federal judges to sentence offenders below the applicable mandatory minimum penalty if the offender has a minimal prior record, no violence was involved in the offense, and the offender offers substantial assistance to the prosecution.

Disproportionate Effect on African Americans

The Anti-Drug Abuse Act of 1986 established mandatory minimum sentences for offenses involving both crack and powder cocaine. However, congressional testimony heightened fears of the greater dangers of crack, resulting in the same 5- to 40-year mandatory penalties being given for possession of 5 grams of crack as for 500 grams of powdered cocaine, a 1:100 ratio (Musto, 1999). Further, crack cocaine is the only controlled substance for which a mandatory minimum sentence exists for a first offense of simple possession for personal use versus sale/distribution or trafficking (The Anti-Drug Abuse Act of 1986; Office of National Drug Control Policy, 1999).

The U.S. Sentencing Commission cited several reasons for these differences:

For example, crack cocaine is more often associated with systemic crime—crime related to its marketing and distribution—particularly the type of violent street crime so often connected with gangs, guns, serious injury and death. In addition, because it is easy to manufacture and use and relatively inexpensive, crack is more widely available on the street and is particularly appealing and accessible to the most vulnerable members of our society. (April 1997, p. 4)

The Commission also noted that crack cocaine is more addictive than powder cocaine due to its more intense physiological and psychotropic effects.

However, at least at the federal level, these sentencing disparities have had a disproportionate effect on African Americans. For example, although approximately two thirds of crack-cocaine offenders were Caucasian or Hispanic in 1997, African Americans represented 85% of the offenders convicted in federal court for crack-cocaine distribution (United States Sentencing Commission, February 1995, 1998). As a result, members of the African American community have strongly accused the justice system of racial bias in sentencing. Such concerns appear well founded, as sentencing disparities have dramatically increased both incarceration rates and sentencing lengths for African American offenders. For example, between 1990 and 1997, the number of Black inmates serving time for drug violations increased more than 60%, whereas increases for White and Hispanic inmates were up by only 46% and 32%, respectively (Beck & Mumola, 1999). In addition, while safety valve provisions have reduced overall

sentence lengths for many drug offenders, crack-cocaine offenders have been the least likely to benefit from this provision (51% of heroin offenders vs. 16% of crack-cocaine offenders: United States Sentencing Commission, 1998).

In response to this appearance of racial bias in drug sentencing, in May 1995, the Sentencing Commission officially recommended to Congress that disparities between sentencing guidelines for crack and powder cocaine be eliminated (United States Sentencing Commission, February 1995). By fall of 1995, however, both Congress and the Clinton Administration rejected these recommendations, arguing that crack was more dangerous due to its greater addictiveness, low price, ease of manufacture, and associated street violence. In April 1997, the commission altered its recommendation to reduce the amount of powder necessary to trigger a mandatory minimum sentence (between 125 and 375 grams), while increasing the amount of crack (between 25 and 75 grams) (United States Sentencing Commission, April 1997).

OVERALL EFFECTIVENESS OF MANDATORY MINIMUMS

Although numerous studies have examined the impact of mandatory minimum sentences and three-strikes laws on courts, local jails, prison populations, and recidivism (Clark, Austin, & Henry, 1997; Meierhoefer, 1992a; Tonry, 1987), few studies have examined their overall effectiveness at achieving the stated objectives described previously. A comprehensive examination of effectiveness should evaluate the impact of these laws across all objectives. However, no studies to date have been that comprehensive. Instead, evaluations have focused on the impact the laws have had on specific objectives, including deterrence (Loftin & McDowall, 1984), retribution (United States Sentencing Commission, 1991), incapacitation (Clark et al., 1997; Greenwood et al., 1994), and elimination of sentencing disparity (Meierhoefer, 1992b). A few more comprehensive studies have evaluated the impact on several of the stated objectives (Austin et al., 1999; Caulkins et al., 1997, 1998; Tonry, 1987; United States Sentencing Commission, August 1991). The more comprehensive studies will be discussed below.

In a review of the early literature on the effects of mandatory minimums on the criminal justice system, Tonry (1987) found that arrest rates for targeted crimes declined soon after the laws took effect and that sentences became longer and more severe. Further, he found that dismissal and

diversion rates increased at early stages of court processing after the laws became effective. This suggests that these laws may have been effective at inducing cooperation and/or pleas. However, he found that for defendants whose cases were not dismissed, plea-bargain rates declined and trial rates increased, thereby making it unclear what the overall effect was in terms of meeting these two objectives. The interpretation of these findings was further confused by the fact that officials were able to circumvent these laws when they believed the results were too harsh for the crime committed (such as the use of safety valve provisions noted earlier).

A more recent study examining California's three-strikes law provides additional evidence that prosecutorial discretion reduces the potential deterrent effect of mandatory sentencing laws and may actually increase sentencing disparity (Austin et al., 1999). The authors found significant variation in application of California's three-strikes law by county prosecutors in five large counties, resulting in significant sentencing disparity within the state. These five counties revealed similar changes in pre- and postreform crime rates despite differential application of the law, leading the study's authors to conclude that the law failed to deter or incapacitate so-called high-rate offenders (Austin et al., 1999).

Three problems exist with evaluations such as the two cited above that are based on variation created by natural experiments. First, the evaluations frequently ignore secular trends in crime and punishment that are concurrent with changes in law or do not interpret the results within this broader context. Other evaluations of the California law, for example, note that two of the most commonly used indicators of general deterrence, crime rates and drug use, were falling even before the laws came into effect (Greenwood et al., 1994). Second, when evaluations consider the cost of these laws, they very frequently compare only the partial cost of the law vis-à-vis another program. Third, they do not consider differences in program outcomes when comparing costs, making any cost comparisons difficult to interpret.

A series of RAND studies have tried to overcome these limitations by examining the effects of mandatory minimum laws on general deterrence through simulation analyses. Unlike other evaluations, these are based on models of crime and drug use that enable researchers to control for secular trends and thus identify the incremental impact of the laws. Further, the models can be used to compare the cost and implementation of mandatory minimums with alternative policies that could be used to achieve the same objectives.

In the first study, Greenwood and his colleagues (1994) simulated the costs and benefits of California's three-strikes law. The simulation incorpo-

rated several assumptions regarding trends in California crime rates and the impact of the law on deterrence and retribution. Assuming that the law only led to longer sentences and did not have a deterrent effect, the authors projected that the three-strikes law would triple California's prison population over the next 25 years, at an average additional cost of \$5.5 billion each year. Partially offsetting this cost, however, they estimated the law would lead to a 28% reduction in serious crime, resulting in a total correctional cost of about \$16,300 per crime averted. If the law instead enhanced sentences of only repeat violent offenders (i.e., those whose current crime and prior two offenses were violent, serious crimes), the reduction in crime attributed to the law would be only 18%. However, this alternate policy had a much lower total correctional cost of \$12,000 per crime averted, and was therefore more cost effective at reducing crime.

In separate studies, Caulkins and his colleagues (1997, 1998) examined the issue of federal mandatory minimums and their cost effectiveness at reducing cocaine consumption, cocaine expenditures, or drug-related crimes relative to increased conventional enforcement and treatment of heavy users. The authors focused on a strict variant of federal mandatory minimums because the state- and local-level data they employed included all dealers, not just those meeting the triggering conditions necessary for a mandatory minimum sentence.³ Instead, the authors examined the benefit of spending an additional million dollars on increasing the sentences served by a representative set of drug dealers to 5 or 10 years from an average term of 1 year (the average time served by dealers exiting prison in 1990). Two different approaches were taken to mathematically model the market for cocaine, but the conclusion was the same regardless of method: mandatory minimum sentences were not justifiable on the basis of cost effectiveness at reducing cocaine consumption, cocaine expenditures, or drug-related crime relative to treatment of heavy users or increased enforcement. Mandatory minimums that targeted a specific class of drug dealers (i.e., third-level wholesale dealers) did result in a better cost-effectiveness ratio, but this policy was still less cost effective than expanding the scope of conventional enforcement by arresting and prosecuting more dealers under traditional sentencing laws.

Caulkins et al. (1998) also compared the costs of mandatory minimums with those of drug treatment. The authors concluded that treatment was eight times more cost effective in terms of reducing future drug consumption.

³Typically, dealers only incur longer sentences when some specified amount of cocaine can be associated with their crime.

tion than the use of mandated sentencing requirements. In addition, expanding the use of treatment was estimated to reduce drug-related crime up to 15 times more than mandatory sentencing.

It is important to keep in mind the limitations of policy simulations in evaluating mandatory minimum legislation. First, all of these simulations are based on underlying assumptions of baseline rates of criminal activity and drug use. If these rates change, then the models need to be re-evaluated. Second, the models hold other factors constant when evaluating the impact of particular policies. While this is necessary to identify the incremental impact of the particular policies, it does not mean that the outcome from the simulations would actually be observed.

FUTURE DIRECTIONS

The implementation of mandatory sentencing has resulted in serious unanticipated consequences. A reversal of this policy to total judicial discretion, with a primary focus on individual rehabilitation or societal restructuring, would likely encounter significant public resistance. As noted previously, mandatory minimum-sentencing practices have been based on general deterrence theory: severity, certainty, and swiftness of punishment.

New Deterrence Theory

In a 1997 article, Kahan describes the new deterrence scholarship as seeking to integrate social norms into conventional economic conceptions of deterrence. The approach "aims to enrich economics by identifying social phenomena important enough to be worth regulating but malleable enough to be regulated efficiently" (p. 2). According to Kahan (1997), the goal of the new deterrence theory is to create a feasible middle ground. This public health-based, risk-reduction approach⁴ would support the development of a policy environment that does not seek to encourage strictly dichotomous policy approaches (either continuing to increase the cost of crime on a solely economic deterrence basis, or to focus entirely on sociological concerns within the context of structural and cultural conditions). Instead,

⁴The central feature of harm reduction is "... the attempt to ameliorate the adverse health, social, or economic consequences associated with the use of mood-altering substances without necessarily requiring a reduction in the consumption of these substances" (Enziardi & Harrison, 2000).

the goal would be to "identify morally and politically acceptable law-enforcement strategies that themselves ameliorate the social conditions that cause crime" (Kahan, 1997, p. 10).

Ecological Systems Theory

The new deterrence approach suggests methods to successfully combine appropriate sanction severity within the context of social issues. However, it can perhaps be argued that such methods will not be successful unless implemented within an understanding of how they can be transferred from macro to mezzo and micro levels. Ecological systems theory presents guidance on such implementation issues. Ecological systems theory posits that transactions are constantly occurring between individuals and other humans, as well as environmental systems, resulting in reciprocal change (Hepworth, Rooney, & Larson, 1997). In the case of sentencing-reform issues, ecological systems theory encourages approaches, such as multisystem collaboratives, that can act as intermediaries between macrolevel policy initiatives and local agency implementation efforts. The theory also supports the use of mezzolevel, cross-systems case management to assist individual offenders in accessing and successfully completing needed programs and services in areas such as treatment, supervision, and community reintegration (Terry, VanderWaal, McBride, & VanBuren, 2000). At the microlevel, the theory supports those interventions that show the greatest ability to integrate the multiple needs of offenders within the context of their unique family, employment, and peer environments. Such interventions can occur in a wide range of supervision settings. For example, therapeutic communities have shown success in reducing drug-use rates among prisoners in prison and jail settings. Diversion programs, such as Treatment Alternatives to Street Crimes (TASC), provide individuals with drug treatment services while still under the close supervision of a parole or probation officer. Finally, community-based interventions, such as multisystemic therapy, have demonstrated reduced recidivism and drug use rates with serious juvenile offenders (McBride, VanderWaal, Terry, & VanBuren, 1999b).

Concrete Strategies Based on Theory and Research

Current experiments within the justice system are beginning to incorporate both of these perspectives. Specifically, policy and case processing for drug

offenses are increasingly using a public health approach acknowledging the findings that (a) treatment works and is cost effective (Centers for Substance-Abuse Treatment, 2000), and (b) a public health approach coupled with increased attention to the need for economic development and opportunities may provide the best foundation on which to base national drug policy (McBride, Terry, & Inciardi, 1999a). In a recent review of the most promising programs and services to break the cycle of drug use and crime within the juvenile justice system, McBride and his colleagues (1999b) described a potentially successful model. Model components reported as being most likely to be successful included the following: comprehensive assessment, empirically valid treatment modalities integrated into the offender's natural environment, and adequate supervision within a graduated sanctions framework. This model would be coordinated using a case-management approach within multisystem collaboratives, with an emphasis on public safety, rehabilitation, and community reintegration. Such an approach emphasizes social organization and moral credibility through careful respect of the need for adequate supervision and public safety, while also incorporating community buy-in and support through multisystem collaboration. Deterrence is implemented through the graduated sanctions process of assigning penalties based on the offender's progress in treatment and other activities. Finally, social influence is acknowledged by giving attention to community reintegration supervision and program involvement. Concrete examples of programs that may incorporate these types of approaches include drug courts and TASC (McBride et al., 1999b).

SUMMARY

The expected outcomes of mandatory minimum sentencing have not been realized. Their implementation has resulted in prison overcrowding, differential impacts by gender and ethnicity, continued sentencing disparities, and relatively low measures of cost effectiveness. However, current efforts to develop specific alternative approaches to sentencing procedures show promise in combining the important lessons learned from both mandatory minimum sentencing, as well as the problems encountered using a purely sociocultural context approach to dealing with criminal behavior. Within a framework of the new deterrence scholarship, as well as recognition of the reality of systemic environmental conditions, it may be possible to find a middle ground. The goal of such efforts should be to balance both the moral concerns and safety fears of communities searching for ways to reduce crime and drug use, and the needs of the justice system to design and enforce penalties while still meeting the rehabilitation needs of offenders.