Report:

FACTORS RELATED TO THE USE OF MANIFEST INJUSTICE IN JUVENILE COURT SENTENCING

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FACTORS RELATED TO THE USE OF MANIFEST INJUSTICE IN JUVENILE COURT SENTENCING

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EXECUTIVE SUMMARY

Background

In 1977 the Washington State Legislature passed a new juvenile code intended to reduce discretionary decision-making and to increase consistency in sentencing juvenile offenders. A sentencing procedure was instituted using the offender's age, criminal history and offense seriousness as determinants of a "standard range" sentence.

The code provides a mechanism for sentencing outside the standard range if the standard range sentence would fail to protect the community or cause an injustice to the offender. The intent is to allow an increase in the sentence when considered necessary to protect the community and to allow a decrease when the sentence is an injustice to the offender.

The use of this "manifest injustice" provision has had a significant impact on Division of Juvenile Rehabilitation (DJR) institutional populations. In fiscal year 1981, manifest injustice was used in 52 percent (534) of all non-escape commitments. Of these, 458 (86% of the manifest injustice commitments) were committed for longer terms than required under the standard range.

Purpose and Scope

The purpose of this research project is to identify factors related to decisions to use the manifest injustice provision. In conducting the study, 325 court cases sentenced during 1980 were reviewed from four juvenile courts in Washington State: Benton/Franklin, Clark, Pierce and Spokane.

Information was collected from court files describing:

Juvenile's Social Characteristics (e.g., age, sex, race, psychological condition and runaway history);

Juvenile's Criminal History (including measures of prior crime and court history);

Current Offenses (seriousness and type of current and concurrent offenses);

Current Offense Description (i.e., the victim was injured or subjected to sexual abuse or there were other aggravating or mitigating circumstances);

Court Processing Variables (e.g., the child was detained prior to sentencing, the charges were plea bargained or a presentence diagnostic evaluation was ordered) and;

Sentence. Although judges may use the manifest injustice provision to reduce prescribed sentences, they do so infrequently. The information in this study examines only decisions to increase sentences through the use of manifest injustice.

Summary of Findings

Some major findings of the study include:

1. Contrary to current statutes, the number of concurrent offenses was an important consideration in invoking manifest injustice for all groups analyzed. The number of prior offenses was a significant factor for both committable and non-committable offenders. Both findings suggest disagreement with existing sentencing guidelines and standards.

2. For both non-committable and property offenders, the fact that a presentence diagnostic evaluation had been completed was the single most important factor in the decision to use manifest injustice.

3. A greater variety of factors are considered when invoking manifest injustice for non-committable than for committable offenders. Most of these factors are not directly related to the juvenile's present or past criminal behavior. Some factors, such as completion of presentence diagnostic evaluations, psychological problems, and juvenile and parental attitudes, suggest that the offender is judged as resistant to or unable to benefit from community modes of rehabilitation might benefit from treatment offered at a DJR institution. Other factors, including prior probations and commitments reflecting previous failures at rehabilitation, may be viewed as indicating a need for stronger measures than allowed under the current sentencing standards.

4. Aggravating factors associated with the current offense, the number of concurrent offenses, and the number of prior commitments are important determinants of the length of sentence for those committed under manifest injustice.

5. For property offenders, ethnicity and age were related to the decision to use manifest injustice. Minority offenders are more likely to receive manifest injustice sentences than are white offenders. Also, younger children are more likely to receive manifest injustice sentences than older offenders.

6. For those already committed under manifest injustice, sex of the offender was a factor in determining length of sentence, i.e., the sentence was likely to be longer if the offender was male.

Appropriateness of Use of Manifest Injustice

During interviews, juvenile court judges were asked what criteria would indicate that manifest injustice was being used inappropriately. The common response was that there were no legitimate criteria with which to measure appropriateness. Each case, they claimed, must be viewed on its own merits or faults.

Some judges saw the Division of Juvenile Rehabilitation statistics, which show manifest injustice accounting for approximately 50 percent of commitments, as evidence that the manifest injustice provision is being overused.

Others claimed that this occurs because the sentencing guidelines simply "don't work." In two cases, the courts have stated that disagreement with the guidelines is not an appropriate justification for the use of manifest injustice.

Another problem in determining the appropriateness of sentences stems from the vague language of the code. Manifest injustice is defined as an alternative when the standard range disposition "would impose an excessive penalty on the juvenile or a clear danger to society in light of the purpose of this chapter" (emphasis added). The statute does not define a "danger to society." Research has had little success in predicting future violence or criminal behavior. It is unreasonable to expect judges to provide an accurate prediction.

There are at least three ways in which manifest injustice is being used inappropriately. First, several factors already used in the standard range sentence computations are systematically used by judges in making manifest injustice decisions. Age was related to the use of manifest injustice when property offenders were being sentenced, and offense frequency was related to both the finding of manifest injustice and the length of sentence of juveniles sentenced under manifest injustice. Both variables, age and offense frequency, are already considered in computations of the standard range sentence.

Second, the use of manifest injustice is inappropriate when variables specifically excluded by statute are used. We found that sex of the defendant was systematically related to the length of term for offenders sentenced under manifest injustice. Previous research suggests that males are sent to the institution for "punishment," whereas females are committed for "treatment." Race, also defined by statute as inappropriate for consideration, was systematically related to the use of manifest injustice when property offenders were sentenced. Caucasian offenders were less likely to be sentenced under manifest injustice than were minority group offenders. However, larger subsamples of minority offenders are necessary to understand fully the relationship between race and sentencing.

The use of manifest injustice as a treatment tool is the third way in which it may be used inappropriately. We found that for offenders without sufficient points for commitment under the standard range, treatment concerns may be related to the use of manifest injustice. Such concerns are viewed as inappropriate if they are the primary or sole reason for a finding of manifest injustice. Technically, citing a single non-treatment variable as an aggravating factor is sufficient support for a finding of manifest injustice. However, when the data show a consistent trend to use mainly dependency variables, the result is a de facto reliance on treatment rather than legitimate aggravating factors.

Recommendations

Recommendation 1: Sentencing judges should be required to specify facts supporting a finding of "danger to the community" separate from other aggravating and mitigating factors.

Recommendation 2: Require fiscal responsibility for the use of manifest injustice. One method of providing some limits to the use of manifest injustice, while still allowing judges the discretion to use it, is to link the decision to sentence to a state institution with the costs of institutionalization. Overall funding for community programs, for example, might be adjusted in relation to individual counties' use of DJR institutions.

Recommendation 3: Replace state-funded presentence diagnostic evaluations with post-sentence evaluations. There is no evidence that the presentence diagnostic evaluations provide the judge with information which cannot be obtained from other sources. Presentence evaluations confuse issues of treatment and punishment. These should be separate concerns, with treatment considered after the basic sentence has been determined.

INTRODUCTION

Historically, the Juvenile Court has worked under the philosophy of parens patriae, acting with all the rights and obligations of a parent and concerned with "treating" rather than punishing the offender. Critics of this treatment philosophy have argued that it results in inequitable punishment of juvenile offenders and produces little consistency in making juveniles accountable for their actions.

In response to this criticism, a new juvenile code was passed in Washington State in 1977, drastically altering the philosophical assumptions of the juvenile justice process.1/ The processing and sentencing of an offender is no longer at the discretion of the probation officer, prosecutor and judge. Strict guidelines are mandated for the charging and sentencing decisions. The intent of the new code is to reduce discretionary decision-making and to increase consistency in sentencing offenders.

The code mandated that sentencing guidelines were to be developed by the Department of Social and Health Services (DSHS) and approved by the Legislature.2/ The guidelines, often referred to as the "sentencing matrix," allow the sentencing judge to sentence the offender within a "standard range" of options based on the juvenile's age, criminal history and seriousness of the offense.

The code also provides a mechanism for sentencing outside the standard range when a standard range sentence would produce an injustice for society or for the offender. In other words, if the standard range is too severe or not severe enough, the judge may find that a "manifest injustice" exists. The legislative intent was to allow an increase in sentence to protect the community and a decrease when the sentence is an injustice to the offender.

There are only three situations in which a judge must use manifest injustice to sentence outside the standard range. A manifest injustice must be found:

1. To keep a "serious offender" in the community;3/

1/For a more detailed discussion of the evolution of the code, see Becker (no date) or Schneider et. al (1981).

2/This was changed in 1981. The responsibility for developing guidelines now rests with the Juvenile Disposition Standards Commission.

3/A serious offender is defined by RCW 13.40.020 as a person fifteen years or older who has committed an offense which, if committed by an adult, would be:

a) A class A felony or an attempt to commit a class A felony;
b) Manslaughter in the first degree or rape in the second degree; or
c) Assault in the second degree, extortion in the first degree, indecent liberties, kidnapping, robbery in the second degree, burglary in the second degree, or statutory rape in the second degree, where such offenses include the infliction of grievous bodily harm upon another or where during the commission of or immediate withdrawal from such an offense the perpetrator uses a deadly weapon or firearm.

Serious offenders must be sentenced to the Division of Juvenile Rehabilitation.

2. To sentence an offender to the Division of Juvenile Rehabilitation when the guidelines do not include institutionalization; and,

3. To sentence an offender to the Division of Juvenile Rehabilitation for a term different than that prescribed by the standard range.

The purpose of the guidelines is to provide for an objective determination of sentence: offenders of the same age, criminal history and offense are to receive similar sentences under the guidelines. The discretion provided by the use of manifest injustice introduces a subjective component into the sentencing process. As a result, offenders with similar characteristics sentenced using manifest injustice may receive widely different punishment. The purpose of this project is to examine how the discretion provided by the manifest injustice clause of the code is used by the juvenile court judges. Specifically, the major questions which will be addressed are:

1. What factors are related to the use of the manifest injustice provision?

2. Are these factors appropriate and consistent with the intent and letter of the law?

LEGAL DESCRIPTIONS AND RESTRICTIONS

RCW 13.40.150 specifies factors which should and should not be considered by the judge during sentencing. The statute lists a number of mitigating factors which should be considered. They include the absence of serious bodily injury or intent to injure, provocation by the victim, the mental or physical condition of the defendant which may have affected culpability, attempts at restitution prior to detection, and infrequency of crime in the criminal history.

The statute also lists possible aggravating factors. They include whether or not the offender inflicted serious bodily injury or whether the offense was committed in an especially heinous, cruel, or depraved manner; whether the victims were particularly vulnerable; the offender's recent criminal history; and whether the offender was a leader in the criminal enterprise.

Factors which may not be considered in determining the punishment include the sex, race or color, creed or religion, economic or social class of the offender and factors indicating that the respondent may be a dependent child. The statute mandates that the court shall not commit an offender to the institution solely because of the lack of treatment facilities in the local community.

While the statute lists factors which should and should not be considered by the sentencing judge, the interpretation of the rules of the statute is left to case law. Case law is developed through published decisions of appeals of manifest injustice sentences. Of the few published appeals,

none overturned the trial court's finding of manifest injustice and little mention was made of the appropriateness of various sentencing criteria. There are three major published cases relevant to this research: In Re Luft, State v. Strong and State v. Rhodes.

In Re Luft (21 Wn. App. 841, 589 P.2d 314) interprets the statute's reference to consideration of additional aggravating or mitigating circumstances as "not only permitting, but mandating, consideration of factors other than those aggravating ones inhering in the offenses." The court also suggested that the defendant's "conduct at trial and his testimony thereunder in the 'parlous effort to appraise character' may be considered by the judge." Such conduct would include the demeanor and attitude of the defendant and whether the defendant committed purjury during testimony.

State v. Strong (23 Wn. App. 789, 599 P.2d 20) resolved the issue of whether the sentencing court could consider criminal acts which are not part of the criminal history, ruling that "there is no indication that the legislature intended to prohibit the trial court from considering [such criminal acts]." The court ruled that the statutory limitations on acts which may be included as criminal history are intended as restraints on DSHS's discretion in developing sentence guidelines and not on the decisions of the sentencing judge. In the revised statute (1981) the Legislature has specifically stated that aggravating circumstances may include other complaints which have resulted in diversion or a finding or a plea of guilty but which are not included as criminal history.

In Re Luft, State v. Strong and State v. Rhodes (92 Wn.2d 755, 600 P.2d 1264) all ruled that a finding of manifest injustice must be substantiated by the facts of the case. The Strong and Rhodes decision specified that as intended by statute, a finding of manifest injustice must be supported by a written report of the reasons. In addition, the court found that since specification of reasons for a manifest injustice is required, the statute is not unconstitutionally vague.

While appeals courts have ruled that a finding of manifest injustice must be accompanied by supporting facts, they have left the question of excessive penalty to the "reasonable person" test. In State v. Strong, the court found that:

> "For an action to be clearly excessive, it must be shown to be clearly unreasonable, i.e., exercised on untenable grounds or for untenable reasons, or an action that no reasonable person would have taken." (P. 794)

The only cases in which manifest injustice sentences have been overturned were unpublished commissioners' rulings. Of the 12 cases in which the manifest injustice finding was remanded, only 4 have been remanded for other than procedural reasons: State v. Wood, State v. Chase, State v. Parnell and State v. Williams. In each case, there seems to be confusion between the "treatment" needs of the defendant and evidence that the offender is a "clear danger to society."

In State v. Wood (No. 3446-III-1, Division III, July 27, 1979) the trial

court's reasons for finding a manifest injustice included:

1. The offense involved the use of LSD, "an extremely dangerous drug,"

2. The defendant habitually used marijuana,

3. The defendant refused to reveal a drug source,

4. The defendant had a negative attitude since he "indicated he would not give up use of drugs but only use them less frequently,"

5. The juvenile indicated a bitterness toward the court and law enforcement, and

6. Detention time was needed to allow the defendant to "reconsider his attitude and readjust his attitude and expectations towards society."

The appeals commissioner ruled that the reasons specified did not support the finding of a "clear danger to society" and remanded the case for sentencing within the standard range.

The ruling in State v. Chase (No. 3755-III-0, Division III, March 3, 1980) was similar. The facts did not support the findings of a clear danger to society. In Chase, the evidence showed "dependency needs" (i.e., poor school attendance, incorrigibility, sexual activity and a negative self-image), with a non-serious criminal history. The appeals commissioner stated that the statute does not allow consideration of dependency factors. At least two other unpublished cases (State v. Von Appen [No. 3789-II, Division II, February 20, 1979] and State v. Lawson [No. 4865-II, Division II, August 25, 1980]) illustrate the inconsistency of the unpublished rulings. Both cases had facts very similar to State v. Chase, but when reviewed by a different commissioner, the manifest injustice findings were upheld rather than overturned.

In State v. Parnell (No. 4484-III-0, Division III, June 1, 1981) the commissioner ruled that the case facts did not support a finding of a clear danger to society. The sole reasons posited by the sentencing court for the finding of manifest injustice were Parnell's attitude, curfew violation, truancy, failure to complete community service and the fact that the defendant "talks a good line but so far follow through has been nonexistent." Parnell had less than 110 points and the recommended sentence was community placement. The trial court used manifest injustice to sentence the offender to the institution, and then suspended the commitment when placing Parnell in the community. The appeals court found that the resulting sentence was so similar to the standard range sentence that the necessary finding of "danger to society" could not be justified. They further ruled that using a suspended finding of manifest injustice as a threat is impermissible.

In State v. Williams (No. 8092-0-I, Division I, April 1980) the defendant, who had no prior offenses, had been convicted of two counts, auto theft

and hit and run, both committed on the same day. The sentencing court's argument for a finding of manifest injustice stated that "these offenses were committed in a willful and aggravated manner and that the offenses which brought [Williams] before the court were committed within a short time period which indicates a pattern of criminal behavior and an unusual degree of sophistication." This argument was rejected by the appeals court as not supporting a finding of a danger to the community. The appeals court found it unclear how two offenses occuring on the same date could show a "pattern of criminal behavior."

EFFECTS ON THE DIVISION OF JUVENILE REHABILITATION

The use of the manifest injustice provision affects the number of admissions to Division of Juvenile Rehabilitation (DJR) institutions. A Division of Juvenile Rehabilitation report (Steiger, 1980) stated that 54 percent of all admissions to DJR institutions in 1979 were committed under the manifest injustice clause.

Data for 1980 are similar. They show 43 percent of the 1,074 admissions sentenced under manifest injustice. Of the 467 manifest injustice admissions, 16 percent (75) were cases in which manifest injustice was used to reduce the standard range sentence, 26 percent (119) to increase the sentence and the remainder, 58 percent (273), to commit offenders who were uncommitable under the guidelines.

In fiscal year 1981, manifest injustice was used in 52 percent (534) of all non-escape commitments. Of these, 458 (86 percent of the manifest injustice commitments) were committed for longer terms than required under the standard range. DJR information indicates that the increase in residential population resulting from the use of manifest injustice amounted to 242 to 320 youth years.4/ Thus, manifest injustice accounts for a significant number of commitments to the institutions and a large proportion of the daily population of DJR institutions.

Currently, DJR institutions are operating at 113% of staffed capacity. Commitments to DJR institutions for 1981 added up to a minimum of 762 and a maximum of 980 youth-years. If all commitments had been within the standard range, with no use of manifest injustice, there would have been a reduction of 240 to 320 youth-years, almost one-third of the total.

JUDGES' INTERVIEWS

A nonrandom sample of judges and court commissioners in the Clark, Benton/Franklin, Spokane and Pierce County courts was interviewed. They were asked to identify factors they considered before arriving at a decision to use manifest injustice. The reasons reported by the judges will be discussed in logical groupings and not necessarily in order of importance or frequency of response. Reasons mentioned fall into three

4/"Youth-year" is measured as the equivalent of one youth spending one year in a DJR institution.

general categories: Those that consider a need for treatment, a need for punishment, and other aggravating and mitigating factors.

The offender's amenability to treatment and the availability of treatment at the local level is considered. Judges mentioned the juvenile's attitude toward the court and cooperativeness toward treatment. The offender's plea was seen by some to be an indicator of remorse. Others claimed that the plea is irrelevant and a legal issue, not a sentencing issue. Some judges wanted to know whether the offender had exhausted local alternatives and whether sentences showed a history of treatment failure. One judge remarked that he evaluated the chances of reoffense given various treatment alternatives. The lack of family cooperation with the court was seen by some as an indication that placement in the home would not be beneficial. Some judges felt the use of manifest injustice was indicated for those offenders with standard range sentences of short-term institutionalization, (e.g., 8 to 12 weeks). If institutionalization is to have the desired effect, they argued, it must be for a longer period of time than the 8 to 12 week minimum. That position was frequently expressed when the offender had committed a sex offense. For sex offenders, the standard range was not seen as long enough.

To other judges, the punishment component of the sentence had more importance than treatment. Several claimed that, in general, the standard range sentences did not punish sufficiently. A few judges claimed that the standard range sentences were too severe. They saw manifest injustice as a method of making the punishment fit the individual and the crime.

Other reasons related to the details of the offense. In keeping with the statute, judges considered the vulnerability of the victim and the offender's use of excessive violence. Whether the offender was under the influence of drugs or alcohol was seen by some as a mitigating factor justifying a reduction in punishment. Others, however, expressed the opposite opinion, stating that drug or alcohol use was an aggravating factor. They argued that if the juvenile commits criminal acts when under the influence, he/she is a greater danger to society and warrants more severe punishment than a juvenile who is in control of his/her behavior.

The frequency of offenses was considered by some judges. Even though the guidelines consider offense frequency, some judges claimed to use it independently when deciding on an appropriate sentence. Judges also considered the number of uncharged police contacts and dropped charges. One judge claimed to use recent offenses which had not yet been adjudicated. Other judges felt that offenses which did not result in a conviction were irrelevant and that it was not proper to consider them in the sentencing process.

Plea bargaining was considered by some to be important. They argued that a judge should consider the original charge as well as the reduced charge which results from plea bargaining. Dropped charges were viewed similarly. Some judges felt that when an offender pleads guilty in return for dropping other charges, it is valid to consider all the original charges. One judge justified the consideration of bargained offenses by arguing that the purpose of manifest injustice was to act as a check and balance

of the prosecutor's decision to reduce charges or to charge only one of many offenses.

Several judges stated that the frequency of manifest injustice decisions has changed over time in response to DJR policy regarding release of offenders, pending appeal. Initially, they used manifest injustice when they felt it necessary. When they realized that the Division of Juvenile Rehabilitation's policy was to release offenders with pending appeals, they reduced their use of manifest injustice, since they would rather have offenders in institutions or in detention for a short time than released while awaiting an appeals decision. The recently amended statute allows DJR to keep an offender incarcerated for the maximum standard range sentence or for 60 days, whichever is more (effective July 1980). The judges stated they increased their use of manifest injustice after this change in the statute, since offenders they considered dangerous were no longer released when an appeal was filed.

METHODS

To evaluate the degree to which various factors affect the decision to sentence under the manifest injustice provision, cases were examined in four target jurisdictions: Benton/Franklin, Clark, Pierce and Spokane.5/

In each court a random sample of manifest injustice cases processed during 1980 was selected from the JUVIS data files.6/ In addition, a random sample of cases which went to disposition but did not result in a manifest injustice decision was selected. Information from the social and legal files was coded for each sample case. The number of cases coded in each county is shown in Table 1.

Information describing each offender's criminal history was available from the JUVIS data. Additional variables were coded from the offender's social and legal files. The items selected for coding, shown in Table 2, fall into seven categories. The first category includes variables describing the offense. Many judges claimed they need to know the details of the offense in order to make a sentencing decision. The statutorily defined categories of crime allow for a wide range of behavior within each crime category. The second category describes the offender. Some variables, such as race and sex, are inappropriate if used in making a manifest injustice decision. Others, such as psychological condition, may indicate a need for treatment. The third category includes attitudinal and

5/King County, the largest county in the state, was initially considered for inclusion in the sample. Eventually it was dropped due to problems with their computer files. Use of computer files was necessary in order to sample cases.

6/JUVIS is a computer system designed to provide storage and easy retrieval of juvenile criminal and judicial histories. It is maintained by the Administrator for the Courts.

behavioral variables. The fourth category describes the offender's criminal history and combines data from JUVIS and from the social and legal files. The fifth reports the juvenile court response to past offenses and measures the degree to which various sentencing variations have been tried in the past.

In effect, they may be thought of as indicators of the success or failure of prior sentences. Category six includes information about the processing of the offender's case. The final category provides information on the court's perceptions of the offender's criminality.

TABLE 1

NUMBER OF CASE FILES CODED BY COUNTY AND SAMPLE TYPE

	Sample Type		
County	Non-Manifest Injustice	Manifest Injustice	Total
Benton/Franklin	68	17	85
Clark	38	29	67
Pierce	39	60	99
Spokane	58	16	74
	203	122	325

TABLE 2

VARIABLE LIST

1. Offense Description

Offense Seriousness
Degree of Forethought
Heinousness of the Offense
Victim Vulnerability
Sexual Advances or Abuse
Use of Violence
Injury to Victim
Leader or Follower
Age of Codefendants
Offender Under Influence of Drugs
Offender Under Influence of Alcohol

2. Offender Description

Sex
Race
Age
Living Arrangement (with parents or not)
School Status
Psychological Condition

3. Attitudinal and Behavioral

Offender's Attitude Towards Court
Parents' Attitudes
History of Running Away
History of Incorrigibility
History of Sexual Activity

4. Criminal History

Time Since Offender's First Referral
Time Since Most Recent Offense
Number of Prior Offenses
Number of Offenses Per Month Since First Referral
Number of Prior Offenses Less Serious Than Current Offense
Number of Offenses Being Sentenced Concurrently
Proportion of Offenses Which are Violent Crimes
Proportion of Offenses Which are Property Crimes
Proportion of Offenses Which are Sex Crimes

5. Past Sentences

Number of Prior Probation Sentences
Number of Prior Diversion Sentences
Number of Prior Commitment Sentences

6. Case Processing

Presentence Detention
Charge Reduced by Plea Bargain
Presentence Diagnostic Conducted
Probation Officer's or Diagnostic Evaluation Recommendation

7. Court's Perceptions of Criminality

High Frequency of Offenses
Increasing Seriousness of Offenses

The data were analyzed using a multiple regression procedure. Effects of each independent variable on the decision to use manifest injustice and on the length of sentence were measured, controlling for all other variables.7/ For details on the method of analysis and the regression data see Appendix A.

This statistical method is designed to identify patterns in the variables used to make sentencing decisions. While cases may be examined individually, as when a case is reviewed on appeal, the systematic use of factors can only be determined by examining a large number of cases.

RESULTS

Since few cases used the manifest injustice provision to reduce the offender's sentence, we have restricted the discussion of findings to those cases where manifest injustice was used to increase the standard range sentence.

The analysis addresses four major questions:

1. What are the factors which affect the decision to sentence using manifest injustice?

2. Do the factors differ depending on whether the offender has sufficient points for commitment to the institution?

3. Do the factors differ according to the type of offense the offender has committed?

4. Once a decision has been made to sentence to the institution under manifest injustice, what factors affect the length of the sentence?

We coded the recommendation made to the judge by the presentence diagnostic evaluation or, when no diagnostic was conducted, by the probation officer. There is a significant body of literature which suggests that the most important factors affecting sentencing are the recommendations made to the judge by the probation officer and, to a lesser degree, by the prosecutor and defense attorney. In fact, many of the judges stated that before making a decision they want to know the probation officer's and the attorneys' recommendations.

7/Only relationships with standardized betas greater than .10 are presented in this report. All relationships are significant to the .01 level.

Our data showed that of all the variables under consideration, probation officers' recommendations were most strongly related to the final sentencing decision. There were some problems in the interpretation of this finding. This relationship could mean that judges in fact listen to and follow the probation officers' recommendations. Alternatively, the judge and probation officer may be evaluating the same information and arrive at similar conclusions. Although the evidence points toward the first interpretation, it is not conclusive. Since we are interested in determining which factors influence the manifest injustice decision, it is more important to identify the factors rather than determine whether the judge arrives at a decision independent of the probation officer. For that reason, the effects of the probation officers' recommendations are excluded from the remainder of the analysis.

Question 1: What are the factors which affect the decision to use manifest injustice?

For the total sample, 12 variables were significantly related to the use of manifest injustice. The variables examined and their rank order according to the strength of relationships are presented in Table 3. A range of factors was associated with the use of manifest injustice, including not only those related to the juvenile's current offense and previous criminal activities, but also individual characteristics of the offender and prior commitments.

MANIFEST INJUSTICE WAS LIKELY TO BE USED:

- If the current offense included sexual advance or abuse. Abusive sexual behavior, whether charged or not, increased the chance of a manifest injustice finding. This indicates disagreement with the offense factors considered in the standard range computation.

- If the offense did not include the use of force or violence. Violent offenders, such as robbers or assaulters, often have sufficient points for institutionalization, whereas non-violent offenders, such as burglars, often have fewer points than necessary. Thus, those with non-violent offenses were more likely to be committed under manifest injustice.

- The more prior offenses a juvenile had committed. This can most logically be interpreted as a disagreement with the punishment imposed by the standard range sentence.

TABLE 3

RANKINGS OF SENTENCING VARIABLES BY TYPE OF OFFENDER AND LENGTH OF SENTENCE

	Sample				
VARIABLES	ALL	COMMITTABLES	NON-COMMITTABLES	PROPERTY OFFENDERS	SENTENCE LENGTH OF OFFENDERS SENTENCED UNDER MANIFEST INJUSTICE
SEX					4
AGE				4	
RACE				9	
PRIOR OFFENSES	11	1	3		
CONCURRENTS	1	4	2	3	1
LEADER				5	3
DRUGS				8	
SEX ABUSE	7				6
VIOLENCE	12				5
CHARGE REDUCTION				10	
OFFENSE FREQUENCY	6				2
INCREASING SERIOUS		5			
INCORRIGIBILITY				11	
PSYCHOLOGICAL	10	2	8		
PRIOR SEX OFFS	2				
PRIOR COMMITS	4		5	6	7
PRIOR PROBATIONS			4		
NEG JUV ATTITUDE	9		6	2	
NEG PARENT ATT	8		7		
DIAGNOSTIC EVAL	3		1	1	
SCHOOL		3		7	
TIME FIRST OFF	5				

- As the number of concurrent offenses increased. The more offenses being sentenced concurrently, the more likely the judge is to sentence beyond the standard range using manifest injustice. The explanation is clear. The statute and the guidelines demand that the judge sentence separately for each offense the defendant has committed. In the case where an offender has more than one offense, the sentence for any individual offense should not reflect any other concurrent offenses. Judges may see this as unfair. It may seem inequitable, for instance, to sentence two burglary offenders similarly when one offender has several burglary convictions awaiting sentence and the other offender has no concurrent offenses. The use of concurrent offenses indicates disagreement with the statute and with the guidelines.

- As the proportion of sex offenses in the juvenile's criminal career increased. The proportion of sex offenses is a measure of offense "specialization." It is likely that judges view offenders with a history of sex offenses or a current sex offense as in need of treatment and/or as a danger to the community. In either case, the judges' solution is to use manifest injustice to increase the sentence.

- Manifest injustice was likely to be used when the time interval of a juvenile's criminal history was short. Time interval was measured as the time between the offender's first referral and the current offense. The explanation for this is unclear. One explanation is that some offenders, most notably arsonists and sex offenders, often have short criminal histories but, by the nature of their offenses, are considered a danger to the community.

- As the number of prior commitments to DJR increased. The fact that the juvenile had reoffended indicates that prior commitments failed to rehabilitate the offender adequately. The number of prior commitments also might indicate to the judge that the offender had been viewed previously as a danger to the community.

- If the judge perceived or the record explicitly stated that the juvenile had a high frequency of offenses. This measure, based on the perceptions of the probation staff or the judge, had little relation to actual offense frequency. An independent measure, average number of offenses per month, was found to be unrelated to perceived offense frequency. Since the guidelines account for the number of offenses in an offender's history and increase the sentence according to how recently prior offenses were committed,

frequency of offenses is included in the standard range computation. Consideration of offense frequency may be interpreted as a concern over crime sprees8/ and may also be interpreted as disagreement with the standard range guidelines.

- If the juvenile is selected for a presentence diagnostic evaluation. This indicates that independent of all other possible causes of manifest injustice, the completion of the diagnostic evaluation by itself increased the chances for a manifest injustice finding. The probation officer developing a presentence report may decide that an offender is a likely candidate for a manifest injustice sentence and recommend a diagnostic evaluation. In effect, a diagnostic evaluation serves to confirm the initial assessment of the probation officer.

  The recommendation resulting from a diagnostic evaluation was strongly related to the actual sentence. Some of the same variables may affect both the decision to conduct a diagnostic evaluation and sentencing decision. However, when we held all other factors constant, the simple fact that a diagnostic evaluation was completed tended to increase the chance of a manifest injustice finding.

- If psychological problems were noted in the presentence report (i.e., when the report explicitly stated that the child had been diagnosed a schizophrenic, psychotic, or as having some other psychological disorder). Apparently, the institution was seen as a treatment alternative, and institutional placement was selected because of the offender's psychological problem.

- If the juvenile had a negative attitude toward the court. An offender's negative attitude may be interpreted by the court as indicating that the offender is not amenable to treatment. A negative demeanor may also simply offend the judge. In either case, a negative attitude increased the chance of manifest injustice. This finding is consistent with other research. Most notably, Pilliavan and Briar (1964) reported that the probability of a juvenile being arrested depended on his/her demeanor when being questioned by the police.

8/Not all perceptions of crime sprees are accurate, however. In State v. Williams (No. 8092-0-I, Division I, April 1980) the trial court judge found that the offender, who had been charged with two counts as a result of a single criminal offense, showed a pattern of criminality and a high frequency of offenses. The appeals commissioner ruled that an offender with no prior offenses and with a single criminal act could not be considered to have a pattern of crime or have a high frequency of offenses.

- If the parents had negative attitudes toward the court. Parents' attitudes may be considered by the judge when appraising the home situation as a placement alternative. Court personnel and judges often become less willing to place the juvenile back in the home when the parents are unsympathetic to the goals and procedures of the court.

Unrelated Variables

Thus far we have discussed variables which were found to be related to the use of manifest injustice for the total sample. Almost as important are some of the variables which were not found to be related to the use of manifest injustice. These may be grouped into three categories: offender characteristics, offense characteristics and criminal history. Although relationships were not found for these variables using the full sample, significant relationships were discovered in some selected subsamples discussed later in this report.

- Offender Characteristics. Neither the age, sex or race of the juvenile was found to be directly related to the use of manifest injustice. Age is already included in the guidelines, and there is no evidence of disagreement with the way age is factored into the standard range computation.

  Sex and race are specifically listed by statute as inappropriate for use in sentencing. Other research (Doyon, 1980) has shown that sex is related to sentence decisions. However, no evidence of differential sentencing was found in these data. Although the finding for race is consistent with some prior research, our findings remain inconclusive because of the small number of minorities in the sample.

- Offense Characteristics. The only offense characteristics related to manifest injustice were use of sexual abuse and use of violence (discussed above). Forethought, victim vulnerability, heinous nature of offense, and injury to the victim were unrelated to the use of manifest injustice. In addition, whether the offender was under the influence of alcohol or drugs had little effect. The lack of observed relationships contradicts the statements made by judges and court staff (e.g. the judges reported that victim vulnerability and the commission of crimes while under the influence of alcohol or drugs related to use of manifest injustice). Although the offense specifics may affect decisions on selected cases, there were no systematic effects.

- Criminal History. Variables such as offense frequency, measures of increasing seriousness of offenses, and indicators of specialization in either property or violent offenses were unrelated to the use of manifest injustice.

Question 2: Do the factors used in a finding of manifest injustice differ depending on whether or not the offender has sufficient points for commitment?

The decision to use manifest injustice was in part dependent on whether the standard range sentence provided for institutionalization. For those offenders who already had 110 points or more the standard range permitted institutionalization. The only use of manifest injustice would be to increase the sentence or, less frequently, to decrease the term of institutionalization. More often, the offender had less than 110 points and was uncommittable under the sentencing guidelines, and the judge used manifest injustice in order to commit the offender to the institution.

In order to examine the differences between committable and non-committable offenders who received increased sentences under manifest injustice decisions, the sample was subdivided. The analysis was conducted on subsamples of 63 committable offenders and 157 non-committables.

Use of Manifest Injustice with Committable Offenders

For offenders with sufficient points for commitment, five variables were significantly related to the decision to use manifest injustice. Three variables pertained to the criminal history of the offender and two variables to other personal characteristics.

MANIFEST INJUSTICE WAS LIKELY TO BE USED FOR COMMITTABLE OFFENDERS:

- As the number of prior offenses decreased. Although this relationship seems counter to expectations, it is easily explained by the fact that the standard range already accounts for the number of priors in an offender's criminal history. The standard range sentences for offenders with few priors will be shorter than for those offenders with more prior offenses. Thus, manifest injustice was used to increase the sentence of offenders with fewer offenses in their criminal history.

- As the number of concurrent offenses decreased. This relationship was opposite to that observed for the full sample of offenders. Committable offenders with few concurrents were more likely to be sentenced under manifest injustice than those with more concurrents. This finding may be due to the statute allowing, within limits, the addition of sentences for concurrent offenses. Offenders with more concurrents were likely to have longer sentences than offenders with fewer concurrents. Thus, manifest injustice was used to increase sentences for those with few concurrents.

- If the judge or the court record explicitly referred to the increasing seriousness of offenses. Offenders whose criminal careers seemed to be escalating in seriousness were sentenced to longer terms using manifest injustice. Again, this variable is a subjective rather than objective measure of increasing seriousness.

- If there was evidence of a psychological problem. A number of judges interviewed felt that for sex offenders and psychologically disturbed offenders a short term was not effective. The term may be lengthened using manifest injustice in order to maximize treatment. An alternative explanation is that offenders with psychiatric problems are seen as a greater risk to the community.

- If the juvenile was not attending school. It is likely that juveniles not attending school are seen as non-productive members of society and are given harsher punishment as a result. An alternative explanation is that juveniles not in school may be expected to benefit from the structured environment of the institution. They may be sentenced for a longer term in order to maximize treatment.

Use of Manifest Injustice with Non-Committable Offenders

Eight variables were found to be related to the use of manifest injustice for non-committable offenders. As with committable offenders, several variables pertaining to the criminal history of non-committable offenders were related to the use of manifest injustice. Evidence of psychological problems was also a significant factor for both groups. However, for non-committable offenders a variety of other factors, including prior sentences as well as characteristics of the juvenile, were involved in invoking manifest injustice.

MANIFEST INJUSTICE WAS LIKELY TO BE USED FOR NON-COMMITTABLE OFFENDERS:

- As the number of prior offenses decreased. This finding is consistent with the findings for the full sample and for the committable offenders. This is interpreted as a punishment or incapacitation variable. Certain offender types, notably sex offenders and arsonists, are likely to have few prior offenses but are, by the nature of their offense, seen as dangerous to the community.

- As the number of concurrent offenses increased. This finding is the opposite of that for committable offenders. Since concurrent offenses cannot be used to increase the standard range sentence to the extent of committing the offender to the institution, judges who wish to consider concurrents must use manifest injustice.

- As the number of prior probation sentences increased. Prior probations may be viewed as attempts at treatment which have failed. Judges may see institutions as the only option when community resources have been tried without success.

- As the number of prior commitments to Division of Juvenile Rehabilitation institutions increased. The explanation is similar to that proposed for prior probations: prior commitments have failed and thus, since few alternatives exist, recommitting the offender for additional treatment or punishment is needed. Judges may feel that prior commitments failed because the offender did not spend enough time in the institution to be rehabilitated.

- If a presentence diagnostic evaluation was completed. Controlling for all other variables, the fact that a diagnostic evaluation was conducted increased the chance of a manifest injustice finding.

- If there were indications of a psychological problem. The interpretation of this finding remains the same. A diagnosis of psychological problems may be seen as necessitating institutional treatment or a need to institutionalize in order to protect the society from future criminal behavior.

- If the juvenile had a negative attitude towards the court. This is consistent with the findings for the full sample. The juvenile's negative demeanor, attitude and lack of remorse may be viewed as indicators of need for treatment and resistance to community-based treatment.

- If the parents had a negative attitude towards the court. Negative attitudes of parents may be considered indicative of a poor environment in which to place the juvenile.

Question 3: Do the factors used differ according to the type of offense committed?

It may be argued that judges consider different factors according to the type of offense committed. Many judges indicated that they examine different variables for sex offenders and for property offenders. Victim vulnerability, for example, is important in a sex offense but not for a property offense. We subdivided the sample according to offense type to examine possible differences. Due to small sample sizes we were only able to examine the relationships for 112 property offenders.

Eleven variables were found to be related to the use of the manifest injustice provision for property offenders. These variables showed no apparent pattern. Many of the variables which were found significant for the total sample were also significant for the subsample of property offenders. There were notable differences between the two samples. Only those variables which significantly increased the use of manifest injustice for the property offender subsample but not for the total sample are reported below.

MANIFEST INJUSTICE WAS LIKELY TO BE USED FOR PROPERTY OFFENDERS:

- If the offender committed the offense alone or acted as a leader. The role of the offender in the commission of the offense seemed to affect the use of manifest injustice. Offenders who were leaders or who committed the offense alone were considered more culpable and thus were more likely to have their sentences increased than offenders who were followers.

- If the offender was not under the influence of drugs. Drug use at the time of the offense was viewed as a mitigating factor reducing offender culpability. Offenders who were not under the influence of drugs when the offense was committed were more likely to receive a manifest injustice sentence than those under the influence of drugs.

- If the charge had been reduced. Charges may be reduced for several reasons including the prosecutor's decision that the evidence does not support the more serious charge. Apparently, even if the charge was reduced, judges tended to use manifest injustice to sentence according to the original charge. As a result the only advantage of plea bargaining to the defendent would be that in subsequent court actions the reduced offense and not the original charge would be used in computations of the standard range.

  In State v. Wallace (No. 3788-II, Division II, February 20, 1979), the appellant argued that the use of the original charge as a justification for a manifest injustice finding was improper since no reduction in sentence resulted from the plea bargain. The commissioner rejected that argument ruling that since plea bargaining did have direct benefits for the defendant in the event of a future offense and since the statute mandates the consideration of all aggravating factors of the offense, the use of the original offense was proper.

- As the offender's age decreased. As with other variables which are considered in the standard range point computation, the observed relationship is opposite to that built into the standard range. Since the standard range already gives harsher sentences to older offenders, manifest injustice is more likely to be used for younger offenders.

- If the offender was not attending school.

- If the offender belonged to a minority race or ethnic group. Since we would not expect to find a relationship between race and manifest injustice due to the low proportion of minorities in the sample, finding a relationship in our subsample is of added significance.

The analysis is controlled for most variables which might have spuriously produced the observed relationship between race and sentencing. Thus, the results suggest racial/ethnic bias in sentencing. The relationship is not strong, but it is significant. Of the eleven significant variables, race ranked ninth in strength of relationship.

- If the offender had a history of incorrigibility. Incorrigibility included behavior such as truancy, curfew violation and not obeying one's parents. An offender's history of incorrigibility may be seen as indicating a need for treatment or that a placement in the home would not be a reasonable alternative.

Question 4: Once a decision has been made to sentence under manifest injustice, what factors affect the length of sentence?

The decision to sentence includes two components: the decision to use manifest injustice and the decision determining length of sentence. To examine the factors related to sentence length we examined a subsample of all cases sentenced under manifest injustice.

Seven variables were significantly related to sentence length. For the most part, the decision to increase length of sentence appears to be related to factors associated with the current offense, as well as the criminal history of the juvenile. However, the number of prior commitments and the sex of the offender also were significant variables.

SENTENCE LENGTH OF MANIFEST INJUSTICE CASES WAS LIKELY TO BE LONGER:

- If the juvenile committed the offense alone or as a leader. Offenders who were instigators of the offense were viewed as more culpable and receive longer sentences.

- If the offender sexually abused the victim. Sexual abuse or advances are not included in standard range computations. When sexual abuse is considered as an aggravating factor, manifest injustice is likely to be used to increase sentence length.

- If violence was not used in the commission of the offense. Violent offenses are considered more serious by statute and receive harsher sentences under the guidelines.

- As the number of concurrents increased. Concurrents are not included in the computation of standard range sentence. Sentences for concurrent offenses may be added together up to a prescribed limit. Additional lengthening of sentence due to concurrent offenses requires using manifest injustice.

- If the judge or court records explicitly referred to a high frequency of offenses.

- As the number of prior commitments increased.

- If the offender was male. Other research supports this finding. In a previous study (Doyon, 1980), male juvenile offenders were also found to receive harsher punishment than did females.

We found no evidence that race directly affects the length of sentence. Steiger's (1981) paper examining the relationship between manifest injustice and race among committed offenders found different results. He found that for offenders committed under manifest injustice, race was related to sentence length.

The difference in findings cannot be attributed to control variables. Although Steiger had few control variables, none of which significantly reduced the initial observed effects of race, both studies examined all the relevant explanatory variables. Using no conrol variables, we found the same race effects as did Steiger. Additionally, we found that as control variables were included in the analysis, the relationship between race and sentence length became stronger. Up to a point, the findings of this study and Steiger's match. We then controlled for the seriousness of the offense and the number of concurrent offenses. The relationship between race and sentence length dropped to zero. Since Steiger also controlled for offense seriousness and concurrent offenses, the only difference in the analyses is the samples of cases examined. Since Steiger had a larger sample than did this study, we attribute more validity to his findings.

Although we found that race was not related to the length of sentence, given Steiger's findings, racial bias cannot be totally ruled out. Questions remain as to the way in which racial bias, if it exists, enters into the processing of an offender. Is it a product of differential charging by the prosecutor, for instance, or a result of discrimination by the sentencing judge? More research is needed to compare adequate samples by race, offense type, judge, and disposition.

APPROPRIATENESS OF USE OF MANIFEST INJUSTICE

During interviews, juvenile court judges were asked what criteria would indicate that manifest injustice was being used inappropriately. The common response was that there were no legitimate criteria with which to measure appropriateness. Each case, they claimed, must be reviewed on its own merits or faults.

Some judges saw the Division of Juvenile Rehabilitation statistics, which show manifest injustice accounting for approximately 50 percent of commitments, as evidence that the manifest injustice provision is being overused. Other judges claimed that this occurs because the sentencing guidelines simply "don't work." In State v. Bryan (93 Wn. 2d 177), State v. Wood (No. 3446-III-1, Division III, July 27, 1979), and State v. Soto (No. 4450-III-5, Division III, June 1, 1981), the courts have stated that disagreement with the guidelines is not an appropriate justification for the use of manifest injustice. The Legislature made the Department of

Social and Health Services, and not the judiciary, responsible for determining a just and appropriate sentence. While the 50 percent level of manifest injustice commitments may seem high, this is a subjective judgment. If 50 percent is too high, is 25 percent acceptable? On the other hand, if 50 percent is acceptable, what about 75 percent? The answer reflects one's assumptions about the philosophy of the juvenile justice system.

Other problems in determining the appropriateness of sentences stem from the vague language of the code. Manifest injustice is defined as an alternative when the standard range disposition "would impose an excessive penalty on the juvenile or a clear danger to society in light of the purpose of this chapter" (emphasis added). The statute does not define a "danger to society."

When judges, attorneys and juvenile court personnel were asked to define "a danger to society," the answers varied and were vague. Some defined it as a simple likelihood to reoffend. Others were slightly more specific and claimed that a danger exists if the offender is likely to commit a violent offense. However, research has had little success in predicting future violence or criminal behavior. It is unreasonable to expect judges to provide an accurate prediction.

Judges may use a number of factors to predict dangerousness. Some of those factors are counter to the law. The statute specifies those factors which may be used and those which may not. Race or social status of the juvenile may not be considered when sentencing. To the extent that these factors are related to the use of manifest injustice, the decisions are being made inappropriately.

Some factors which may normally be appropriate to use in decision-making may be considered inappropriate when they cause a de facto relationship between inappropriate factors and the sentencing decision. For example, in school desegregation the use of area of residence was found in some cities to result in de facto segregation, since the race of students is related to place of residence. In the case of sentencing, we may also find that certain inappropriate variables, such as race or social status, may be related to other legitimate variables which are considered by the judge in making a sentencing decision.

There are at least three ways in which manifest injustice is being used inappropriately. First, several factors already used in the standard range sentence computations are systematically used by judges in making manifest injustice decisions. Age was related to the use of manifest injustice when property offenders were being sentenced, and offense frequency was related to both the finding of manifest injustice and the length of sentence of juveniles sentenced under manifest injustice. Both variables, age and offense frequency, are already considered in computations of the standard range sentence.

Several appeals decisions have ruled that the use of the instant offense as a sentencing criterion is inappropriate since the guidelines already

account for offense seriousness (e.g., State v. Soto [No. 4450-III-5, Division III, June 1, 1981] and State v. Wood [No. 3446-III-1, Division III, July 27, 1979]). The courts' rationale has been that the Legislature gave DSHS the responsibility for determining appropriate sentences. Judges may consider other aggravating circumstances, but it is inappropriate to use factors already considered in the standard range computation. Extending the logic of that argument, it must also be inappropriate to consider the offender's age or criminal history as aggravating circumstances.

Second, the use of manifest injustice is inappropriate when variables specifically excluded by statute are used. We found that sex of the defendant was systematically related to the length of term for offenders sentenced under manifest injustice. Previous research suggests that males are sent to the institution for "punishment," whereas females are committed for "treatment."

Race, also defined by statute as inappropriate for consideration, was systematically related to the use of manifest injustice when property offenders were sentenced. Caucasian offenders were less likely to be sentenced under manifest injustice than were minority group offenders. A finding of a relationship between race and sentence was unexpected due to the small number of minority offenders. To find a relationship, as we did with the property offenders subsample, indicates added significance. Larger subsamples of minority offenders are necessary to understand fully the relationship between race and sentencing.

The use of manifest injustice as a treatment tool is the third way in which manifest injustice may be used inappropriately. We found that for offenders without sufficient points for commitment under the standard range, treatment concerns may be related to the use of manifest injustice. Such concerns are viewed as inappropriate if they are the primary or sole reason for a finding of manifest injustice. For example, in State v. Chase (No. 3755-III-0, Division III, March 30, 1980), the commissioner vacated the manifest injustice commitment order on the grounds that the court cited dependency variables as supporting factors and, as such, indicated that the prime motivation for the sentence was treatment. The single non-dependency factor cited, criminal history, was insufficient to support a finding of manifest injustice. The commissioner ruled that the defendant's "need for treatment does not render inoperative the due process safeguards surrounding a finding of manifest injustice."

However, in another case with similar facts (State v. Von Appen [No. 3789-II, Division II, February 20, 1979]), the commissioner affirmed the finding of manifest injustice, stating that the relevance of R.C.W. 13.40.150(4) (e) is that "the court may not impose punishment <u>solely</u> on the basis of dependency factors", with "<u>solely</u>" interpreted literally. The ruling stated that since criminal history was cited by the sentencing court as supporting a finding of manifest injustice, the dependency factors were not the <u>sole</u> basis of the decision.

The question of whether the use of treatment concerns is appropriate remains unresolved. If a judge uses mainly treatment concerns to support a finding of manifest injustice, is the sentence within the intent of the Legislature? Technically, citing a single non-treatment variable as an aggravating factor is sufficient support for a finding of manifest injustice. However, when the data show a consistent trend to use mainly dependency variables, the result is a de facto reliance on treatment rather than legitimate aggravating factors.

The use of manifest injustice to sentence offenders to the institution for treatment may have unanticipated and undesired consequences. Corrections officials claim that, in order to provide effective treatment programs, a certain degree of management flexibility is needed, and is only available when the institution's population is under capacity. The use of manifest injustice has resulted in institutional populations well over maximum desired populations. As a result, using manifest injustice to sentence large numbers of youths to the institutions for treatment tends to be self-defeating.

RECOMMENDATIONS

The case law clearly illustrates that the same case factors can be interpreted differently. While one court finds support for a finding of manifest injustice in a set of facts, another, using a similar set of facts, does not. Part of the reason for inconsistency rests in the statute which encourages judges to consider a variety of aggravating and mitigating factors.

When reviewing case files, it is difficult to determine which of the supporting factors were considered indicators of a "danger to the community" and which were simply aggravating or mitigating factors. Although the statute and case law require the reporting of factors used to support a finding of manifest injustice, the judge is not required to justify the conclusion that the offender is a "danger to the community."

The courts can use the same set of facts to arrive at widely different sentencing decisions. This runs counter to the intent of the Legislature to ensure uniform and consistent sentencing.

Recommendation 1: Sentencing judges should be required to specify facts supporting a finding of a "danger to the community" separate from other aggravating and mitigating factors.

Various proposals have been made regarding restriction of the use of manifest injustice. Some participants in the juvenile justice system state that manifest injustice is used too frequently, placing an unnecessary burden on the state's juvenile institutions. Others feel that manifest injustice serves a necessary function, giving judges needed discretion to sentence outside the standard range for exceptional cases. Many judges view attempts to limit the use of manifest injustice as attempts to limit their discretion.

Recommendation 2: Require some degree of fiscal responsibility for the use of the manifest injustice provision.

One method of providing some consequences for the use of manifest injustice, while still allowing judges the discretion to use it when they feel it is necessary, is to link the decision with the costs of housing the offender in the institution. This approach has been used in both the Oregon Community Corrections Act for adult offenders and Oregon's Juvenile Services Act of 1979.

The purpose of the Oregon Community Corrections Act was to reduce commitment of adult Class C felons. Participating counties were funded to develop community corrections alternatives. As long as the number of offenders sentenced to the institution is less than a specified limit, the county retains the money allocated for community corrections. If more offenders are sentenced to the institutions than allowed, the county is required to pay back to the state a specified amount per offender. An initial evaluation shows the program to be cost-beneficial for both county and state and to have reduced commitments to the institutions. The Juvenile Services Act has a similar pay-back provision.

A similar program could be developed for juvenile sentencing in Washington. Baselines could be developed for each county to indicate the number of "acceptable" manifest injustice commitments. Each manifest injustice commitment beyond this number would require a "pay-back" to the state to help pay the costs of confinement. In addition, if a committable offender were sentenced to the institution for longer than the standard range sentence using manifest injustice, the counties should be required to pay a proportion of the institutional costs. A decrease in sentence length, on the other hand, should result in a refund to the county.

Currently, the costs of running the state's institutions are disproportionately shared by counties. Tying the use of manifest injustice to the cost of housing offenders in the institutions would ensure that those counties using manifest injustice the most in relation to their "at risk" population will pay more of the institutional costs.

DJR has developed a community corrections program as part of its Consolidated Juvenile Services. Funding is scheduled to begin in January 1983. An equitable mechanism for distributing community corrections funds has not yet been developed although it is anticipated that one criterion will be the counties' at-risk populations. Since no payback provision is included, the program does not hold counties fiscally responsible for manifest injustice commitments.

Recommendation 3: Replace state-funded presentence diagnostic evaluations with post-sentence evaluations.

There is little evidence that presentence diagnostic evaluations provide the judge with information not already available during sentencing.

Diagnostic evaluations rely heavily on psychological and sociological assessments of the offender's danger to the community, despite the lack of any convincing evidence that future behavior can be predicted accurately.

Psychological assessments have their place, however. Information on an individual's psychological condition and cognitive development are often important mitigating factors. Those tests need not be part of a presentence diagnostic evaluation, since they can be ordered by the judge or probation officer.

The data indicate that the diagnostic evaluation tends to be used to support the recommendation already selected by the probation officer, since referral of offenders for an evaluation is often based on the belief that the offender is a likely candidate for a manifest injustice finding. As a result, the fact that an offender is referred to the diagnostic unit implies that the individual probably "needs" to be sentenced under manifest injustice and increases the chance of such a sentence.

Currently, DJR funds ten presentence diagnostic programs throughout the state. Unless it can be shown that the presentence diagnostic evaluations provide judges with needed information which cannot be obtained from other sources, state funding for presentence diagnostics should be eliminated. In their place, post-sentence diagnostics could be provided.

Post-sentence diagnostics are already provided by DJR for some institutionalized youths. Post-sentence diagnostics could assist the probation officers or institutional staff in designing a treatment plan.

A basic problem with presentence diagnostic evaluations is the tendency to confuse issues of punishment and treatment. These should be separate concerns. Treatment of the offender may best be addressed after the basic sentence has been determined.

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APPENDIX A

TECHNICAL REPORT

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This report describes the procedures used for the study entitled "Factors Related to the Use of Manifest Injustice in Sentencing Juvenile Offenders." The research issues and interpretation of findings are reported in a separate publication which may be obtained from the Department of Social and Health Services, Office of Research. The basic research problem was to identify the factors which affect the use of manifest injustice by juvenile court judges.

METHOD

Sample

Four county courts were selected for investigation: Benton/Franklin, Clark, Pierce and Spokane. Criteria used for selection included location in the state (East v. West), population, number of commitments per year to DJR (counties with few commitments were rejected as possible target counties), and involvement with the JUVIS data system. Table 1 shows population and commitments to the institution for each target county.

The JUVIS data system provided a list of all cases processed within each county from which a random sample of cases could be selected. JUVIS is an interactive computer system designed to store and make available to juvenile court personnel the criminal histories of all juveniles processed by the courts in Washington State. Operated by the Administrator for the Courts, participation in the JUVIS system is voluntary and not all counties take part in the program. As a result, some counties (e.g., King County) were immediately excluded from consideration as target counties.

Using the JUVIS data tapes for the four target counties, we first selected all delinquency cases receiving dispositions during 1980. "Dispositions" rather than offenders were chosen as the unit of analysis. We are concerned with the disposition decision rather than individual offenders since the statute specifies that an offender should be sentenced separately for each offense committed. An offender convicted of four offenses during 1980, for example, may have received four separate sentences and accounted for four potential cases in the sample.

For each court two random samples were selected, one of cases which were sentenced using manifest injustice and another of cases sentenced without manifest injustice. In some courts, Benton-Franklin and Spokane, where the number of manifest injustice cases was low, all manifest injustice cases were sampled. Table 2 shows the number of cases sampled by county. Tables 3 through 14 show frequencies of selected variables for the total population of 1980 cases and for the sampled cases.

TABLE 1

AT-RISK POPULATION, COMMITMENT RATE AND MANIFEST INJUSTICE COMMITMENTS BY COUNTY

Court	Estimated Population At-Risk (Ages 10-19)1/	DJR Commitments2/	Rate/1000 At-Risk	Manifest Injustice Commitments3/	Manifest Injustice Reason: Reduce Sentence	Commit Uncommittable	Increase Sentence
Benton/Franklin	22,617	30	1.33	14 (47%)	1 (.3%)	7 (23%)	6 (20%)
Clark	13,879	49	3.53	30 (61%)	5 (10%)	15 (31%)	11 (22%)
Pierce	83,396	136	1.63	75 (55%)	7 (5%)	54 (40%)	13 (10%)
Spokane	58,881	65	1.10	20 (31%)	5 (8%)	7 (11%)	9 (14%)
STATE	596,294	1,074	1.80	465 (43%)	75 (7%)	273 (25%)	119 (11%)

1/Office of Financial Management, State and County Populations By Age and Sex: 1980-2000, Special Report No. 30 (Olympia, February, 1980).
2/Courtesy of D.J.R. Commitments exclude escapes.
3/Courtesy of D.J.R. Commitments exclude escapes. Percents are proportions of total commitments.

TABLE 2

NUMBER OF CASES SAMPLED BY COURT

SAMPLE

Court	Manifest Injustice Cases	Non-Manifest Injustice Cases	Total
Benton/Franklin	17	68	85
Clark	29	38	67
Pierce	60	39	99
Spokane	16	58	74
TOTAL	122	203	325

TABLE 3
OFFENSE TYPE BY COUNTY FOR ALL 1980 DISPOSITIONS

OFFENSE TYPE	COUNTY: BENTON-FRANKLIN	CLARK	PIERCE	SPOKANE	TOTAL
A+ OFFENSE	0 (.0)	0 (.0)	1 (.0)	1 (.0)	2 (.0)
A OFFENSE	2 (.6)	9 (.8)	23 (1.0)	14 (.5)	48 (.7)
B+ OFFENSE	5 (1.4)	55 (5.1)	54 (2.3)	37 (1.3)	151 (2.3)
B OFFENSE	106 (30.6)	302 (28.0)	652 (27.3)	296 (10.4)	1,356 (20.3)
C+ OFFENSE	4 (1.1)	12 (1.1)	32 (1.3)	4 (.1)	52 (.8)
C OFFENSE	83 (23.9)	239 (22.2)	423 (17.7)	279 (9.8)	1,024 (15.4)
D+ OFFENSE	4 (1.1)	56 (5.2)	105 (4.4)	139 (4.9)	304 (4.6)
D OFFENSE	83 (23.9)	260 (24.1)	796 (33.3)	1,280 (44.9)	2,419 (36.3)
E OFFENSE	61 (17.5)	146 (13.5)	305 (12.8)	799 (28.0)	1,311 (19.7)
TOTAL	348 (100%)	1,079 (100%)	2,391 (100%)	2,849 (100%)	6,667 (100%)

CHI SQUARE = 756.29334 ($p < .001$)
CRAMER'S V = .19446

Numbers in parentheses are column percents.

TABLE 4
OFFENDERS' SEX BY COUNTY FOR ALL 1980 DISPOSITIONS

SEX	COUNTY: BENTON-FRANKLIN	CLARK	PIERCE	SPOKANE	TOTAL
FEMALE	23 (6.6)	160 (14.8)	201 (8.4)	524 (18.4)	908 (13.6)
MALE	325 (93.4)	919 (85.2)	2,190 (91.6)	2,325 (81.6)	5,759 (86.4)
TOTAL	348 (100%)	1,079 (100%)	2,391 (100%)	2,849 (100%)	6,667 (100%)

CHI SQUARE = 126.27656 ($p < .001$)
CRAMER'S V = .13762

Numbers in parentheses are column percents.

TABLE 5
MANIFEST INJUSTICE SENTENCE BY COUNTY FOR ALL 1980 DISPOSITIONS

MANIFEST INJUSTICE	COUNTY: BENTON-FRANKLIN	CLARK	PIERCE	SPOKANE	TOTAL
YES	17 (4.9)	87 (8.1)	215 (9.0)	16 (.6)	335 (5.0)
NO	331 (95.1)	992 (91.9)	2,176 (91.0)	2,833 (99.4)	6,332 (95.0)
TOTAL	348 (100%)	1,079 (100%)	2,391 (100%)	2,849 (100%)	6,667 (100%)

CHI SQUARE = 218.66231 ($p < .001$)
CRAMER'S V = .18110

Numbers in parentheses are column percents.

TABLE 6
COMMITMENT SENTENCE BY COUNTY FOR ALL 1980 DISPOSITIONS

SENTENCE	COUNTY: BENTON-FRANKLIN	CLARK	PIERCE	SPOKANE	TOTAL
NO COMMITMENT	310 (89.1)	968 (89.7)	2,147 (89.8)	2,771 (97.3)	6,196 (92.9)
COMMITMENT	38 (10.9)	111 (10.3)	244 (10.2)	78 (2.7)	471 (7.1)
TOTAL	348 (100%)	1,079 (100%)	2,391 (100%)	2,849 (100%)	6,667 (100%)

CHI SQUARE = 142.09574 ($p < .001$)
CRAMER'S V = .14599

Numbers in parentheses are column percents.

TABLE 7
OFFENDERS' RACE BY COUNTY FOR ALL 1980 DISPOSITIONS

RACE	COUNTY: BENTON-FRANKLIN	CLARK	PIERCE	SPOKANE	TOTAL
WHITE	312 89.7	998 92.5	1,931 80.8	2,518 88.4	5,759 86.4
BLACK	0 .0	15 1.4	305 12.8	81 2.8	401 6.0
NATIVE AMERICAN	7 2.0	3 .3	58 2.4	101 3.5	169 2.5
HISPANIC	12 3.4	2 .2	26 1.1	17 .6	57 .9
ASIAN	5 1.4	3 .3	25 1.0	9 .3	42 .6
OTHER	0 .0	2 .2	3 .1	12 .4	17 .3
UNKNOWN	12 3.4	56 5.2	43 1.8	111 3.9	222 3.3
TOTAL	348 (100%)	1,079 (100%)	2,391 (100%)	2,849 (100%)	6,667 (100%)

CHI SQUARE = 426.47279 ($p < .001$)
CRAMER'S V = .14602

Numbers in parentheses are column percents.

TABLE 8
OFFENDERS' AGE BY COUNTY FOR ALL 1980 DISPOSITIONS

AGE	COUNTY: BENTON-FRANKLIN	CLARK	PIERCE	SPOKANE	TOTAL
12.	4 1.1	84 7.8	148 6.2	224 7.9	460 6.9
13.	10 2.9	86 8.0	165 6.9	225 7.9	486 7.3
14.	18 5.2	137 12.7	344 14.4	345 12.1	844 12.7
15.	59 17.0	191 17.1	506 21.2	608 21.3	1,364 20.5
16.	115 33.0	209 19.4	535 22.4	715 25.1	1,574 23.6
17.	132 37.9	349 32.3	642 26.9	713 25.0	1,836 27.5
18.	10 2.9	23 2.1	51 2.1	19 .7	103 1.5
TOTAL	348 (100%)	1,079 (100%)	2,391 (100%)	2,849 (100%)	6,667 (100%)

CHI SQUARE = 146.04247 ($p < .001$)
CRAMER'S V = .08545

Numbers in parentheses are column percents.

TABLE 9
OFFENSE TYPE BY COUNTY FOR SAMPLED CASES

OFFENSE TYPE	COUNTY: BENTON-FRANKLIN	CLARK	PIERCE	SPOKANE	TOTAL
A OFFENSE	0 .0	0 .0	0 .0	3 4.0	3 .9
B+ OFFENSE	6 7.1	3 4.5	3 3.0	8 10.7	20 6.2
B OFFENSE	35 41.7	18 27.3	30 30.0	20 26.7	103 31.7
C+ OFFENSE	1 1.2	0 .0	3 3.0	0 .0	4 1.2
C OFFENSE	13 15.5	20 30.3	18 18.0	20 26.7	71 21.8
D+ OFFENSE	1 1.2	4 6.1	5 5.0	0 .0	10 3.1
D OFFENSE	14 16.7	15 22.7	29 29.0	12 16.0	70 21.5
E OFFENSE	14 16.7	6 9.1	12 12.0	12 16.0	44 13.5
TOTAL	84 (100%)	66 (100%)	100 (100%)	75 (100%)	325 (100%)

CHI SQUARE = 40.81126 ($p < .01$)
CRAMER'S V = .20459

Numbers in parentheses are column percents.

TABLE 10
OFFENDERS' SEX BY COUNTY FOR SAMPLED CASES

SEX	COUNTY: BENTON-FRANKLIN	CLARK	PIERCE	SPOKANE	TOTAL
FEMALE	6 (7.1)	14 (21.2)	11 (11.0)	11 (14.7)	42 (12.9)
MALE	78 (92.9)	52 (78.8)	89 (89.0)	64 (85.3)	283 (87.1)
TOTAL	84 (100%)	66 (100%)	100 (100%)	75 (100%)	325 (100%)

CHI SQUARE = 7.05508 (non-significant)
CRAMER'S V = .14734

Numbers in parentheses are column percents.

TABLE 11
MANIFEST INJUSTICE SENTENCE BY COUNTY FOR SAMPLED CASES

MANIFEST INJUSTICE	COUNTY: BENTON-FRANKLIN	CLARK	PIERCE	SPOKANE	TOTAL
YES	17 20.2	28 42.4	61 61.0	16 21.3	122 37.5
NO	67 79.8	38 57.6	39 39.0	59 78.7	203 62.5
TOTAL	84 (100%)	66 (100%)	100 (100%)	75 (100%)	325 (100%)

CHI SQUARE = 43.27049 ($p < .001$)
CRAMER'S V = .36488

Numbers in parentheses are column percents.

TABLE 12
COMMITMENT SENTENCE BY COUNTY FOR SAMPLED CASES

SENTENCE	COUNTY: BENTON-FRANKLIN	CLARK	PIERCE	SPOKANE	TOTAL
NO COMMITMENT	62 73.8	42 63.6	55 55.0	54 72.0	213 65.5
COMMITMENT	22 26.2	24 36.4	45 45.0	21 28.0	112 34.5
TOTAL	84 (100%)	66 (100%)	100 (100%)	75 (100%)	325 (100%)

CHI SQUARE = 8.95375 (non-significant)
CRAMER'S V = .16598

Numbers in parentheses are column percents.

TABLE 13
OFFENDERS' RACE BY COUNTY FOR SAMPLED CASES

RACE	COUNTY: BENTON-FRANKLIN	CLARK	PIERCE	SPOKANE	TOTAL
WHITE	70 83.3	63 95.5	75 75.0	62 82.7	270 83.1
BLACK	0 .0	0 .0	21 21.0	4 5.3	25 7.7
NATIVE AMERICAN	2 2.4	0 .0	1 1.1	3 4.0	6 1.8
HISPANIC	4 4.8	1 1.5	2 1.0	0 .0	6 1.8
ASIAN	3 3.6	0 .0	2 2.0	0 .0	5 1.5
OTHER	0 .0	0 .0	0 .0	2 2.7	2 .6
UNKNOWN	5 6.0	2 3.0	0 .0	4 5.3	11 3.4
TOTAL	84 (100%)	66 (100%)	100 (100%)	75 (100%)	325 (100%)

CHI SQUARE = 63.526657 ($p < .001$)
CRAMER'S V = .25526

Numbers in parentheses are column percents.

TABLE 14
OFFENDERS' AGE BY COUNTY FOR SAMPLED CASES

AGE	COUNTY: BENTON-FRANKLIN	CLARK	PIERCE	SPOKANE	TOTAL
12.	3 (3.6)	4 (6.1)	6 (6.0)	3 (4.0)	16 (4.9)
13.	4 (4.8)	7 (10.6)	5 (5.0)	6 (8.0)	22 (6.8)
14.	3 (3.6)	7 (10.6)	16 (16.0)	8 (10.7)	34 (10.5)
15.	15 (17.9)	17 (25.8)	25 (25.0)	16 (21.3)	73 (22.5)
16.	35 (41.7)	18 (27.3)	27 (27.0)	18 (24.0)	98 (30.2)
17.	24 (28.6)	13 (19.7)	21 (21.0)	21 (28.0)	79 (24.3)
18.	0 (.0)	0 (.0)	0 (.0)	3 (4.0)	3 (.9)
TOTAL	84 (100%)	66 (100%)	100 (100%)	75 (100%)	325 (100%)

CHI SQUARE = 28.82789 (non-significant)
CRAMER'S V = .17195

Numbers in parentheses are column percents.

Data Collection

Judges and court personnel in each target county were interviewed to identify potentially relevant variables. A review of prior research and a review of the case law and the statute provided additional variables. A list of the variables and the coding categories is shown in Appendix B. Information on these variables was coded from the offenders' social and legal files. The legal and criminal histories of offenders were provided by the JUVIS data and were cross-checked for accuracy with the case file information.

Data were collected on a larger number of variables than could be efficiently analyzed. Given the variety of information at our disposal, we had multiple measures of some variables. Frequency distributions of the variables were examined and variables with little actual variance were dropped from consideration for further analysis. Selection between multiple measures of the same variable, such as several different measures of prior criminality, were based on the simplicity of the measures. Simple measures of a concept were selected over more complex scales and combinations of variables. For example, prior criminality was measured using a simple count of the number of prior offenses rather than a combination or weighting of prior offenses.

The variables included in the analysis and their distributions are as follows:

AGE

Mean = 15.89 years
Standard Deviation = 1.45 years

Charge Reduction: (Referral Offense Class - Disposition Offense Class)*

Code	Frequency	Percent
-6	1	.3
-5	3	.9
-4	1	.3
-3	3	.9
-2	1	.3
-1	7	2.2
0	233	71.7
1	6	1.8
2	20	6.2
3	2	.6
4	19	5.8
5	2	.6
Missing	27	8.3
	325	

*Score indicates difference between offense charged and conviction offense. A positive difference indicates a reduced charge. A negative score indicates an increased charge.

Committable vs. Non-committable

	Code	Frequency	Percent
Non-Committable (less than 110 points)	1	268	82.5
Committable	2	57	17.5
		325	100.0

Detained Pre-Trial

	Code	Frequency	Percent
Not Detained	0	137	42.2
Detained	1	188	57.8
		325	100.0

Diagnostic Evaluation Completed

	Code	Frequency	Percent
No Diagnostic	0	251	77.2
Diagnostic Evaluation	1	74	22.8
		325	100.0

Forethought

	Code	Frequency	Percent
No Forethought	1	213	65.5
Forethought	2	112	34.5
		325	100.0

Heinous Offense

	Code	Frequency	Percent
Offense Not Especially Heinous	1	316	97.2
Especially Heinous Offense	2	9	2.8
		325	100.0

Incorrigibility

	Code	Frequency	Percent
No Incorrigibility Noted in File	0	158	48.6
Incorrigibility Noted in File	1	167	51.4
		325	100.0

Juvenile's Negative Attitude

	Code	Frequency	Percent
Positive Attitude or Unknown	1	220	67.7
Negative Attitude	2	105	32.3
		325	100.0

Leader or Follower

	Code	Frequency	Percent
Follower	1	177	54.5
Leader or Alone	2	148	45.5
		325	100.0

Living Arrangement

	Code	Frequency	Percent
Not Living with Parents	0	73	22.5
Living with at least one Parent	1	230	70.8
Unknown		22	6.8
		325	100.0

Number of Concurrent Offenses

	Code	Frequency	Percent
None	0	112	34.5
One	1	101	31.1
Two	2	58	17.8
Three	3	21	6.5
Four	4	4	1.2
Five	5	3	.9
Six	6	3	.9
Seven	7	6	1.8
Eight	8	4	1.2
Nine or More	9	13	4.0
		325	100.0

Number of Prior Diversions

	Code	Frequency	Percent
None	0	245	75.4
One	1	39	12.0
Two	2	28	8.6
Three or more	3	13	4.0
		325	100.0

Number of Prior Offenses

	Code	Frequency	Percent
None	0	105	32.3
One	1	42	12.9
Two	2	56	17.2
Three	3	37	11.4
Four	4	25	7.7
Five	5	25	7.7
Six	6	10	3.1
Seven	7	11	3.4
Eight	8	6	1.8
Nine	9	0	0.0
Ten or more	10	8	2.5
		325	100.0

Number of Prior Probations

	Code	Frequency	Percent
None	0	180	55.4
One	1	31	9.5
Two	2	46	14.2
Three	3	33	10.2
Four	4	17	5.2
Five	5	8	2.5
Six or more	6	10	3.1
		325	100.0

OFFENSE RATE

(Number of offenses Committed/Time Since First Offense)

Mean = .40 offenses/month
Standard Deviation = .69

Offense Seriousness

	Code	Frequency	Percent
E	1	44	13.5
D	2	70	21.5
D+	3	10	3.1
C	4	71	21.8
C+	5	4	1.2
B	6	103	31.7
B+	7	20	6.2
A	8	3	.9
		325	100.0

Offense Type

	Code	Frequency	Percent
Violent		17	5.2
Property		231	71.1
Sex		18	5.5
Other		33	10.2
Drugs		26	8.0
		325	100.0

Older Codefendants

	Code	Frequency	Percent
Codefendants Same Age or Younger	1	297	91.4
Older Codefendants	2	28	8.6
		325	100.0

Parents' Negative Attitude

	Code	Frequency	Percent
Positive Attitude	1	271	83.4
Negative Attitude	2	54	16.6
		325	100.0

Perceived Increasing Offense Seriousness (Increase Mentioned in File)

	Code	Frequency	Percent
No Increase Mentioned	0	310	95.4
Increasing Seriousness Mentioned	1	15	4.6
		325	100.0

Perceived Offense Frequency (High Frequency Mentioned in File)

	Code	Frequency	Percent
High Frequency Not Mentioned	0	162	49.8
High Frequency Mentioned	1	163	50.2
		325	100.0

Prior Commitments

	Code	Frequency	Percent
No Past Commitments	0	299	92.0
Prior Commitments	1	26	8.0
		325	100.0

Probation Officer's Recommendation

	Code	Frequency	Percent
Not MI Up	1	235	72.3
MI Up	2	90	27.7
		325	100.0

NUMBER OF PRIORS LESS SERIOUS/TOTAL PRIORS

Mean = .49
Standard Deviation = .46

PRIOR PROPERTY OFFENSES

(Number of Property Offenses/Total Offenses)

Mean = .71
Standard Deviation = .29

PRIOR SEX OFFENSES

(Number of Sex Offenses/Total Offenses)

Mean = .03
Standard Deviation = .15

PRIOR VIOLENT OFFENSES

(Number of Violent Offenses/Total Offenses)

Mean = .04
Standard Deviation = .11

Psychological Condition

	Code	Frequency	Percent
No Psychological Problems Noted in File	0	291	89.5
Psychological Problems Noted in File	1	34	10.5
		325	100.0

Race

	Code	Frequency	Percent
White	1	270	83.1
Non-White	2	44	13.5
Unknown		11	3.4
		325	100.0

Runaway History

	Code	Frequency	Percent
No Runaway History	0	214	65.8
Runaway History	1	111	34.2
		325	100.0

School Status

	Code	Frequency	Percent
Not Enrolled	1	149	45.8
In School	2	129	39.7
Unknown	3	47	14.5
		325	100.0

Sex

	Code	Frequency	Percent
Female	1	42	12.9
Male	2	283	87.1
		325	100.0

Sexual Abuse or Advances

	Code	Frequency	Percent
No Sexual Advance/ Abuse	1	306	94.2
Sexual Advances/ Abuse	2	19	5.8
		325	100.0

Sexual Activity

	Code	Frequency	Percent
No Sexual Activity Noted in File	0	300	92.3
Sexual Activity Noted in File	1	25	7.7
		325	100.0

TIME SINCE FIRST REFERRAL

Mean = 11.78 months
Standard Deviation = 13.56

Under Influence of Alcohol During Offense

	Code	Frequency	Percent
Not Under Influence of Alcohol	0	286	88.0
Under Influence of Alcohol	1	39	12.0
		325	100.0

Under Influence of Drugs During Offense

	Code	Frequency	Percent
Not Under Influence of Drugs	0	304	93.5
Under Influence of Drugs	1	21	6.5
		325	100.0

Victim Injured

	Code	Frequency	Percent
Victim Not Injured	0	312	96.0
Victim Injured	1	13	4.0
		325	100.0

Victim Vulnerability

	Code	Frequency	Percent
Victim Not Particularly Vulnerable	0	311	95.7
Victim Particularly Vulnerable	1	14	4.3
		325	100.0

Violence

	Code	Frequency	Percent
No Violence in Offense	1	296	91.1
Violence in Offense	2	29	8.9
		325	100.0

Causation and Causal Modeling

In its simplest sense, a "causal model" identifies the cause-effect relationships among a set (or pair) of variables. A causal relationship is assumed to exist when, given two variables X and Y, a change in X results in a change in Y. Implied in this simple definition of a causal relationship are three necessary assumptions: Time order, an association between the two variables, and non-spuriousness.

In order for one variable causally to affect a second, temporal order is required. This means that for X to affect Y, the change in X must occur prior to the change in Y.

The second requirement for the assumption of a causal relationship is that a statistical association exist between the variables. This means that when X changes there must be a concomitant change in Y. A perfect relationship exists when a change in variable X results in a consistent, uniform, and predictable change in all cases of Y. In the perfect association the degree to which Y varies is totally "explained" by the variance in X.

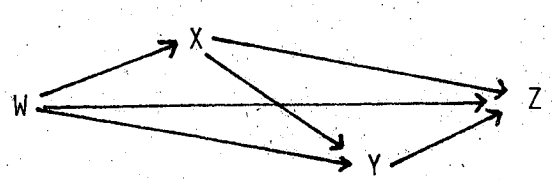
The third requirement is non-spuriousness. A relationship is spurious when the observed association is not the result of a causal relationship between the two variables but rather is due to the effects of a shared cause. Since we can never be certain that a variable producing a spurious association between two other variables is contained in the model, the requirement of non-spuriousness can never be satisfied. Instead, by examining all plausible third variables we can decrease the probability that the observed relationship is spurious.

Model Trimming

In its simplist form, causal modelling is a method of graphically representing the relationships implied by theory. One method of analysis uses causal models in a "trimming" process, beginning with a complex model of the phenomenon under investigation and reducing it to a simple, more understandable representation of the relationships.

"Model-trimming" begins with the development of a fully-recursive model. This is accomplished by first ordering all variables in an assumed temporal sequence. Arrows representing a causal link are drawn from each variable to all other variables which occur later in the sequence.

For example, assume we have a model with four variables, W, X, Y and Z, with W being causally prior to the others, X prior to Y and Z, and Y prior to Z. A fully recursive model would be diagrammed as follows:



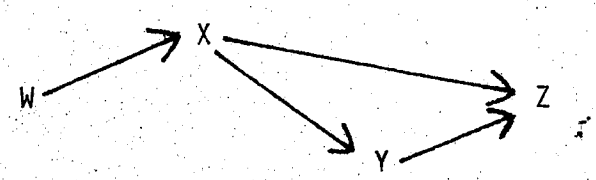
A path coefficient, representing the strength and direction of the relationship between two variables, can be computed for each "path" or arrow in the fully recursive model (see Duncan, 1966; Blalock, 1961, 1969; Land, 1969; Boudon, 1965; Heise, 1965; or Nei et al., 1975 for a description of the procedures of path analysis). The path coefficients are computed using multiple regression procedures. For example, the path between W and X is the standardized beta coefficient when X is regressed on W and may be obtained by solving the following equation:

$$X = B_W W$$

where B_W is the standardized regression coefficient.1/ Similarly, the path between X and Y is the coefficient $B_{yx \cdot w}$ when the following equation is solved:

$$Y = B_{yx \cdot w} X + B_{yw \cdot x} W$$

Model-trimming simplifies the fully recursive causal model by eliminating paths which fail to meet pre-determined criteria of strength and statistical significance. We will delete all paths with standardized betas less than .15 and/or which are not statistically significant to the .01 level. In our example, the trimmed model may look as follows:



Decomposition of Effects

The concept of decomposing effects may be shown by example. In the preceding example, variable Y has only direct effects on Z. Variable X, on the other hand, has both direct and indirect effects on Z. The total effects of a variable can be computed as the standardized regression coefficient controlling for all causally prior variables. Here the total effects of X and Z is simply $B_{zx \cdot w}$. The direct effects of a variable are given by the beta coefficient with all other variables in the regression equation. In our example the direct effects of X are given by the coefficient $B_{zx \cdot wy}$. Thus, the indirect effects of X (the effects of X on Z through X's effects on Y) is simply the difference between the total and the direct effects.

While research is concerned often with the direct effects of variables on the dependent variable, the indirect effects are interesting also. If in our example X represents race and Z the sentence given a juvenile offender, we may wish to know to what degree race indirectly affects sentence through variable Y as well as directly affecting sentence. This

1/In computing standardized coefficients, the variables in the equation are in standardized form. The intercept, a, is equal to zero and is deleted from the regression equation.

information would be especially important if variable Y was being considered for use in computing a standard range sentence. Inclusion of such a variable in the guidelines would unintentionally produce racial bias in the sentencing standards. For a more complete discussion of the decomposition of effects see Alwin and Hauser (1975) or Doyon (1980).

FACTORS AFFECTING THE USE OF MANIFEST INJUSTICE

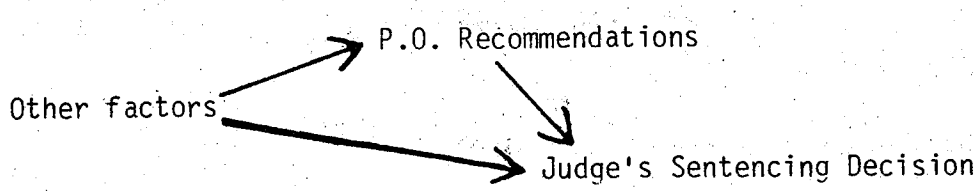
Several samples were examined during the course of the analysis. First, we used the full sample of 325 cases. Second, we subdivided the sample according to whether the offender had a sufficient number of points for commitment to the institution under the standard range. The two subsamples, "committables" and "noncommittables," were examined. Third, in order to investigate whether the type of offense has interaction effects on the decision to use manifest injustice, we subdivided the sample according to offense type (violent, property, sex). Because of small sample sizes for violent and sex offenders, we were only able to investigate the data for property offenders. Last, we examined the factors which affect the length of sentence for those offenders sentenced under the manifest injustice provision.

Full Sample

The independent variables were ordered into twenty-two groups shown in Table 15. Assignment to the groups was made according to assumed causal ordering. A fully recursive model would hypothesize that each variable in group 1 affects every other variable in the model, the variables of group 2 affect all variables in groups 3 and above, etc. The general rule is that a fully recursive model includes arrows between each variable and every other variable in higher ordered groups. We leave the actual model to the imagination of the reader since the large number of arrows involved makes drawing the model extremely complicated.

Effects of the Probation Officer's Recommendations

Much research on sentencing has suggested that the recommendations made to the sentencing judge most strongly affect sentencing. Problems in interpretation arise from our inability to distinguish between the following models:



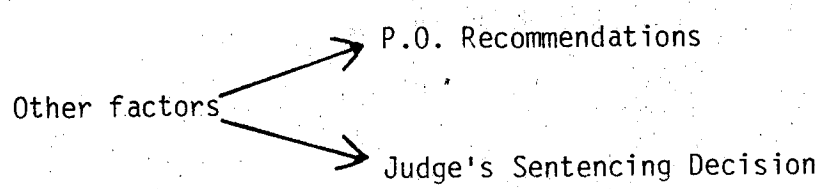


TABLE 15

GROUP ORDERING OF INDEPENDENT VARIABLES

Group 1

Sex
Age
Race

Group 2

Psychological Condition
Incorrigibility
Runaway History
Sexual Activity

Group 3

Living Arrangement

Group 4

School Status

Group 5

Time Since First Referral

Group 6

Time Since Most Recent Referral

Group 7

Number of Prior Offenses

Group 8

Number Prior Probations
Number Prior Commitments
Number Prior Diversions

Group 9

Leader or Follower
Older Codefendants

Group 10

Under Influence of Alcohol
Under Influence of Drugs

Group 11

Forethought

Group 12

Sexual Abuse or Advances
Violence
Victim Vulnerability
Victim Injured

Group 13

Heinous Offense

Group 14

Offense Seriousness
Number of Concurrent Offenses

Group 15

Proportion Prior Violent Offenses
Proportion Prior Property Offenses
Proportion Prior Sex Offenses
Offense Rate
Number Priors Less Serious

Group 16

Parents' Negative Attitude
Juvenile's Negative Attitude

Group 17

Juvenile Detained Pre-Trial

Group 18

Charge Reduced

Group 19

Committable vs. Non-Committable

Group 20

Diagnostic Evaluation Completed

Group 21

Perceived Offense Frequency
Perceived Increasing Offense Seriousness

Group 22

Probation Officer's Recommendation

The first model suggests that although both the probation officer's recommendations and the judge's decision are affected by other variables, there is an independent causal link between recommendations and sentence. The second model suggests that the observed correlation between recommendations and sentence results from shared dependence on other variables. Unless we are able to identify and measure the other important variables, it becomes difficult to statistically distinguish between the two models. Our guess is that the first model is closer to reality than the second.

We decided to avoid the issue by conducting the analysis with and without the probation officer's recommendation included in the model. In reporting the findings (see "Factors Related to the Use of Manifest Injustice in Sentencing Juvenile Offenders"), we reported only the observed effects with recommendations excluded from the model.

We don't feel that excluding the probation officer's recommendations from the interpretation causes any serious problems. We are interested in discovering which factors are related to (or "cause") the decision to use manifest injustice. In practical terms, it doesn't matter much whether the factors related to manifest injustice are mediated by the probation officer's recommendation or not; the sentencing results are the same.

Trimmed Model

The trimmed model is shown in Figure 1 and is the result of deleting paths which did not meet minimum requirements of strength (.1500) or statistical significance (.01) from the fully recursive model. The trimmed model shows four variables directly affecting the decision to use manifest injustice: number of concurrent offenses, proportion of sex offenses, number of prior commitments and whether a diagnostic evaluation was conducted. Other variables in the model only affect the sentencing decision indirectly through their influence on key variables. For example, race was not found to be directly related to manifest injustice. Instead it has indirect influence through its relationship with number of concurrent offenses and home situation.

The importance of examining the relationships between the independent variables is clear when one considers the example of the effects of race. The data show no significant total or direct effects of race on manifest injustice for the full sample. However, if the sentencing standards were changed to include the number of concurrent offenses in the point computations, race's correlation with number of concurrents may result in an unanticipated and undesired correlation between race and manifest injustice. Such a correlation might be viewed as de facto racial bias in the sentencing process.

Decomposition of Effects

Another method of examining the data involves decomposing effects. Table 16 decomposes the effects of the independent variables on manifest injustice.

FIGURE 1

"TRIMMED" CAUSAL MODEL OF DECISION TO USE MANIFEST INJUSTICE

ALL COEFFICIENTS SIGNIFICANT TO .01 LEVEL.
ONLY PATHS WITH COEFFICIENTS GREATER THAN .15 INCLUDED.

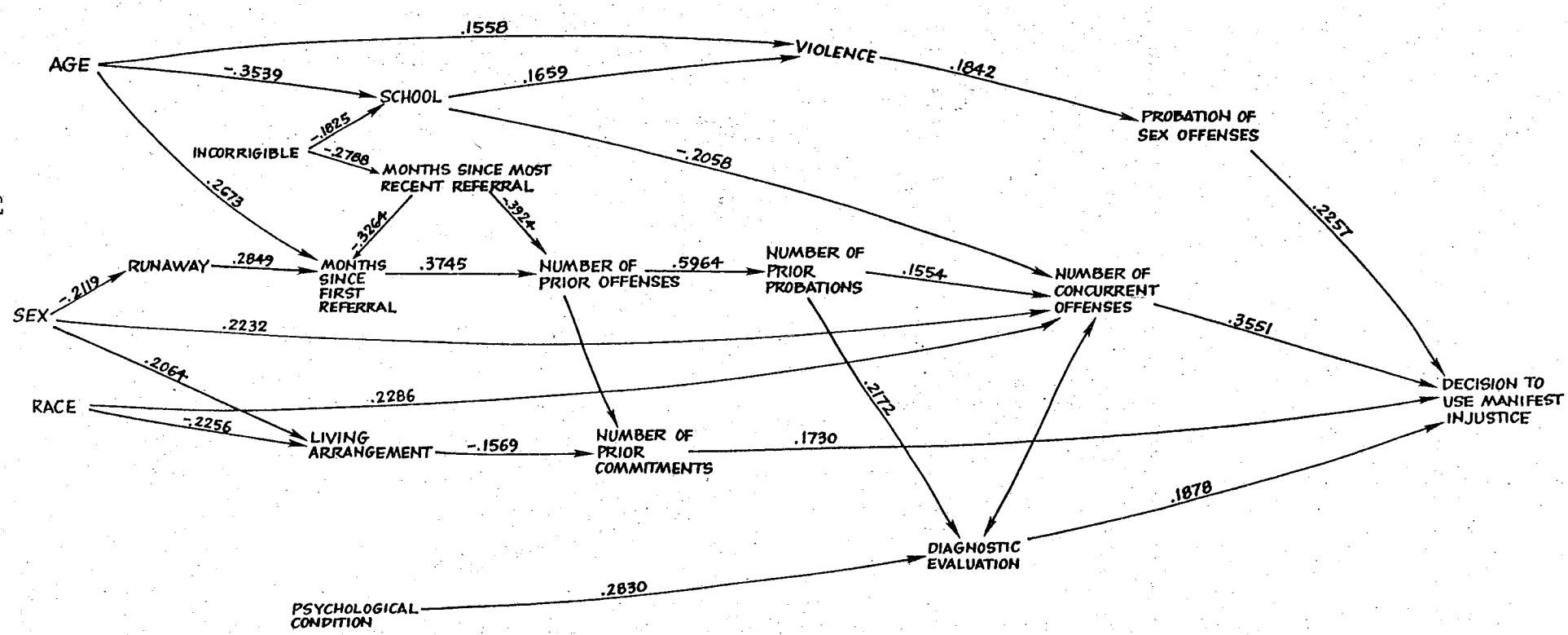


TABLE 16

DECOMPOSITION OF EFFECTS OF INDEPENDENT VARIABLES ON THE DECISION TO USE MANIFEST INJUSTICE

Total and direct effects are standard regression coefficients. The sum of the direct effects and indirect effects of a variable equals that variable's total effects. Values in parentheses are percentages of total effects of the independent variable on the dependent variable.

INDEPENDENT VARIABLE	TOTAL EFFECTS	INDIRECT EFFECTS VIA VARIABLE GROUP 3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	Direct Effects W/O P.O. Vars.	22	Direct Effects With P.O. Vars.
GROUP 1 Psychological Condition	.2309	-.0012 (-.5%)	.0081 (3.5%)	0 (0%)	-.0007 (-.3%)	-.0009 (-.4%)	-.0296 (-12.8%)	-.0060 (-2.6%)	-.0005 (-.2%)	.0002 (.1%)	.0183 (7.9%)	.0012 (.5%)	.0027 (9.8%)	.0219 (9.4%)	.0384 (16.6%)	-.001 (0%)	-.0005 (-.1%)	0 (0%)	.0634 (27.4%)	-.0211 (-9.1%)	.1173* (50.8%)	.0778 (33.7%)	.0395 (17.1%)
Sexual activity	.1779*	.0004 (.2%)	.0176 (9.9%)	.0037 (2.1%)	-.0077 (-4.3%)	.0008 (.4%)	-.0098 (-5.5%)	.0030 (1.7%)	.0093 (5.2%)	0 (0%)	.0578 (32.5%)	.0002 (.1%)	.0575 (32.3%)	-.0024 (-1.3%)	.0656 (36.9%)	.0006 (.3%)	-.0008 (-.4%)	-.0001 (-.1%)	-.0137 (7.7%)	.0050 (-2.8%)	-.0265 (-14.9%)	.0205 (11.5%)	-.0470 (-26.4%)
GROUP 4 School Status	-.1954*	----	----	.0149 (-7.6%)	-.0021 (1.1%)	.0007 (-.3%)	-.0284 (14.5%)	.0036 (-1.8%)	-.0089 (4.5%)	-.0001 (.1%)	.0388 (-19.9%)	.0031 (-1.6%)	-.0752 (38.5%)	-.0133 (6.8%)	-.0425 (21.7%)	-.0004 (.2%)	-.0016 (.8%)	0 (0%)	-.0279 (14.3%)	-.0037 (1.9%)	-.0524 (26.8%)	-.0415 (21.2%)	-.0109 (5.6%)
GROUP 5 Months since first referral	-.1097*	----	----	----	.0244 (-22.2%)	-.0046 (4.2%)	.0047 (-4.3%)	.0077 (-7.0%)	-.0094 (8.6%)	.0001 (-.1%)	-.0145 (13.2%)	0 (0%)	-.0323 (29.4%)	.0655 (-59.7%)	-.0033 (3.0%)	-.0002 (.2%)	-.0019 (1.7%)	0 (0%)	.0096 (-8.7%)	-.0108 (9.8%)	-.1447* (131.9%)	-.0854 (77.8%)	-.0593 (54.1%)
GROUP 7 Number of priors	-.0123	----	----	----	----	----	.2533 (-2059.3%)	.0051 (-41.5%)	-.0338 (274.8%)	-.0002 (1.4%)	-.0168 (136.6%)	-.0071 (57.7%)	-.0889 (722.7%)	-.0248 (201.6%)	.0037 (-30.1%)	-.0007 (5.7%)	.0001 (-.8%)	0 (0%)	.0038 (-30.9%)	.0092 (-74.8%)	-.1152* (936.6%)	-.1113 (904.9%)	-.0039 (31.7%)
GROUP 8 Number of prior commitments	.2250	----	----	----	----	----	----	.0010 (.4%)	.0131 (5.8%)	.001 (.1%)	.0107 (4.8%)	.0067 (3.0%)	-.0113 (-5.0%)	.0186 (8.3%)	.0098 (4.4%)	0 (0%)	.0006 (.3%)	.0001 (0%)	-.0041 (-1.8%)	.0066 (2.9%)	.1731* (76.9%)	.1181 (52.5%)	.0550 (24.4%)
Number of prior diversions	.1271*	----	----	----	----	----	----	.0012 (.9%)	-.0059 (-4.6%)	-.001 (-.1%)	.0150 (11.8%)	.0080 (6.3%)	.0478 (37.6%)	.0213 (16.8%)	-.0377 (-29.7%)	0 (0%)	-.0017 (-1.3%)	-.0001 (-.1%)	.0019 (1.5%)	.0100 (7.9%)	.0674 (53.0%)	.0075 (5.9%)	.0599 (47.1%)
GROUP 12 Sex advances-abuse	.1426	----	----	----	----	----	----	----	----	----	----	.0165 (11.5%)	-.0287 (-20.1%)	.0196 (13.7%)	.0049 (3.4%)	.0001 (.1%)	-.0019 (-1.3%)	0 (0%)	.0144 (10.1%)	-.0109 (-7.6%)	.1286* (90.2%)	.1334 (93.5%)	-.0048 (-3.3%)
Violence-use	-.0289	----	----	----	----	----	----	----	----	----	----	.0231 (-79.9%)	-.0172 (59.5%)	.0712 (-246.3%)	-.0053 (18.3%)	.0002 (-.7%)	.0024 (-8.3%)	0 (0%)	.0240 (-83.0%)	-.0167 (57.8%)	-.1106* (382.7%)	-.0935 (323.5%)	-.0171 (59.2%)
GROUP 1. Number of offenses	.3809*	----	----	----	----	----	----	----	----	----	----	----	----	-.0059 (-1.5%)	-.0132 (-3.5%)	.0003 (.1%)	-.0004 (-.1%)	0 (0%)	-.0093 (-2.4%)	.0543 (14.2%)	.3551* (93.2%)	.2012 (52.8%)	.1539* (40.4%)
GROUP 15 Proportion of sex offenses	.2760	----	----	----	----	----	----	----	----	----	----	----	----	----	.0228 (8.3%)	-.0016 (-.6%)	0 (0%)	0 (0%)	.0003 (.1%)	.0288 (10.4%)	.2257* (81.8%)	.0013 (.5%)	.2244* (81.3%)
GROUP 16 Parents negative attitude	.1379*	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-.0001 (-.1%)	.0013 (.9%)	-.0001 (-.1%)	.0062 (4.5%)	.0171 (12.4%)	.1135* (82.3%)	.0626 (45.4%)	.0509 (36.9%)
Juveniles negative attitude	.1425*	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-.0004 (.3%)	-.0017 (-1.2%)	0 (0%)	.0062 (4.3%)	.0185 (13.0%)	.1199* (84.1%)	.0851 (59.7%)	.0348 (24.4%)
GROUP 20 Diagnostic completed	.2238*	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	.0359 (16.0%)	.1879* (84.0%)	.1289 (57.6%)	.0590 (26.4%)
GROUP 21 Perceived offense frequency	.1421*	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	.1260 (88.7%)	.0161 (11.3%)
GROUP 22 PO's recommendation to MI	.8282*	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	.8282* (100.0%)

1/ Independent variables reported are those with total or direct effects significant to the .01 level and with coefficients greater than .1000. Variable groups include all variables in the model. A list of variables by groups appears in Table 15.

*Coefficients significant to the .01 level.

Only variables which have either total or direct effects of .1000 or greater and are statistically significant to the .01 level are included. The table shows the total effects of the variables (e.g., left column: .2309 for psychological condition), direct effects without and with the probation officer's recommendation included in the model (third column from the right and far right column -- .1173 and .0395 respectively, for psychological condition), and the indirect effects. Indirect effects and direct effects sum to the total effects. We can, therefore, compute the percent of the total effects for the indirect and direct effects. For instance, for psychological condition, 27.4% of the total effects are a result of an indirect effect through the diagnostic evaluation variable (group 20).

The variables included in the table of decomposed effects and the trimmed model differ slightly for two reasons. First, we used a slightly less restrictive criterion for strength of relationship when looking at the decomposition of effects. Using .1000 for the causal model would have increased the number of indirect paths to such a degree that the model would have become incomprehensible. Second, some variables, such as race, have significant indirect paths and are therefore included in the trimmed model but have neither significant nor direct effects.

The table of decomposed effects lists all variables with significant total or direct effects on manifest injustice. This is a simple indicator of the variables important to a manifest injustice decision. Second, the effects of some variables are basically direct effects. For example, psychological condition has fairly strong and significant total effects on manifest injustice, most of which (50.8%) are direct effects. The highest proportion of indirect effects (27.4%) results from indirect effects through the diagnostic evaluation.

The effects of other variables are almost completely indirect. Sexual activity, for instance, while having no significant direct effects, has significant total effects resulting from mediation by group 16 (juvenile's and parents' attitudes), group 12 (sex advances and violence) and group 14 (number of concurrents). When we compare the effects with and without the probation officer's recommendations (far right columns), the measured direct effects of most variables are substantially lower when the probation officer's recommendations are included in the model. Only the direct effects of the proportion of sex offenses remains unaffected by including the P.O.'s recommendations in the model.

Committables vs. Non-Committables

The sample was subdivided according to whether the offender had a sufficient number of points to be committed under the standard range guidelines. Some cases were lost due to missing data. Sixty-three committable offenders (offenders with 110 points or more) and 156 non-committables remained in the samples. The coefficients for the direct effects are shown in Table 17 with the data for the full sample and data for other subsamples.

TABLE 17

DIRECT EFFECTS ON THE DECISION TO USE MANIFEST INJUSTICE BY SAMPLE AND DIRECT EFFECTS ON SENTENCE LENGTH FOR MANIFEST INJUSTICE COMMITMENTS

	EFFECTS ON MANIFEST INJUSTICE BY SAMPLE				EFFECTS ON INSTITUTION SENTENCE LENGTH--MI CASES ONLY
VARIABLES	Sample	Commit-tables	Non-Commit-tables	Property	
SEX	----	----	----	----	-.4046
AGE	----	----	----	-.2295	----
RACE	----	----	----	.1744	----
PRIOR OFFENSES	-.1152	-.6395	-.2529	----	----
CONCURRENTS	.3551	-.3359	.2850	.2602	.7993
LEADER	----	----	----	.2133	.4879
DRUGS	----	----	----	-.1863	----
SEX ABUSE	.1286	----	----	----	.2996
VIOLENCE	-.1106	----	----	----	-.3153
CHARGE REDUCTION	----	----	----	.1314	----
OFFENSE FREQUENCY	.1421	----	----	----	.5217
INCREASING SERIOUS	----	.2794	----	----	----
INCORRIGIBILITY	----	----	----	.1294	----
PSYCHOLOGICAL	.1173	.3808	.1190	----	----
PRIOR SEX OFFENSE	.2257	----	----	----	----
PRIOR COMMITS	.1730	----	.1844	.2002	.2788
PRIOR PROBATIONS	----	----	.1893	----	----
NEG JUV ATTITUDE	.1200	----	.1388	.2673	----
NEG PARENT ATT	.1135	----	.1221	----	----
DIAGNOSTIC EVAL	.1878	----	.3368	.2781	----
SCHOOL	----	-.3716	----	-.1881	----
TIME SINCE FIRST OFFENSE	-.1448	----	----	----	----
Regression df	40	39	38	32	29
Residual df	284	23	117	79	38
R^2	.5405	.7802	.6243	.6329	.8256
R^2 adjusted	.4758	.4076	.5033	.4842	.6924

All coefficients are standardized betas significant to the .01 level.

Only betas greater than .10 are reported.

A large share of the variance in the decision to use manifest injustice within these subsamples was explained by the regression models: 41% for committables and 50% for non-committables.

Property Offenders

In order to examine the effects of type of offense the sample was subdivided into property, violent and sex offenses. Since the violent offense and sex offense subsamples were small, only the property offender subsample was analyzed. The betas for the direct effects are shown in Table 17.

Length of Sentence

There is some support in the literature for the notion that the sentencing decision consists of several separate decisions. For adult sentencing, Lizotte (1975) suggested that the decision to sentence to the institution was made prior to and separate from the decision of length of term. Lizotte felt that different factors would be related to the two different components of sentencing. Steiger (1981) found that within a population of committed offenders, race was unrelated to whether the sentence included a finding of manifest injustice but was related to length of term for those committed under manifest injustice.

In order to investigate whether similar relationships exist in our data, we selected a subsample consisting of only those offenders who received manifest injustice sentences and examined the effects of our independent variables on sentence length. The significant variables are listed in Table 17.

Steiger found race to be related to sentence length for a sample of offenders. When only race, age and sex were included in the regression model, we found a significant beta coefficient indicating significant total effects. As the variables groups were added to the regression model, the beta for race remained consistently strong. Finally, when the number of concurrent offenses and offense seriousness were included, the relationship dropped to near zero and non-significance. The betas are shown in Table 18.

TABLE 18

STANDARDIZED BETA FOR RACE AT EACH STEP

IN STEP-WISE MULTIPLE REGRESSION

Betas shown are for the equation after the addition of step variables. Equation at all steps include all variables in previous steps.

Step	Variables	Standardized Beta For Race	*If Significant to .01 Level
1	Sex Age Race	.2520	*
2	Psychological Condition Incorrigibility Runaway	.2770	*
3	School Status	.2672	*
4	Time Since First Referral	.2697	*
5	Number of Priors	.2295	*
6	Number of Prior Probations Number of Prior Commitments Number of Prior Diversions	.2489	*
7	Leader Older Codefendants	.2782	*
8	Alcohol Use Drug Use	.2598	
9	Sexual Advance/Abuse Violence Used	.3650	*
10	Offense Seriousness Number of Concurrents	.0844	
11	Proportion Prior Property Offense Rate Number Priors Less Serious	.0747	
12	Parents' Negative Attitude Juvenile's Negative Attitude	.1104	
13	Detained Pre-trial	.1055	
14	Diagnostic Completed	.1247	
15	Perceived Offense Frequency Perceived Increasing Seriousness	.0422	

(NOTE: Due to the small N, 68, not all variables were included in the stepwise analysis. Only those variables which had significant effects in previous analyses or which were logical control variables for the effects of race were included in the analysis.)

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APPENDIX B

CASE FILE DATA COLLECTION CODES

MANIFEST INJUSTICE DATA COLLECTION CODES

1. REFERRAL OFFENSE (3 col.)
   Use codes in JUVIS appendix 5
   000 - Unknown
   998 - Charge added

2. CHARGE OFFENSE (3 col.)
   Offense first charged before bargaining and reduction.

   Use codes in JUVIS appendix 5
   000 - Unknown

3. DISPOSITION OFFENSE (3 col.)
   Use codes in JUVIS appendix 5
   000 - Unknown

4a. FORETHOUGHT/PLANNING (Code highest number possible)

1 Evidence of Forethought or Planning:
- Leaving and returning to scene
- Seeking out/waiting for victim
- Discussing intent
- Plotting/laying plans for execution of act
- Offender's actions were clearly not spontaneous

2 Evidence of Sophistication
- Use of masks or disguises
- Getaway vehicle with driver waiting in vehicle
- Use of look-outs
- In Burglary:
  - Use of burglary tools
  - Second-story job
  - Warehouse, bank, jewelry store, furrier or other commercial establishment known to contain goods of high value or large sums of money
- In Auto Theft:
  - Having keys copied
  - Hot-wiring
  - Using tools
- In Forgery:
  - Use of stolen or false ID
- In Possession of Stolen Goods:
  - Stolen goods taken from several different sources
  - Amount or type clear indication of retail selling
  - Receiving goods and paying with pot/hash
- In Theft:
  - Special knowledge of layout, business procedures, etc. necessary to commit
  - Use of Fraud

3 Evidence of Professional
- For hire
- Disabling alarm system
- Timed partner coordination necessary to commit
- Detailed preparation
- Blue prints, maps
- Tear gas, explosives, etc.
- Fencing/wholesaling stolen goods
- Use of highly sophisticated or specialized tools

9 Unknown or not mentioned in offense description

4b.	HEINOUS NATURE TO OFFENSE (Code highest number possible)	1 Offender used or threatened to use violence in excess of that necessary to carry out the crime 2 A predatory situation in which the offender actively rendered the victim helpless before completing the act by tying the victim up or rendering the victim unconcious by drugs or violence in order to further assault or molest the victim Offender carried out act in henious manner by prolonging victim's agony or humiliation or physically/mentally torturing victim 9 Unknown or not mentioned in offense description
5.	VULNERABLE -- AGE	Victim's age in years 99 - Unknown or N/A
6.	VULNERABLE -- OTHER	1 Victim was physically/mentally handicapped Retarded Mentally ill Physically handicapped Pregnant Seriously ill 2 For theft from an individual Victim on fixed or limited income such as social security, retirement, welfare, disability, unemployment compensation 3 Both 1 and 2 above 9 Unknown or not mentioned in offense description
7.	PROVOCATION	1 Victim had precipitated act through any words or actions enraging or stimulating offender 2 For sex offenses: Evidence of some consenting behavior 9 Unknown or not mentioned in offense description
8a.	FORCE -- USE OR THREAT (CODE HIGHEST NUMBER POSSIBLE)	1 Use or feet or fists 2 Weapon other than knife or firearm 3 Knife 4 Firearm 9 Unknown or not mentioned in offense description

8b. INJURY -- DEGREE OF INJURY TO VICTIM
(Code lowest number possible)

1 Victim killed

2 Victim received major or permanent injury:
Life threatening injury
Injury threatening permanent loss/alteration of bodily functions
Psychological damage resulting or threatening to result in loss of ability to function in normal capacity
Loss of limb or injury causing recognizable handicaps or permanent job disability
Permanent noticable (facial) disfigurement
Any injury that is resonably expected to continue throughout the victim's life

3 Imminent danger of receiving major/permanent injury or death:
Offender exhibited behavior indicating an attempt or intent (with ability to carry out) to inflict major/permanent injury or death

4 Minor Injury
Victim received a physical injury requiring medical attention

9 Unknown or not mentioned in offense description

9. SEXUAL ADVANCES/ABUSE -- NON-CONSENSUAL

Non-Consensual abuse is touching or exposure of the genitals or breasts against the victim's wishes or against a victim incapable of consent by reason of age, informity or mental incapability.

Attempted sexual abuse involve an intent to commit sexual abuse as evidenced by verbal demands, attempted or actual removal of clothing, or touching victim's genitals or breasts AND substantial steps taken to carry out intent such as use or threat of physical force or weapon, mental coercion, forcing victim to another location, or creating in victim a well founded fear of injury.

1 Flashing

2 Attempted or actual sexual fondling or exposure of victim's genital's or breasts

3 Attempted vaginal intercourse, oral sex or anal sex

4 Vaginal intercourse, oral sex, anal sex

9 Unknown or not mentioned in offense description

10. KIDNAP

1 Victim forced to another location

9 Unknown or not mentioned in offense description

11a. INVOLVEMENT	1	Offender was a leader to other offenders
	2	Offender was a follower of other offenders
	3	Offender committed offense alone
	4	Offense committed with others -- leader unknown
	9	Unknown or not mentioned in offense description
11b. CODEFENDANTS	1	Adult (over 18) codefendants
	2	Older (by two years or more) codefendants (OR report to court mentions older codefendants)
	3	Younger (by at least two years) codefendants (OR report to court mentions younger codefendants)
	4	Codefendants same age
	5	Codefendant age unknown
	9	Unknown, no codefendants or not mentioned
12a. ALCOHOL	1	Offender under the influence of alcohol
	9	Unknown or not mentioned in offense description
12b. DRUGS	1	Offender under the influence of drugs
	9	Unknown or not mentioned in offense description
13a. SCHOOL	1	Not attending voluntarily
	2	Attending - Held back
	3	Special Education program
	4	Standard school program
	5	Not attending -- reason unknown (not JUVIS code)
	6	Not attending involuntarily
	7	GED program
	8	Alternative program
	9	Unknown

13b. WORK STATUS	1	Full-time employment
	2	Part-time employment
	3	Seeking employment (JUVIS code -- don't use)
	4	Past employment (not currently employed)
	5	Not employed (not employed in past or past unknown)
	9	Unknown
14. LIVING ARRANGEMENT	1	Parents
	2	Mother Only
	3	Mother and Stepfather
	4	Father and Stepmother
	5	Father Only
	6	Relatives
	7	Independent living
	8	Foster/Group home
	0	Institution/Agency
	9	Unknown
15. DIAGNOSTIC	1	No diagnostic completed
	2	Diagnostic completed
	9	Unknown
16a. PARENTS' ATTITUDE	1	Positive: Express cooperation/concern with court
	2	Negative: Express apathetic attitude or ambivilence
	9	Unknown
16b. JUVENILE'S ATTITUDE	1	Positive: remorseful, turned self into authorities
	2	Negative: denies responsibility
	9	Unknown

17. PHYSICAL CONDITION	1	Physical disability, handicap, illness
	2	Good health
	9	Unknown or not mentioned
18a. EMOTIONAL CONDITION	1	Immature, does not act like normal child of same age
	2	Acts like normal child of same age
	3	More mature than child of same age
	9	Unknown or not mentioned
18b. PSYCHOLOGICAL CONDITION	1	Psychological problems
	4	No psychological problems: normal child
	9	Unknown or not mentioned
19. FREQUENCY OF OFFENSES	1	Recent frequency of offenses mentioned as concern
	2	Few or no priors mentioned
	9	Unknown or not mentioned
20. INCREASING SERIOUSNESS	1	Increasing seriousness of prior offenses mentioned
	2	Decreasing or not increasing seriousness mentioned
	9	Unknown or not mentioned
21. DANGER TO COMMUNITY	1	Danger to community mentioned
	2	Offender not danger to community mentioned
	9	Unknown or not mentioned
22a. INCORRIGIBILITY	1	Incorrigibility (including not behaving parents at home, not behaving in school or at group home or foster home) mentioned
	2	Good behavior in living situation mentioned
	9	Unknown or not mentioned

22b. RUNAWAY

1 History of running mentioned

2 No running history mentioned

9 Unknown or not mentioned

22c. SEXUAL ACTIVITY

1 Mentioned that juvenile sexually active or experienced

2 Mentioned that juvenile not sexually active or experienced

9 Unknown or not mentioned

23. RESTITUTION-RETRIBUTION

1 Restitution or retribution paid or attempted before disposition

2 No effort to make restitution

9 Unknown or not mentioned

24 - 27. PRIOR UNCHARGED POLICE CONTACTS (99 - Unknown)

PRIOR OR CONCURRENT DROPPED CHARGES (00 - none mentioned)

Violent Offenses: All murder, assault (non-sex), robbery

Property Offenses: All theft, burglary, forgery, fraud, malicious mischief, possession of stolen property, criminal trespass, possession of burglary tools, auto theft, etc.

Sex Offenses: All rape, indecent liberties, exposure (flashing)

Other: Traffic, drugs, alcohol

28. PLEA

1 Guilty

2 Not guilty

3 Other

9 Unknown

29. SERIOUS OFFENDER

1 No

2 Yes

3 Minor

4 No-disposition combined

5 Yes-disposition combined

6 Minor-disposition combined

9 Unknown

30. POINTS (3 col.) — Number of points as computed by court

999 - Unknown

31 - 39. RECOMMENDATIONS MADE TO COURT BY PROBATION OFFICER OR DIAGNOSTIC EVALUATION (PO), DEFENSE ATTORNEY (AT), PROSECUTOR (PR), AND JUDGE'S SENTENCE (JD)

31. MANIFEST/STANDARD

1 Standard Range

2 M.I. UP (a. When commit or detain for longer than S.R. or b. When any other part of S.R. increased)

3 M.I. DOWN (When no part of S.R. increased but one part decreased)

4 M.I. UP - Suspend commitment

5 Standard Range - Suspend commitment

6 Different from S.R. -- s/b M.I.

7 Different from S.R. -- M.I. not needed

8 Revoked prior suspended commitment

9 Unknown

32. COMMITMENT

1 4-12 weeks

2 13-16 weeks

3 21-38 weeks

4 39-78 weeks

5 103-129 weeks

6 130 +

7 Commit - time unknown

8 Not commit

9 Unknown

33. COMMUNITY SUPERVISION

1 1 - 3 months

2 3+ - 6 months

3 6+ - 9 months

4 9+ - 12 months

5 More than 12 months

7 Community supervision - time unknown

8 No community supervision

9 Unknown

34. DETENTION	1	1 - 5 days
	2	6 - 10 days
	3	11 - 15 days
	4	16 - 20 days
	5	21+ days
	6	Suspend detention
	7	Detention -- time unknown
	8	No detention
	9	Unknown
35. RESTITUTION/FINE	1	$1 - 25
	2	$26 - 50
	3	$51 - 75
	4	$76 - 100
	5	More than $100
	7	Restitution/Fine -- amount unknown
	8	No restitution/fine
	9	Unknown
36. COMMUNITY SERVICE	1	1 - 35 hours
	2	36 - 65 hours
	3	66 - 100 hours
	4	101 - 130 hours
	5	131 - 150 hours
	6	More than 150 hours
	7	Community service -- hours unknown
	8	No community service
	9	Unknown

37. COUNSELING	1	No
	2	Yes
	9	Unknown
38. OTHER DISPOSITION	1	Other Disposition
	8	No other disposition
	9	Unknown
39. COMMUNITY CORRECTIONS	1	Community corrections not mentioned or explicitly mentioned as not a reason for M.I.
	2	Community Corrections Program mentioned as reason for M.I. or as placement for juvenile
	9	Unknown