

UNIVERSITY OF CENTRAL OKLAHOMA  
JOE C. JACKSON COLLEGE OF GRADUATE STUDIES  
Edmond, Oklahoma

REFORMING THE CRIMINAL JUSTICE SYSTEM: A PRAGMATIC APPROACH TO  
BUILDING A SUSTAINABLE SYSTEM

A THESIS

SUBMITTED TO THE GRADUATE FACULTY

In partial fulfillment of the requirements for the degree of

MASTER OF ARTS, POLITICAL SCIENCE – PUBLIC ADMINISTRATION

By,

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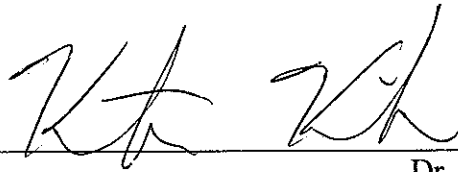
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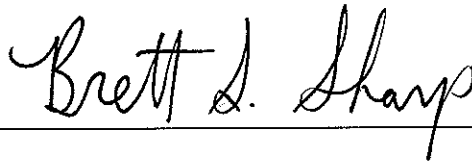
APPROVED FOR THE DEPARTMENT OF POLITICAL SCIENCE

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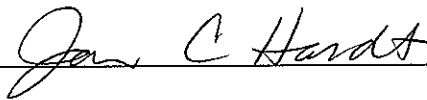
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## Abstract

Much of the literature on the “administration of justice” literature is engrossed with topics that typically concern criminologist, judges, lawyers and police, and therefore, is absentminded of its own identity and purpose. There is almost no mention of the most common professional staff, i.e. analysts, budget personnel, clinicians, compliance officers, division managers, intake clerks, and the administrative professionals who normally comprise and agency’s “administration.” Moreover, there is very little mention of decision-making and functional processes of the “system.” The justice system, therefore, ignores the integral part of the administrative system, non-legal personnel, and the administrative processes, programs and policies that they manage. Additionally, there is literature and studies devoted to the evaluation the individual components of the justice system, i.e. police, courts and corrections. However, there is little devotion to the study and evaluation of the bureaucratic qualities of the justice system. The criminal-justice system, if it can be called a “system,” ignores many of its most basic obligations because of a preoccupation with the arrest, adjudication and correction of offenders. There is more to the administration of justice than the mere consideration of topics that relate to offenders and crime. Moreover, as it currently exists, and is defined by the literature examined, the criminal-justice system is actually a “non-system.” Thus, it is a primary contention of this research that decision-makers and criminal justice scholars ignore the most fundamental and universal principles of administration; consequently, contributing to the degradation of the justice system.

## CHAPTER I: INTRODUCTION

Public perception and normative philosophies have greatly influenced public administration and American jurisprudence. Policies and procedures are often prejudiced by public, private and political discourse; economic conditions; theory; methodological innovations and legal liabilities, as well as countless other environmental factors. In his 1887 work titled, *The Study of Public Administration*, Woodrow Wilson profoundly noted that "...at the same time that the functions of government are every day becoming more complex and difficult, they are also vastly multiplying in number. Administration is everywhere putting its hands in new undertakings" (p.200-01). He continues to add, "Seeing everyday new things which the state ought to do, the next thing is to see clearly how it ought to them" (Wilson, 1887, p.201). Simply, the management of public programs and systems requires clearly defined and objective processes that can be observed and measured. Further, the mechanisms must be responsive to environmental demands that are both internal and external to the organization in order to preempt naturally occurring and systemic limitations. This does not mean that there will not be unanticipated consequences. However, the principles of public administration provide decision makers with an intelligent and responsive system that is equipped with a strong theoretical foundation, uses replicable methods, and is fortified by empirical research.

Although public administration is sometimes characterized as rigid, labor intensive and inconsistent, there is resolve in making use of the various administrative methodologies that are proven to satisfy legal, political and social demands. In contrast, criminal justice administration lacks the comprehensiveness found in conventional public administration. There have been few advances in the management techniques of the justice system. This is because the methods employed in this "system" rarely converge to produce a collaborative and integrated network

capable of executing its interdependent functions. This has ultimately led to a deficient, unsustainable system. There is an apparent lack of commitment to shift the paradigm of justice administration to one that is equally concerned with processes that are not designed to contribute directly to crime control. Traditionally, criminal justice administration techniques are often exclusively associated with crime prevention, recidivism reduction, and corrections. The competing claims and exclusive authority of the various components of the criminal justice system, i.e., police, the courts, and departments of corrections, prevent the development of an integrated system. The administration of justice often concerns the management of the independent parts of the criminal justice system. Moreover, there have been few comprehensive evaluations of the administration of justice; thus, there are few singular points of reference for decision makers, scholars and students. The criminal justice system, therefore, can be characterized as fragmented and lacking the qualities of a truly collaborative, integrated and responsive system.

### Statement of the Problem

There is systemic disagreement within the criminal justice community regarding how to enhance the capacity of administrative mechanisms. To date, the primary focus of the justice system has been “ends,” i.e., crime prevention and reduction, with little focus on the administrative aspects of the organization. Therefore, administration techniques in the justice system concern the same issues mentioned above. Rather than managing specific components of the system, the focus is on “ends” rather than “means.” The theoretical foundation of the criminal justice system concerns the activities of the most prominent legal actors, such as police, lawyers, judges, and to some extent, corrections officials. There is almost no mention of the most common professional staff: analysts, budget personnel, clinicians, compliance officers, division

managers, intake clerks, and the administrative professionals who normally comprise an agency's administration. The justice system, therefore, ignores the most fundamental portion of its administrative system: non-legal personnel, and the administrative processes, programs, and policies that they manage. The criminal justice system, if it can be called a "system," ignores many of its most basic obligations because of its preoccupation with the arrest, adjudication and correction of offenders. There is more to the administration of justice than the mere consideration of topics that relate to offenders and crime. Moreover, as it currently exists and is defined by the literature examined, the criminal justice system is really a "non-system." Thus, it is a primary contention of this research that decision-makers and criminal justice scholars frequently ignore the most fundamental and universal principles of administration, thereby contributing to the degradation of the justice system.

### Background and Need

The justice system is often characterized as fragmented, unresponsive to external stimuli, inconsistent, unsustainable, and ultimately inefficient in the management of its most basic functions. Kenneth J. Peak (2007, p.7) echoes this sentiment, stating:

The U.S. criminal justice system attempts to decrease criminal behavior through a variety of uncoordinated and sometimes uncomplementary efforts. Each system component – police, courts, and corrections – has varying degrees of responsibility and discretion for dealing with crime. Each system component fails, however, to engage in any coordinated planning effort; hence, relations among and between these components are often characterized by friction, conflict, and deficient communication. Role conflicts also serve to ensure that planning and communication is stifled.

The inability to conduct a comprehensive study of the decision-making or administrative processes of the justice "system" makes it difficult to identify the origin of system failure. The shortcomings of the criminal justice system arise from a lack of integration. As Peak notes, "Given its current operation and fragmentation, it might be better described as a criminal justice

process” (Peak, 2007, p.8). This, however, further limits the functionality of the criminal justice system, as each part is dependent upon the other to meet its mandated objectives. Peak (2007) further explains, “Much of the failure to deal effectively with crime may be attributed to organizational and administration fragmentation of the justice process. Fragmentation exists among the components of the process, within the individual components, among political jurisdictions, and among persons” (p.8). It is easy to identify the failures of the overall system of justice; however, it is difficult and nearly impossible to specify how these challenges must be overcome. Further, the competing claims and divergent methodologies of each component of the criminal justice system only exacerbate the problem.

It appears hopeless that members and scholars of the criminal justice will separate the “ends,” or outcomes from the administrative process. Simply put, “[T]he formal task of the criminal justice system is to process arrest, determine guilt or innocence, and in the case of guilt specify an appropriate sanction” (Stojkovic, Klofas & Kalinich, 2004). Consequently, the administrative identity of the criminal justice system primarily concerns its formal tasks. There the administration of justice is limited in scope, theoretical depth, and the potential to contribute to the development of a cohesive system of justice. Additionally, much of the literature on the subject of criminal justice addresses singular issues, e.g., crime prevention and/or sentencing policy. Much of the literature available on this subject does little to expand the theoretical foundation of the “administration of justice.” The primary concern of literature on criminal justice focuses on questions of “ought” and “ends,” and rarely considers applied process or “means.” Comparatively speaking, and as a matter of opinion, the administration of justice as a discipline lacks the depth and breadth found in the study of public administration. The preoccupation of the criminal justice system with subjective issues and “ends” ultimately limits



its ability to be innovative, responsive, capable and sustainable. Moreover, the in-built requirement that criminal justice policies be “just” further limits the range of decision-making methodologies available to administrators. Justice as the most conspicuous value of the criminal justice system is also inconspicuous, in that it surreptitiously undermines the progressive nature of administration. This is not, however, a contention that justice should no longer be the cornerstone of U.S. jurisprudence. The assertion is that decision-makers’ preoccupation with achieving justice restrains progress because justice, as a singular goal, is unmanageable. Achieving justice through policy is impractical in that it is immeasurable, situational and idiosyncratic. In a 1993 U.S. Department of Justice report, *Performance Measures of the Criminal Justice System*, Dr. Charles H. Logan noted:

[The] definition of justice is rights-based, rather than utilitarian or consequentialist. ...a rights-based theory sees justice as a process, an ongoing property of criminal sanctioning as it occurs, not as an expected outcome. Criminal justice is thus a value in itself and not merely useful as a means to some other end. Sanctioning that is evaluated as to its justice or injustice may, in addition, be evaluated in terms of its consequences for other values, such as freedom, order, happiness, wealth, or welfare, but those are separate concerns. This means that questions about the effectiveness or efficiency of the criminal justice system in achieving various “goals” or “purposes” should be kept separate from, and secondary to, an evaluation of the performance of the justice system in its most basic mission: doing justice (Logan , DiIulio, Alpert, Moore, Cole, Petersilia & Wilson, 1993, p.11-12).

To suggest that criteria such as efficiency and effectiveness are secondary to the “... the most basic mission: doing justice,” may only exacerbate the debilitating issues the criminal justice system is currently facing. If the administration of justice is to be akin to discipline of public administration, then the previous must be aligned with the substantiated methodologies of the latter. In his 2009 work, *Public Administration and Society*, Richard C. Box noted: “Public administration is not only instrumental – public sector decisions and actions are often complex, involve multiple possibilities, and change with time; and public sector practitioners are involved

with determining what government does in addition to how it does it.” Public administration, then, is a multidimensional, responsive, collaborative and reflective system – capable of responding to both internal and external stimuli with the purpose of efficiently achieving a specified objective. Public administration recognizes the various stimuli that act upon and influence projected outputs and continuously evaluates outcomes with the purpose of reengineering, when needed, its processes, policies and programs.

The methodologies employed in this system are designed to consider all relevant inputs to provide a range of alternatives from which the most viable options are selected. The justice system, as described by Logan (1993), separates the major criteria of public administration from the evaluation process and places the mission of “doing justice” above all else. Much of criminal justice literature is preoccupied with crime, sentencing policy, and the actions of judges and police officers. There is very little mention of the traditional administrative system embodied within the “criminal justice system”; very little literature discusses the activities, responsibilities and challenges facing non-legal actors. The administrative effectiveness of the justice system is rarely presented in a way that is reminiscent of mainstream administrative theory. The lack of a comprehensive analysis of the administrative functions of the criminal justice system makes it difficult to determine the necessary changes that must take place in order to increase effectiveness. This is the overall nature of the criminal justice system – an inefficient, fragmented compilation of ideas that have no identifiable direction and little discernible identity outside of the descriptions embodied within the U.S. Constitution. Contextually speaking, there is little to no administrative identity in the criminal justice system, thereby limiting the utility of the need to study the administration of justice, as very few methods on this subject are agreed upon.

Doris MacKenzie (2001) noted, “In the past 30 years of the 20th Century, major changes have occurred in United States corrections and sentencing. The strong emphasis on rehabilitation that existed at the turn of the century gave way to new philosophies of corrections. The new philosophies focused on retribution and crime control” (p.299). Many scholars and practitioners faulted this shift in philosophy as the primary factor contributing to issues such as prison overcrowding, punitive sentencing, and the overburdening of judges. The persistent need of decision-makers and criminal justice system professionals to focus on results or outcomes limits the range of alternatives. The first step in policy analysis, as expressed by David Stephens and Nelson Wikstrom (2007), is to define the problem and determine its causes. Further, the way in which the problem is defined will affect the range of policy alternatives, as well as what policies are selected and implemented. This two-dimensional approach is inadequate in assessing the dynamic nature of the criminal justice system. Poorly defined problems will only hinder the development of innovative solutions. The central focus of criminal justice policy is value-based and focuses primarily on ends. Very little attention is paid to inputs, and very little focus is given to fact-based analysis. During the 1960s, intermediate sanctions were viewed as ineffective as they had not been proven to reduce recidivism. Martinson (1974) observed that there were few exceptions where rehabilitative efforts had been reported as having appreciable effects on recidivism. In this intervening period, the criminal justice system has been more concerned with results, such as crime reduction, sentencing policy and preventive initiatives, and has only rarely focused on the means or administrative processes used by the criminal justice system. Criteria traditionally used in public administration, such as efficiency and effectiveness in weighing policy alternatives, have been replaced with immeasurable values such as the fear of crime and emotional loss. Discounting the standards of efficiency, effectiveness, and sustainability has led

to the inconsistent management of criminal justice systems at various levels throughout the United States.

In his 1973 article, *Two Models of the Criminal Justice System: An Organizational Perspective*, Malcolm M. Feeley embarked on an attempt to discuss the methods of criminal justice administration. There is an apparent need to merge traditional public administration theory with administration of justice theory. However, the administration of justice lacks the sufficient means to evaluate and sustain the bureaucratic mechanisms found in administration. Kenneth J. Peak (2007) noted in, *Justice Administration: Police, Courts, and Corrections Management*, that the purpose "...is to familiarize the reader with the methods and challenges of criminal justice administrators. [Moreover], to consider what reform is desirable or even necessary and to be open-minded and visualize where changes might be implemented" (p.5). Yet, it is nearly impossible to study the administration of justice because there is no common theme or method of management. The fragmented and conflictive nature of the criminal justice system is also easily identifiable and characterized by, criminal justice literature. The lack of cohesion in practice, literature, and theory contributes to the criminal justice system's current state. There are very few administrative methods available to decision makers, making it difficult to determine what steps should be taken to overcome the unrelenting challenges facing criminal justice. The President's Commission on Law Enforcement and Administration of Justice (1967) summarized:

The system of criminal justice used in America to deal with those crimes it cannot prevent and those criminals it cannot deter is not a monolithic or even consistent system. ...its philosophic core is that a person may be punished by Government, if, and only if, it has been proven by an impartial and deliberate process that he has violated a specific law. Around that core, layer upon layer of institutions and procedures, some carefully constructed, some impoverished, some inspired by principle and some by expediency, have accumulated. ...every village, town, county, city, and State has its own criminal justice system, and there is a federal

one as well. All of them operate somewhat alike; no two of them operate precisely alike (p.7).

There is a great need to undertake an analysis of the entire criminal justice system to determine if it is truly a “deliberate and impartial process.” Examining the interactions or inactions of the system will help to bridge the gap in operation. If criminal justice systems, in fact, operate differently, then there is reason for great concern. The potential that justice can vary greatly does not satisfy the standard of “due process” professed in the U.S. Constitution because procedural law, that which facilitates due process of law, is not carried out uniformly throughout the various levels of the criminal justice system. Additionally, there is a need to examine the intergovernmental relations mechanisms of the justice system. Doing so could allow effective analysis of the collaborative efforts among the various parts and their ability to produce measurable outcomes. Moreover, it is imperative to identify the cause of fragmentation in order to determine what can be done to produce a more sustainable system. There is a need, as Martinson (1974) astutely observed, to determine “what works” in the criminal justice system, using evidence-based practices. In addition, the evaluation methods applied in the assessment of crime prevention, as well as other initiatives, should be reexamined to determine their effectiveness. Because the criminal justice system has been described by many as a non-system, the use of methods traditionally employed within a bureaucracy are misplaced. The evaluation and policy methods employed in a bureaucracy require observable and standardized processes, which are not characteristic of the justice system. Simply, there is a need to move beyond the discussion of singular issues, i.e., sentencing policy and crime control, which are of traditional concern in the criminal justice system. Moreover, the justice system must surmount its unitary motive of crime control if it is to diversify its methodologies and policy alternatives. There is also little use of research to help guide practice. “The reasons offered for the alleged lack of

effect of research information have been summarized in long lists, which include such items as poor methodological quality of the research, lack of relevance of research information to decision making, and inadequate, ineffective, and untimely communication of results” (Grosskin, 1981, p.1). Again, there is a need to create a system capable of addressing the complex problems of the criminal justice system. However, before this can happen, the capacity for change must first be established. This requires a strong theoretical foundation, the use of empirical research, replicable methods of evaluation and implementation, and a distinctive administrative structure capable of responding to environmental stimuli.

### Rationale

There is an abundance of literature on the subject of public administration and the various components of it, such as finance and budgeting, the economics of policy analysis, public program evaluation and intergovernmental relations, to name a few. The study of public administration does not concern a singular issue; rather, it incorporates all the parts that make the whole operate. When these individual administrative functions are combined, they produce a distinctive and observable administrative structure. As Richard J. Stillman II noted in his 2010 book titled *Public Administration: Concepts and Cases*, public administration is often concerned with:

(1) the executive branch of government, yet it is related in important ways to the legislative and judicial branches; (2) the formulation and implementation of public policies; (3) the involvement in a considerable range of problems concerning human behavior and cooperative human effort; (4) a field that can in several ways be differentiated from private administration; (5) the production and public goods and services; and (6) rooted in the law as well as concerned with carrying out laws (p.4).

Public administration, therefore, influences almost all facets of society and human existence. The administration of a public organization requires the capability to respond to a

multiplicity of demands, and the ability to address complex problems. Managing such multifaceted issues requires a vast spectrum of processes, policies, programs and methods. Public administration as an instrument of governance cannot be limited in theory or practice. There is a need for administrative diversity; rather, the methods used to manage a public organization must be as multifaceted as the problems they were designed to solve.

The criminal justice system as a function of government, and therefore, a subsystem of public administration, seems to ignore the theoretical principles and methodological foundation observed in mainstream public administration. In *Two Models of the Criminal Justice System: An Organizational Perspective*, Malcolm M. Feeley (1973) explains, “Despite the scholarly and popular interest in the administration of criminal justice, there are few theoretical discussions of the process” (p.407). However, it is important to note that Feeley did very little to add to the theoretical prowess of the administration of justice. Yet, he is no less correct that the lack of theoretical fervor has resulted in the inability of the criminal justice system to respond adequately to challenges that result from an ever-changing environment. However, with a comprehensive theoretical and methodological foundation, the criminal justice system might be able to overcome its inefficiencies. For example, changes in the environment are considered only in the context of how they contribute to increases in crime. There is very little discussion of how environmental factors directly affect the administrative capacity of the justice system. Crime control, recidivism, sentencing policy, corrections philosophy, and values such as justice dominate the study of criminal justice, and consequently the administration of justice. Proportionately speaking, criminal justice literature includes very little information with regard to the applied methods used in the administration of justice. The efficiency and effectiveness of

the criminal justice system are measurements of how well particular initiatives achieve their intended design.

Policies of narrow focus are often evaluated in a similar light, potentially leading to debilitating unanticipated consequences. Consider an initiative designed to increase the number of arrests for a specific offense, for example, drug crimes. The local police department may actively take on the task of catching these criminals; however, this may become a burden to the judicial system. There are often not enough judges to handle a large influx in the number of cases in the court system. The result: many criminals sit in local jails awaiting an initial hearing. If, for example, during a trial a judge or jury finds that a crime has been committed, yet the crime does not warrant incarceration – the local jail unnecessarily expended funds on housing the suspected criminal for an extended period. If the intent of the policy is to identify, apprehend, and correct the behavior of suspected criminals, but they are released, then resources were spent with no benefit to society. The police department may have been efficient in identifying and apprehending suspected criminals; however, the policy may not result in the correction of the targeted behavior. This, then, is not an efficiency of the entire criminal justice system. Simply, there are additional factors that must be considered in order to determine the most effective means of achieving a desired outcome. The criminal justice system, however, lacks the comprehensive and rational processes that allow the more common bureaucratic institutions to produce desired outcomes.

### Purpose of Study

Much of today's analysis of the criminal justice system focuses on crime management – blindly producing unsustainable reforms, while the entire system approaches critical mass. The goal is to provide a comprehensive analysis of the various approaches, practices and policies of



the criminal justice system. This will require the examination of the many variables that make up the administrative environment of the justice system – and how they influence the overall utility of the corrections system. Moreover, this study will address the future of the administration of justice should identified problems go unaddressed and the impact this will have on the sustainability of the justice system. Additionally, the current literature will be examined to determine how the goals of efficiency, effectiveness, accountability, political feasibility, economic viability, and sustainability are achieved.

#### Research Question/Hypothesis

This study intends to demonstrate that substantive modifications of the current criminal justice system are necessary in order to: (a) create a system capable of addressing complex problems; (b) actively employ collaborative intergovernmental relations methods; (c) respond to environmental demands; (d) capitalize on traditional public administration methods; (e) enhance structural capacity; and (d) develop a distinctive administrative identity.

#### Methods

Secondary research was examined throughout this study. The information was gathered from various sources, including peer-reviewed journals, books, government reports and documents, commissioned studies, and other professional reports. Specifically, this study is a qualitative analysis of criminal justice administrative theory and the quantitative methods of the same subject.

#### Limitations

There are several limitations to this study. First, the comprehensive analysis of the administration of justice is nearly impossible. There are many factors that must be taken into consideration that are difficult to observe and, therefore, limit the depth and breadth of

discussion. Explicitly, the lack of consensus among criminal justice scholars regarding the mission, model, and structure of the criminal justice system has produced inconsistent research. The methods used to evaluate sentencing policy and crime control initiatives are widely perceived to be inadequate. Therefore, the discussion of the relevance of available data is also quite mixed. The central concern is that an attempt to standardize or observe many criminal justice functions detracts from the goal of “doing justice.” Much of the literature available on the topic of criminal justice concerns singular issues such as race and crime, juvenile justice, and crime prevention, to name a few. Very little mention is made of the applied administrative practices that are believed to contribute to the utility the system of justice. Even the personnel within the criminal justice system are viewed differently. The administrators or the primary actors of the justice who are most often discussed are police and corrections officers, lawyers, and judges. There is very little mention, for example, of policy or budget analysts, division managers, or compliance officers. The criminal justice system also lacks the organization of a traditional bureaucracy; therefore, it lacks observable and measurable systems, thus, limiting the quality and availability of information on the administration of justice. Moreover, finding reliable data is difficult in many situations. Data pertaining to the federal justice system are easier to obtain than data on state or local justice systems. Because reporting is also not standardized, the quality and quantity of data available also vary. The nature of justice administration are so inconsistent that it produces a wide range of assertions in literature, which limits the researcher’s ability to make confident inferences.

## CHAPTER II: METHODS: HISTORY and FORM

The focus of this study was to review the theoretical foundation, and practical application of administration theory, and this examines the limitations of the administration of justice. Rather, this section will survey the methods used to measure of effectiveness of the criminal justice system. The aim is to remain consistent with the previous sections of this study. The emphasis of this study is on the processes and established systems that are designed to execute or appraise the functions within the justice system. Therefore, the intent is not to quantify the effectiveness of administrative processes in the criminal justice system.

In, *Evidence Based Corrections: Identifying What Works*, Doris L. MacKenzie (2000) cited a University of Maryland study that identified a two-step procedure in evaluation of crime prevention initiatives (p.459-461). Step one, *determining scientific rigor*, evaluates the thoroughness of the scientific methods found in the literature. It requires the gathering of a substantial number of studies that include scientific methods, and should be as recent as possible. Scientific rigor is determined by using a form that documents research design, selection problems, attrition, controls, variables, and statistical methodology. Each component included in the assessment then receives a rating, typically from one to five, with five indicating a high degree of scientific rigor. The studies are then assigned a methods score, which are also divided into five levels. Level studies are those studies are those that indicate some correlation between a crime prevention initiative and an outcome, such as reductions in recidivism. Studies in the first level are typically ignored, as the correlation is too weak. Level two studies indicate an association between a program and an outcome, however, to a limited degree because alternative associations could not be ruled out. Level three studies compared two or more studies, one of the groups being a control group. The research design in this study and the methods used are

examined to ensure that similarities between the groups. Level four studies compare program groups to several control groups, each controlling for different factors or a nonequivalent group. Level five studies meet the “gold standard” of scientific evaluation, such as random assignment, comparison groups, and control for attrition (MacKenzie, 2000). Step two, *drawing conclusions about what works*, requires a high confidence in results of step one. The process allows for the continuous evaluation of new studies, however, each time a new study is considered, all previous studies must be reevaluated. The most comprehensive study, of course, is one that can prove the effectiveness of a program or initiative, and primarily rely on quantitative and qualitative data. Studies that meet these standards are often those that are committed to traditional scientific methods of analysis, such as a multiple regression. MacKenzie (2000) notes that because there are numerous competing claims and conjectures in the criminal justice system, it is important for the research to set high standards to weed out unsubstantiated studies.

The effectiveness of criminal justice initiatives, whether the aim is crime prevention, recidivism reduction, or process integration, depends upon of consistent and scientific methods of inquiry. Ferguson (2002) states, “...the focus has been what should be done and the steps that need to be taken without giving attention to how to implement these steps, or the challenges that might be experienced while doing so” (p.459). Again, the problem is determining what method of evaluation to use in the assessment of programs and initiatives. Further, much of the literature on the subject of evaluation or research-based methods do not speak to the administrative process, or even the policy development process. The majority of evaluation in the criminal justice system, like much of the literature, focuses primarily on crime prevention and recidivism reduction. Determining “what works” in the criminal justice system does not necessarily tell one how or why it works, nor does it explain which organizational components contribute to the

effective implementation of the program. Nevertheless, it is important to understand not only the usefulness of evaluation methods, but also their history in the criminal justice system.

Ferguson (2002) summarizes the three generations of assessment. First generation assessment methods were based on “professional judgment and intuition” of the evaluator. Second generation assessment methods were primarily concerned with scientific methodology. Finally, third generation assessment considered risk and need within the same tool, thus, strengthening the ability to determine what type of interventions to assign and to what degree.

In the, *Guide to Frugal Evaluation for Criminal Justice*, Michael G. Maxfield (2001) explains that evaluation must be *purposive*, *analytic*, and *empirical*. Moreover, Maxfield explains several key assumptions of *frugal evaluation*: (1) the most promising criminal justice policies and actions are flexible, purposive, and collaborative; (2) justice professionals ranging from those in operations to executive positions are better able to do their jobs if they understand the basics of evaluation methods and appropriate applications of those methods; and (3) in many circumstances, self-evaluation is possible; public agencies, community groups, and other organizations can conduct internal evaluations (p.1-2).

Although there is a consistent finding that a small number of offenders commit a large number of crimes, predicting who these offenders are and incapacitating them have not been particularly successful (MacKenzie, 2001). As Cullen and Gendreau (2001) argue, an important change for criminologists would be to move from “nothing works” to “what works.” That is, effectiveness has become the central focus of the corrections system. The aim, therefore, is to adopt correctional practices that have been or that are espoused to be effective. The “what works” philosophy incorporates research into the decision-making process, whereas correctional practices prior to this point were based largely on goals and perceived benefit. Ferguson (2002)

notes, "...the focus has been on what should be done, and the steps that need to be taken without giving much attention to how to implement these steps or the challenges that might be experienced while doing so" (p.559). It is arguable that the lack of administrative structure, fragmentation, and the competing interest of the criminal justice system was a major contributing factor. Without formal structure, collaboration, continuity, and standard practices, it is difficult for an organization to execute its formal duties, and in this case, convert research to practice.

### **CHAPTER III: LITERATURE REVIEW**

At first glance, the various sections of this literature review may appear inconsistent with one another. However, as stated in the previous chapter, there is a great need for the consideration of the various parts of the criminal justice system. Because the criminal justice system is typically concerned with goals or ends, i.e., crime prevention, recidivism reduction, and sentencing policy, it is important to review these topics. It is equally important to note that the primary intent of this literature review is to direct attention to the administration of justice as a discipline and function of criminal justice. Here individual policies or initiatives are relevant only when considering the administrative system responsible for their execution. The intent, therefore, is not to focus on the evaluation of goal setting, or the role of “justice” in defining the mission of the criminal justice system, as is the traditional focus of this subject. Focusing on such singular issues does not provide a comprehensive analysis of the “system.”

The literature review will address five areas related to enhancing the capacity of the criminal justice system. The first section will address research that relates to the ecology of public administration and its effects on the administrative process. The second section will focus on research, addressing the challenges facing the State of Oklahoma’s Department of Corrections, specifically in its attempts to reduce recidivism. The third section will discuss research related to federal and state sentencing policy, as well as current reform measures. The fourth section will examine crime prevention initiatives and evaluation methods. The fifth and final section will discuss the inadequate administrative distinctiveness of the criminal justice system.

## SECTION I: THE ECOLOGY OF PUBLIC ADMINISTRATION

It is important to discuss the environmental factors that influence the ability of an organization to carry out appropriately its functions. The ecology of public administration is included in this discussion because it allows for the consideration of variables that impact an organization's ability to affect change. Conversely, the consideration of ecology as it relates to public administration provides insight to the ways in which the environment enhances or limits the scope of governance. Therefore, this section is devoted to the discussion of the major tenants of the ecology of public administration, and in the case of the administration of justice.

Public administration is a unique, all-encompassing function of government. According to the *Encyclopedia Britannica*, public administration is “the implementation of government policies. Today, public administration is often regarded as including... some responsibility for determining the policies and programs of governments. Specifically, it is the planning, organizing, directing, coordinating, and controlling of government operations.” However, it is arguable that there is more to public administration beyond this operational description. Public administration is more than the mere execution of government policies; further, it concerns more than the organization, coordination, and control of government functions. In addition to the functional and dichotomous nature of public administration, there is also the ecology of public administration. Ecology is commonly understood as being the study of the relationships between living organisms and their natural environment. However, the ecology of public administration seeks to explain the “interconnectedness” of “authoritative decision-making systems and their environments” (Riggs, 1980). Explicitly, the ecology of public administration explores the environmental conditions that influence the politico-administrative apparatus, the externalities



that result from this symbiotic relationship, and also how this relationship influences the utility and capacity of administrative systems.

Harvard professor John M. Gaus (1894–1969), known as one of the earliest pioneers of public administration, defined ecology in a series of lectures that were later published in his book *Reflections of Public Administration*. Gaus builds upon the common definition of ecology, which is “the interrelationships of living organisms and their environment” (Stillman, 2010). He explains how a setting or ecology influences the strategies, methodologies, and implications of public administration. Specifically, Gaus asserts that administrative functions are inextricably linked to the fabric of society. He further outlined several important elements that he found useful “[in] explaining the ebb and flow of the functions of government: people, place, physical technology, social technology, wishes and ideas, catastrophe, and personality” (Gaus, 1947). In his article, *The Ecology and Context of Public Administration: A Comparative Perspective*, University of Hawaii professor Fred W. Riggs echoes the sentiments of John Gaus. For Riggs, the “ecology of administration” refers to the means by which “... environment conditions the politico-administrative process” (Riggs, 1980, p.108). Moreover, Riggs asserts that to “condition” something does not mean that its behavior is determined by the influence of an outside actor or force. To determine action, for Riggs, is a more finite and definitive occurrence, whereas to condition an action is to set the parameters of the action. Parameters are therefore both constraints on action and resources for action. However, definitions of ecology seem weak in their explanations of the environmental factors that condition the effectiveness of the administrative process. It is suggested here that the ecology of public administration addresses how the environment affects administrative processes, and conversely, the capacity of the politico-administrative apparatus to affect its environment. Moreover, the discussion of ecology

should include such factors as political and public discourse, political affiliation, geographic location, social need, and economic stability.

As stated, ecology is a broad concept, since it deals with all the interrelationships of living organisms with their environments. According to Riggs, in order to understand administrative ecology, it must be “inlined” instead of “outlined” (Riggs, 1980). The coined word *inlining* entails considering a concept in an expanded context. As Riggs observed, “One consequence of our persistent efforts to ‘outline’ problems is that we focus ever more deeply on smaller and smaller subjects. Occasionally, however, we need to pull back and take a broader view, thereby achieving an explanatory perspective on the interconnectedness, at higher levels, of many of our problems” (Riggs, 1980, p.107). Therefore, the ecology of administration is concerned with a broad perspective of public administration – as opposed to the traditional normative administrative system.

The purpose of the ecology of public administration is to explore the interrelationships that affect administrative organizations, and the response of that organization to external stimuli. Administrative prerogative and performance, therefore, are conditioned by their environment – producing the context in which functions are executed and guided by the preferences and parameters of the immediate environment concerned (Riggs, 1980). Whatever has an environment is conditioned by it, which is the natural order of systems. Nevertheless, because the environments differ, so will politico-administrative systems due to the condition and response to their environment. In other words, organizations that are similar in design and authority are ostensibly the “same,” but they can be substantively different because of their distinctive environment. “By contrast, the ‘environment’ of anything differs qualitatively from whatever is environed. When speaking about the environment as a parameter... one of the

definitions of this word is ‘variable constant.’ The environment is, indeed, at any moment a constant, but in the long run, it becomes a variable” (Riggs, 1980, p.107). There is always ecology of public administration, which from day to day, conditions the “enviored” at a constant rate. As previously mentioned, it is only when the ecology of public administration is “inlined” that we are able to weigh the variables capable of changing the scope, sustainability, effectiveness, and administrative function of an organization. To ignore the previous is to limit the latitude, perspicuity, and vitality of the organization – ultimately resulting in inadequate performance and contracted relevance. There is a considerable benefit to understanding how ecology qualitatively and/or quantitatively affects politico-administrative function. Note that the term “politico-administrative” is used here because public administration is not devoid of political influence nor is it value neutral.

There is a political ecology of public administration; in this discussion it is combined with administration due to their inseparable relationship. The activities of political actors, and the ecology that condition political action also condition administrative function at every level of government. Norton E. Long addresses this point in his essay, *Power and Administration*, arguing that “... bureaucrats contend for limited power resources from clientele, constituent groups, the legislative and executive branches, and the general public to sustain their organizations” (Long, 1949, p.258). In many cases, political variables often require the immediate attention of an organization’s actor – as these pressures are often not easily ignored. Political variables often produce and address the needs of an organization; simply, they can both limit and expand the purpose and function of an organization. Long further asserts, “The lifeblood of administration is power. Its attainment, maintenance, increases, and losses are subjects that the practitioner and student can ill afford to neglect” (Long, 1949, p.257). This

statement implies that the ecology of public administration is a conduit for substantial interaction between the organization and interested parties. If nothing else, this concept of ecology provides a way to understand how administrative power is acquired. For Long (1949), legislatively bestowed authority and allocated funds are a necessary, "... but politically insufficient bases of administration" (p.257). To ignore the existence of the politico-administrative apparatus is to ignore the essence of the discussion of the ecology of public administration, as modern public administration is rooted in a political foundation. "Administrative rationality demands that objectives be determined and sights set in conformity with a realistic appraisal of power position and potential..." (Long, 1949, p.258). Although true, the previous statement places much emphasis on the role of politics as a source of power or the process of agenda setting.

The modern public administration is often too concerned with political pressures and scarcely considers other environmental pressures. The ecology of public administration concerns the comprehensive conformity of objectives with all relevant environmental demands. Inadequately considering all variables or heavily weighting the importance of one variable over another can cause debilitating consequences, as will be discussed later in the Spokane County Jail case. The interconnectedness of an environment almost guarantees that a change in one part will produce a change in the whole. Often, political demands are touted as addressing the "needs" of the organization. However, it is rare that the subjective value conflicts behind the political demand are fully understood. The ecology of public administration does not purport to address the *needs* of an organization, but environmental factors often produce a demand that an organization must satisfy – the need to conform administrative objectives to environmental demands. For example, poor economic conditions (such as a recession) may decrease the revenue of an organization. This loss of revenue produces the *need* for the organization to

identify additional revenue to maintain and execute its function. In this example, economic factors actually limit the function of the organization. Thus, its environment has conditioned the organization, and in this case, the organization must align its objectives with environmental limitations. Therefore, the environment is not necessarily responsive to administrative needs.

When considering formal decision-making systems and their environments, there are various ecological relationships to consider. As previously stated, Riggs observes that there is “political ecology” and “administrative ecology,” as well as the hybrid “politico-administrative ecology” (Riggs, 1980). The terms *ecology of public administration*, coined by John M. Gaus, and *politico-administrative ecology*, coined by Fred W. Riggs, are used interchangeably in this discussion. The discussion of the ecology of public administration is “relevant not only to cloistered scholars of administration at work on universal theories of the administrative process, but also to on-the-line practitioners of administration” (Gaus, 1947, p.81). This discussion is relevant because of the real impact on the administrative function and the capacity of practitioners to execute their duties in spite of environmental conditions. Stillman explains, “A conscious awareness of ecological factors permits administrators to respond more wisely to the demands and challenges of the external environment of their organizations. In the hands of the practitioner, “... ecology can become a diagnostic tool; it can help in visualizing the major elements in the administrative processes and provide a [barometer] for measuring their impact on an organization” (Stillman, 2010, p.79).

Determining the linkages between the environment and administrations is often not easy to ascertain. It is imperative, however, to understand that the relationship exists in order to provide practitioners with a comprehensive means of identifying the challenges, demands, and opportunities needing their attention. For some organizations, it is easy to see that there is a

relationship between environmental conditions and qualitative and quantitative outputs. For Gaus, “the task of predicting the consequences of contemporary action, of providing the requisite adjustment, is immensely difficult with the individual... The difficulty increases with the size and complexity of the unit and expansion and range of variables” (Gaus, 1940, p.81). For Riggs, the ecology of public administration is more of an explanatory endeavor, while Gaus’s concerns are more akin to providing a barometer that signals the need for change. As Gaus observed, change is found in every aspect of American life and administration. As previously stated, ecology sets the parameters of action; it is both a constraint on action and a resource for action. Gaus looked to public administration “to find some new source of content, of opportunity for the individual to assert some influence on the situation in which he finds himself” (Stillman, 2010, p.81). Employing the methods of the ecology of public administration has provided the opportunity to influence and enhance administrative function and rationality. As ecological complexities increase, so does administrative function, and so begins the relationship between ecology and administration.

According to Riggs, “...important problems surface when any system’s relation to other systems of the same order is considered. These are the problems of contextual analysis. The word *context* was originally used to designate the relations between two words as they are woven together in discourse” (Riggs, 1980, p.108). Simply, it is difficult to understand the meanings of words if taken out of context – such is the case for ecology and public administration. If taken out of context, public administration is difficult to understand; ecology would have little meaning if the environment were taken out of context. For Riggs, the ecology of public administration is not concerned with the change that Gaus asserts. The ecology of public administration is an explanatory mechanism. It is only through proper understanding and explanation that change can

come about. “One word that, in context, may be used to refer to this idea is ‘interdependence.’ Interdependence, of course, also relates to relations between subsystems within a single embracing system” (Riggs, 1980, p.108). Ecology and public administration are interdependent, and understanding externalities will aid in the interpretation of internalities. The interdependent nature of ecology provides the parameters for administrative action, thus influencing the responsiveness of the administrative system, and therefore affecting administrative capacity. Not recognizing the constraints imposed by one’s environment is impossible and will only yield frustration and defeat (Riggs, 1980). Further, when speaking of the environment as a “parameter,” Riggs is referring to a “variable constant.” As previously mentioned, the environment is a constant, but in the long run, it is a variable. “To the degree that decision makers become aware of this fact, they not only take the existing environment into account, but they consider how it may be changed, inversely, how environmental transformations which are occurring by themselves may be modified” (Riggs, 1980, p.108). Working in the inverse leads to environmental administration. This is not to be confused with the administration of environmental policy; rather, it is the administration or parameter setting of ecological activity.

Considering how the environment (ecology) affects politico-administrative functions can aid the organization in influencing the environment, which promotes an environment more hospitable to proposed change. Economic policy is an attempt to condition economy with the purpose of reaching a perceived benefit. The benefit may be increased revenues, or decreases in the harms of a recession. Either way, this sort of inverse interaction signals the interconnectedness of ecology and administration. There are additional factors that affect interconnectedness and migration, such as mobility, population size, the assimilation of immigrants, and urban- or suburbanization.

Riggs further enriches this discussion by adding, “Many [scholars], while acknowledging the importance of the human (demographic) environment, draw [the] line there. They do not confront, what, to me, appears to be an equally important part of the total politico-administrative environment, namely, the cultural contents of human minds. All cultural elements parametrically, both affect and are affected by policy choices” (Riggs, 1980, p.109). Riggs provides several examples, such as technology, language, industrialization, and constitutional practices affecting the “... envired system of government...” Gaus agrees that factors such as those listed above influence ecology. According to Gaus, ecology is concerned with the development of a system from the ground up. Again, the factors believed to contribute to the ebb and flow of government are people, place, physical technology, social technology, wishes and ideas, catastrophe, and personality. These seven factors are “...illustrations of the ‘raw material of politics’ and hence administrators are in themselves the raw material of a science of administration, of that part of the science which describes and interprets why particular activities are undertaken through government and the problems of policy, organization, and management generally that result from such origins” (Gaus, 1940, p.84).

Gaus clarifies his statement by providing several axioms that he believes influence the ecology of public administration. First, the continuous discharge of certain functions is paramount to the existence of government and society. Second, as society becomes more complex, as the division of labor intensifies, as commerce increases, and as technology takes the place of “handcraft” and local self-sufficiency, the scope of government increases in relation to the fortunes of society (ecological responsiveness). Third, government operating in a complicated society, and the society itself, are strong in proportion to their capacity to administer their function. Fourth, when government provides legal (formal) changes, by discussion or open



decision, to fit social changes, effective and wise administration becomes central to the “perdurance of government and society.” Sixth, members of administrative systems must be drawn from the various classes present in the environment in which the system operates (Stillman, 2010). Lastly, administrative systems are constructed and operated to keep alive the local and individual responsibilities essential to the “basic wellspring of activity, hope, and enthusiasm necessary to popular [governance] and the following of a democratic civilization” (Beard, 1940, p.234). Again, the ecological approach to public administration is from the ground up, as Gaus explains, from the elements of place, soil, climate, and location. The concrete explanation of these environmental factors in a contextual setting will result in a cooperative and concrete testing of ecological theory. Stillman suggests that the study of public administration is difficult, as it demands a sensitive awareness of changes and maladjustment, and willingness to face the political basis of administration (Stillman, 2010). The context-based process of growth and formulation of a public policy links environment and administration (Stillman, 2010).

For Riggs, of equal importance are the value premises of contemporary culture. Values such as the women’s liberation movement, the abortion debate, homosexuality and society, and ethnic issues (e.g. immigration) suggest that problems are deeply rooted in our cultural environment, and they raise issues for policy makers to consider (Riggs, 1980, p. 109). These values have a considerable amount of influence on the execution of administrative functions and the expansion or reduction of administrative programs. In the case of the women’s liberation movement, the environment sets the parameters for change. This movement resulted in the development of policies and protections such as the Family and Medical Leave Act (FMLA), sexual harassment laws, reproductive rights, domestic and sexual violence protections, and equal pay. The gay rights movement has resulted in the repeal of Don’t Ask, Don’t Tell, has prompted

several states to allow civil unions or gay marriage, and has brought about new anti-discrimination and anti-bullying laws. The most profound example of the changing environment and subsequent changes in administrative practice is the Civil Rights Movement. Many of these reforms are the most comprehensive and substantial since the Great Depression. The previous are examples of how environmental factors play a vital role in the development, sustaining, and execution of administrative function. “As the complexities and urgencies of the environmental issues mentioned above increase, the need for formal decision-making systems capable of administering, as well as, formulating policies becomes more and more apparent” (Riggs, 1980, p.111). When environmental factors are considered in the long run, analysis of the issue and contributing factors becomes more complete – resulting in a system that can respond to environmental demand.

Administrative development involves an analysis of how existing policies and laws can be more “... effectively and efficiently implanted within the framework of established institutions, notably democracies” (Riggs, 1980, p.111). Improvement, therefore, need not be brought about by increasing the size of government, but should be the result of the refinement of organization’s scope. Although he was not the first to observe this, Riggs noted, “As the burdens placed on government increase and bureaucracies expand, all too often the quality of administration declines while corruption, time-serving, nepotism, underemployment, and various bureau-pathologies increase” (Riggs, 1980, p.111). The ecology of public administration must not be viewed solely as a constraint, but must also be hailed as a vital resource. Riggs asserts that the key is to consider how to make the best use of available resources (administrative development) and to evaluate the outcomes of such choices. Both internalities and externalities must be considered in order to improve administrative capacity. Riggs points out, “This is the

*central* import of an ecological approach to administrative development: the selection among feasible alternatives to those best calculated to serve one's purpose" (Riggs, 1980, p.111). The politico-administrative apparatus must be responsive to the evolving ecological needs of the community in which it serves.

The change adopted by the politico-administrative apparatus modifies its internalities, future needs, and alternatives. "Given this way of looking at administrative development, it is clearly impossible to prescribe universal remedies. The more traditional "principles" of public administration..." are often too generic (Riggs, 1980, p.111). Again, the ecology of public administration must be concerned with providing a range of alternatives consistent with the context of the environment. Any alternative considered must be capable of satisfying immediate needs, as well as producing sustainable responses to the current and future challenges. For example, economic policy rarely produces an immediate result; however, it is expected to produce sustainable results.

Another aspect of the ecology of public administration concerns administrative capacity. A discussion of administrative capacity requires a survey of the internalities of the administration to determine if it is equipped to deal with internal and external burdens. This is ascertained by examining the organization's level of responsiveness to its environment. It is necessary to consider whether the burdens placed on public bureaucracies can be "unloaded." According to Riggs, "More efficient movement of [services] will occur only if the load is reduced – and the long-term viability of the [public agency] also depends on user restraint in not overburdening it" (Riggs, 1980, p.112). Understanding the ecological demands placed on the politico-administrative apparatus will help to validate the organization's capacity to meet demand. Therefore, surveying the internalities of an organization, and of similar organizations, can aid the

unloading process. Only then is reorganization plausible, which is a requirement of the ecology of public administration. The increased responsiveness that results from reorganization predicated on these principles produces a process with fewer encumbrances. Moreover, the new administrative process encompasses an enhanced feedback loop that enables the organization to maintain its responsiveness to internal and external stimuli. An organization that is unwilling or incapable of engaging in comprehensive reorganization and administrative development, and is systematically unresponsive to environmental factors, ultimately becomes a hindrance to the broader politico-administrative apparatus. However, this does not mean that profound structural reforms occur in every instance of development.

The suggestion is that organizations begin to develop, provide for, and implement processes and protocols that will allow the synthesis of internal and external variables as well as produce a system of adaptation. As stated previously, the expansion of a program or public agency has been rarely the necessary or correct response in dealing with the inadequacies of the system. Additionally, the transference of public obligations to private organizations, such as the nonprofit sector, is not always viable. Riggs insists "...there are costs to society, notably in the area of social justice, when fundamental burdens are carried outside of government in the private sector" (Riggs, 1980, p.112). The private sector does not have the same ecological demands placed on it as government has. The primary mechanism for government operation and interaction with its environment is public administration. Public administration is the conduit of exchange between the environment and government, previously referred to as the politico-administrative apparatus. The private sector may not be as capable of responding to environmental demands, because an adequate feedback loop may not exist. However, to

understand fully the private sector's ability to meet ecological demands would require an observation in context, which is beyond the scope of this analysis.

Conversely, the private and nonprofit sectors are not alone in their potential inability to address the unique environmental demands of a task transferred to them. The transference of responsibility to an organization with similar design and authority can also prove unsuccessful. In the book, *This Jail For Rent: The Anatomy of a Deal Too Good to Be True*, by Linda Zupan, this very point is chronicled in the story of the Spokane County Jail in Washington state. The Spokane County Jail Commissioners agreed to a \$1.1-million-dollar-a-year contract to house inmates from the District of Columbia Department of Corrections. What started as a "simple" transfer of responsibility between two organizations of similar design and authority soon resulted in serious failures, as described here by Linda Zupan:

The contract only lasted three months. During that time, the D.C. prisoners threatened and assaulted correctional officers, set numerous fires, threw food trays, clogged toilets, destroyed jail property, and filed a slew of lawsuits against the county, alleging violations of their civil rights. Correctional officers abused and assaulted by the D.C. prisoners and concern about glaring deficiencies in the jail's safety systems, overwhelmingly voted to strike. A prominent local civil rights attorney, angered by the heartless treatment of the D.C. prisoners, filed a lawsuit against the county to force their removal. The media, sensing a controversy of grand scale, printed article after article on the problems... Finally, the District of Columbia forgot to pay its bill (Zupan, 1993, p.22).

This story serves to address the viability of the options traditionally used by correctional organizations. Although the organization may be of similar design and authority and the transferred responsibility may be the same, the outcome may be no better than the original problem. Again, the expansion of a program or public agency, or the transference of responsibility between similar organizations, is not necessarily the correct response in dealing with system inadequacies. In this case, ecological factors were assumed to be constant; both correctional facilities operated on the assumption that their environments were similar. Further,

the primary focus of the D.C. Department of Corrections was a decrease in prison population, while the Spokane County Jail focused on increased revenue. Zupan notes, “Understandably, some local officials will grasp at any alternative to defray or reduce the costs of expensive jail operations. Some will even consider turning the jail into a revenue-generating, rather than revenue-consuming, enterprise. But like most “get-rich-quick” schemes, the hidden costs were immense” (Zupan, 1993, p.23). Had both the D.C. Department of Corrections and the Spokane County Jail focused more on their administrative environments instead of on the end results, perhaps the number and severity of the resulting unintended consequences would have been lessened. The Spokane County Jail did not adequately survey internal and external variables to determine its ability to produce a system capable of responding and adapting to increased demands. Physical and procedural system inadequacies resulted in damaged property and assaults on staff, as well as serious allegations, increased legal liabilities, and an exasperated community. Nearly every part of the Spokane County Jail’s environment was affected by the decision, sustaining the argument that organizations should seriously consider ecological factors before they act.

It is clear that in order to understand administrative capacity and to engage in proper administrative development, organizations ought to consider the interdependency of their administrative environment by addressing the variables at play. Riggs asserts, “It is no longer possible simply to think about how administrative performance can be improved by taking the ‘managerial’ or ‘in-house’ approach suggested by any conventional ‘outlining’ of the problem” (Riggs, 1980, p.115). Organizations must view their administrative shortcomings and problems in a contextualized ecological framework. Ecology of public administration is, therefore, an open and responsive system, an antithesis to the traditional normative or the role-consequential

organization. The ecology of public administration is not devoid of rules or normative principle; however, it advocates for the consideration of all factors may contribute to or be affected by the outcome. The primary focus should not be projected outputs; rather, the aim is the creation of a decision-making process that emphasizes the importance of inputs. When this practice is adopted, a holistic view of public administration is achieved and a better understanding of its strategies, methodologies, and operations is possible. Nevertheless, this discussion of the ecology of public administration has not received the attention it rightfully deserves. Very little scholarly material is available to help us grasp fully the depth of the concept. It is arguable that there are only two leading scholars on the subject, Fred W. Riggs and John M. Gaus. There have been very few contributions to the discussion, so it warrants additional scholarly research and analysis. In addition to the further development of the theory, it is suggested that statistical analysis be conducted to provide the inference that such a relationship exists and the degree to which it exists.

## SECTION II: REDUCING RECIDIVISM: A LOCAL PERSPECTIVE

In order to understand the successes or limitations of the criminal justice system, it is important to examine its function. As stated earlier, the administration of justice is really a study of crime management initiatives and not standard administrative function. Therefore it is prudent that a brief survey of a crime management initiative take place. This section will briefly examine the recidivism reduction methods employed in the State of Oklahoma, in particular their effectiveness. Moreover, this section will only highlight the factors believed to contribute to high incarceration and recidivism rates. Lastly, Peak (2007) reports that there are nearly 3,098 criminal justice systems in the United States, because of this, a local perspective is provided.

It is the responsibility of state governments and their departments of correction to punish successfully and, where necessary, rehabilitate offenders in order to remerge them with society. The process known as “reintegration” is a continuous and delicate process administered by the state. This process requires the proper rehabilitation, support, and monitoring of an offender as he or she attempts to once again become a law-abiding citizen. In recent decades, the population in state prisons has risen exponentially due to a confluence of factors. Increased prison populations, coupled with the concurrent rise in administrative costs and the encumbrance on prison staff, usher the U.S. criminal justice system closer to complete inoperability. The nuances of the American penal and corrections system have compounded for decades, creating a contradictory system of statutes, a rigid adjudication process, and inadequate reintegration strategies. In the wake of these contradictions, judges have lost the discretion to determine which mitigating or aggravating circumstances ought to be considered when rendering punishment. This process is called presumptive sentencing; it gives judges very little latitude in determining the proportionality of the sentence relative to the crime committed. However, presumptive sentencing is not the sole instigator of failing correctional systems. In addition, current sentencing statutes have mounting monetary and social costs, which threaten sustainability and effectiveness. The current predication of sentencing and reintegration policy will affect their fundamental outcomes. Therefore, it is paramount that sentencing policy be guided by the principles of effectiveness, equity, and sustainability and is equally responsive to environmental demands as suggested in Section I, the Ecology of Public Administration.

#### Description of the Problem of Recidivism

According to the Oklahoma State Department of Corrections, in 2011 there were 51,771 offenders in the Oklahoma corrections system (ODOC, 2011). The corrections system includes



all offenders who are currently incarcerated or are on probation, parole, or death row. As of February 28, 2011, the Oklahoma Department of Corrections' year-to-date report contained the following facts:

General information:

- Of the 25,375 incarcerated offenders, 48.2% were convicted of committing violent crimes while 51.8% were convicted of committing nonviolent crimes including larceny, auto theft, burglary, and drug offenses.
- Of the 22,985 offenders on probation, 22.6% were convicted of committing violent crimes while 77.4% were convicted of nonviolent crimes.
- Of the 3,430 offenders on parole, 21.7% were convicted of committing violent crimes while 78.3% were convicted of committing nonviolent crimes.
- The average age of offenders was 39.2 years old.
- Recidivism Rate (within 3 years) is 23.3%.

Top Crimes

The following information is a breakdown of the specific types of crimes committed and their percentage of the total crimes committed as of February 2011. It is important to note that the majority of nonviolent drug offenses carry mandatory minimums in the state of Oklahoma. This means that offenders must serve at least 85% of their original sentences if their offenses satisfy the “presumptive sentencing scheme.”

- Distributing a Controlled Dangerous Substance accounted for 17.3% of all crimes, totaling 4,387 offenses.
- Possessing or Obtaining a Controlled Dangerous Substance accounted for 10.3% of all crimes, totaling 2,624 offenses.
- Assault accounted for 10.8% of all crimes, totaling 2,731 offenses.
- Robbery accounted for 8.7% of all crimes, totaling 2,206 offenses.
- Rape accounted for 7.6% of all crimes, totaling 1,924 offenses.
- Nonviolent Offenses accounted for 51.8% of all crimes, totaling 13,141 offenses.
- Violent Offenses accounted for 48.2% of all crimes, totaling 12,232 offenses.

Inadequacies, Inequities, and Inadaptability of Sentencing Policy

According to the U.S. Sentencing Commission (USSC), there are three major types of sentencing systems: determinate-sentencing, indeterminate sentencing, and those that apply

sentencing guidelines (Hinojosa et. al., 2009). There are also four models of punishment within the U.S. penal system that focus on: deterrence, retribution, rehabilitation, or incapacitation. Within these systems, some overlap exists; there are subsections within each sentencing system. For example, mandatory minimums are a type of sentencing belonging to the determinate sentencing system. Determinate sentencing requires a fixed period of incarceration for a particular offense, with a possible reduction for parole. Determinate sentences are evaluated and developed by state legislatures in order to affix terms for particular offenses. However, this type of sentencing can take away the latitude and discretion of judges to assess the proportionality of a sentence relative to the crime (Hinojosa et. al., 2009). Judges and juries still determine innocence or guilt, but they do not have discretion regarding the length of a sentence. Indeterminate sentencing is a system in which the legislature establishes a range of maximum and minimum terms for particular offenses. This type of sentencing allows more judicial discretion. Each case is adjudicated on an individual basis instead of classifying or generalizing offenses as required under determinate sentencing. Moreover, it allows the affixing of a proportional punishment to the particular crime. The parole board then has the authority to determine the amount of time each inmate is to be incarcerated. Both determinate and indeterminate sentences are akin to the third sentencing system, which requires certain sentencing guidelines to be met. However, sentences that fall in the third category may also include mandatory sentencing or any other sentencing system that requires judges to affix a penalty based on a predetermined set of guidelines; this does not begin to address the larger or more technical nuances of sentencing systems.

The following is a breakdown of the participation in Oklahoma-sponsored reintegration programs, or the number of offenders sentenced with alternative methods. The Oklahoma Department of Corrections released these figures on February 28, 2011.

Program participation:

- Of the 51,771 offenders in the Oklahoma corrections system, 2,145 or 4.1% are participating in substance abuse treatment programs, i.e., support groups and education programs.
- Only 927 or 1.7% of the 51,771 offenders in the Oklahoma corrections system are participating in the *Thinking for Change Program*. As reported by the National Institute of Corrections, the Thinking for Change Program (T4C) is “an integrated, cognitive behavior change program for offenders that includes cognitive restructuring, social skills development, and development of problem solving skills.” (Thigpen, Beauclair, Keiser, Guevara & Mestad, 2007).
- Of the 51,771 offenders in the Oklahoma department of corrections system, 3,074 or approximately 5.9% participated in education programs.

Community Sentencing:

- There are 18,302 offenders receiving community sentences.
- There are 2,989 offenders with active community sentences.

These figures are meant to show that, though more cost-effective sanctions are available, participation in these programs is low, and fewer are sentenced with alternative methods. Further, the programs offered do very little to successfully remerge offenders with society. T4C is designed to change the behaviors of offenders as well as address various risk factors that increase the likelihood that offenders will reoffend. But, as reported by the Oklahoma Department of Corrections, very few offenders are participating in the program. It is unclear whether participation is low because of limited space or limited funding. Despite this, it is clear that state departments of corrections must become more concerned with recidivism reduction and successful reintegration than mere punishment. Oklahoma, like many states, stands to reduce its overall operational costs if there is a renewed commitment to rehabilitate offenders. Current incarceration methods, strategies, and administrative practices do not appear to support fully the

utilization of alternative methods as primary punishments. Moreover, the programs offered to the small number of eligible offenders appear to do little to prepare, pre- and post-release. Thus, the cycle of institutionalization is unbroken, and states face a rise in both administrative and social costs at the hands of their failed strategies and practices. There must be systematic and administrative changes to combat these rooted challenges, which include changes in policy, practice, implementation, and environmental responsiveness.

### SECTION III: FEDERAL SENTENCING and POLICY REFORM

Federal sentencing policy, precedent, and constitutional requirements are the framework of the criminal justice system at any level of government. Therefore, it is necessary to discuss the impact federal initiatives have on the sustainability of the justice system. Further, this section will discuss how federal regulations contribute to the systemic limitations of local criminal justice systems. Lastly, it is important to discuss the nature of federal activities and their effect on local justice systems. Moreover, this section will discuss the ways in which local justice systems are attempting to overcome the unintended consequences caused by federal initiatives.

Criminal justice system reform concerns not only state policy and procedure, but also federal policy, as federal policy is the bedrock of many state sentencing schemes. Often, federal policy is dictatorial in that it outlines the proper behavior and processes for state criminal justice systems. This is achieved through many mediums such as policy (mandates), case law, and precedents established by federal rulings. Although these policies may be sustained on the federal level, many federal mandates cannot be successfully implemented on the local level. There are environmental factors that are unique to the federal and state criminal justice systems. Policies that are developed in one “environment” do not easily transfer to another environment; federal resources are often abundant, while state resources are limited. Moreover, there are fewer

federal crimes than there are state crimes. Simply, although federal jurisdiction is geographically larger, the majority of crimes involve violations of state law. State criminal justice systems process more cases and offenders than does the federal criminal justice system. Moreover, the federal criminal justice system is a singular system, whereas there are 50 state criminal justice systems and countless local systems, making the transplant of policy all the more difficult.

In the article, *True Crime: The New Penology and Public Discourse on Crime*, Feeley and Simon (1992) explained the “new penology” as “...concerned with techniques to identify, classify, and manage groupings sorted by dangerousness” (p.451-52). The preoccupation of criminal justice actors with the identification of new crime management techniques has resulted in crippling side effects. Prison overcrowding, strained resources, poor evaluation methods, and the loss of administrative identity and capacity have brought the system to almost complete inoperability in some instances. The McDonaldization of Punishment, as explained by Ritzer (1993), has four basic dimensions: efficiency, calculability, predictability, and control. Efficiency is described as the “tendency to choose the optimum means to a given end” (p. 372). Calculability refers to the “tendency to quantify and calculate every product and use quantity as a measure of quality” (p. 376). Predictability concerns “the preference to know what to expect at all times” (p.373). Lastly, control “...is oriented toward, and structured to expedite, control in a variety of senses” (p. 378)

David Shichor (1997) explains, “...the ‘solution’ to the ‘growing’ problem of ‘serious’ crime is the adoption of incapacitation as the leading penal policy, that is, applying more and longer prison sentences to a larger variety of offenses and offenders” (p. 477). Efficiency, therefore, centers on the ability of sentencing policy to incapacitate the large number of offenders deemed to have committed a serious offense. Calculability gave rise to the determinant

sentencing grid utilized by judges to weigh the severity of the crime committed and select from predetermined options, the appropriate punishment. Shichor (1997) noted that calculability is the measure of quality. For example, a judge's ability to affix a value to the crime committed is believed to ensure that appropriate punishment is rendered. Therefore, the focus is to remove judicial discretion as a though it is to result in incalculability and, thus, poor quality. Prediction is "often a requisite to control and is central to the application of methods to understand and control crime. If one seeks to control crime behavior, one needs to first be able to predict crime" (Gottfredson & Tonry, 1987, p.6). Lastly, control is a common feature in the criminal justice system – and logically so. However, Shichor (1997) notes that use of nonhuman technology, such as complex surveillance systems, or sentencing schemes that employ non-legal evaluative methods is an example of control. As will be discussed in the section on crime prevention, there are various models employed in criminal justice that will embody many of these characteristics, yet will produce little benefit.

### Federal Sentencing Policy

Federal statutes and sentencing guidelines provide the foundation and construct by which cases are adjudicated throughout the United States. The Sentencing Reform Act of 1984 (the "Act"), requires that federal sentencing guidelines "reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first-time offender who has not yet been convicted of a crime of violence or otherwise serious offense" (Hinojosa et. al., 2009, p. 2). However, the Act defines serious offenses in such a way that it has resulted in the opposite of its stated purpose. As previously stated, the Sentencing Reform Act is intended to elicit sentencing guidelines that provide alternative sentences to traditional imprisonment. The Act goes so far as authorizing probation as a sentencing option, rather than its

traditional use as a means of suspending prison sentences. At the same time, federal statutes and guidelines restrict the use of probation as a primary sentencing of certain offenders.

Offenders convicted of Class A or Class B felonies commit crimes that preclude probation as a primary sentence, so the defendant is sentenced to imprisonment for the offense. Class A felonies are those carrying life-or-death sentences; Class B felonies carry sentences of 25 years or more, pursuant to 18 U.S.C. § 3559. The Act further precludes probation as an option for some offenders. In contradiction to its original aim, the Act directs that sentencing guidelines provide for substantial imprisonment terms for offenders who habitually offend, have two more felony convictions, supervise or manage racketeering conspiracies, commit a crime of violence, or commit a drug offense involving substantial quantities (28 U.S.C. § 994 (i)). Passed in 1988, the Anti-Drug Abuse Amendment Act supplemented the Sentencing Reform Act of 1984 by authorizing the use of home detention and electronic monitoring for offenders sentenced to probation. However, with the existence of mandatory minimum and determinate-sentencing schemes utilized throughout the United States, the Sentencing Reform Act of 1984 and the Anti-Drug Abuse Amendment Act of 1984 rarely meet their intended aims. The United States Sentencing Commission reported that in 2007, 86.5% of offenders were sentenced to prison, while only 6.2% were given probation, and 4% were sentenced to probation and confinement. An additional 3.3% were sentenced to a split between prison and community confinement.

#### Determinate Sentencing Guidelines

Because of federal statutes and sentencing guidelines, judges are required to use a Guidelines Manual, which outlines sentence ranges based on an offender's offense level and previous criminal history. This, as previously mentioned, is a component of determinate-sentencing. Determinate sentencing requires a fixed period of incarceration for a particular

offense, with a possible reduction for parole. The United States Sentencing Guidelines Manual 2009, USSG §1B1.1 provides a sentencing table that is divided into four zones (A, B, C, and D), which determine the confinement options and their range. Specifically, sentencing guidelines determine that:

Sentence ranges in zone (A) are from zero to six months of confinement. The zero to six-month range may consist of probation (zero months of confinement), probation with confinement, and prison with community confinement, or imprisonment.

Zone (B) sentences include confinement terms from one to twelve months. Probation terms in zone (B) are allowed to be a substitute for imprisonment, so long as the term includes confinement conditions (i.e., community confinement or home detention). Zone (B) offenders sentenced to prison must serve at least one month of the total term imposed. The remainder of sentences may also include imprisonment, or a substitution of probation, which includes confinement. However, any zone (B) term of probation without confinement constitutes a departure from the sentencing guidelines.

Zone (C) sentences range from a minimum of eight to a maximum of sixteen months. The guideline further requires that sentences falling in this zone a term of imprisonment of at least half the minimum range. The remaining half of the term imposed requires supervised release (probation) with an element of community confinement (i.e., halfway houses etc.). However, the court has the option of imposing a full prison term for offenders falling in this zone. Any sentence with no term of confinement of offenders in this zone necessarily constitutes a departure from the sentencing guidelines.

Zone (D) sentencing table requires a term of imprisonment ranging from one year to life. In this zone, probation or any combination of probation and confinement as alternative sentence is not allowed. Any sentence of probation for offenders falling within this zone is seen as a departure from the sentencing guidelines (Hinojosa et. al., 2009, p. 3).

The United States Sentencing Commission notes, “Despite the availability of alternative sentencing options for nearly one-fourth of federal offenders, federal courts most often impose a prison sentence for offenders in each of the sentencing zones” (Hinojosa et. al., 2009, p. 3). Moreover, it is important to note that only about one-fourth of all offenders are eligible for alternative sentencing. This implies that the majority of offenders are committing crimes deemed



as “serious” or beyond the scope of alternative sentences. The task then is to determine which of those offenders are deemed to have committed serious, due to the harsh punitive standards outlined in legislation. Definitions or classifications of criminal codes, drug crimes, and property crimes have excluded the number of offenses eligible for alternative sentences. Offenders are not necessarily committing large numbers of especially heinous or egregious crimes that would require severe punishment. Sentencing guidelines or grids such as those outlined in the United States Sentencing Guideline Manual define crimes in such a way that alternative sentences are considered to be a “departure from, or non-guideline sentence.”

Although U.S. sentencing guidelines incorporate alternative sentences, traditional sentences are not excluded as an option. Judges are allowed the discretion to exclude alternative sentencing for offenders on their own personal assessment that alternative sentencing is not a proportional sentence. Alternative sentencing guidelines do not mandate that judges impose alternative sentencing for offenders; they provide only the opportunity of alternative sentencing. However, there are serious offenses that would preclude alternative sentencing as an option. Crimes of violence, habitual offenses, racketeering, as well as offenders with multiple felonies and drug crimes involving a substantial quantity are not eligible for alternative sentencing. These offenses are traditionally seen by society as beyond rehabilitation. Therefore, traditional sentences that are more punitive are in line with societal standards of acceptable punishment and as a result are considered proportional punishments. The United States Sentencing Commission reported the following in 2009:

Only a small proportion of federal offenders are sentenced in zones (A) (7.9%) and (B) (6.8%) and are eligible for non-prison sentences. Similarly, a small proportion of offenders (6.8%) are in zone (C) of the sentencing table and eligible for a prison term followed by community confinement. Most federal offenders (78.5%) are sentenced in zone (D) and are required to serve prison terms. The

following table graphically represents the offenders in each sentencing zone for fiscal year 2007.

As reported by the United States Sentencing Commission in 2009, nearly half (48.4%) of zone (A) offenders are sentenced to prison only, and more than one-half of both Zone B (58.4%) and zone (C) (66.4%) offenders are sentenced to prison only. As would be expected, the overwhelming majority of zone (D) offenders (94.6%) are sentenced to prison (Hinojosa et. al., 2009, p. 3).

Again, those offenders in zone (D) are required to serve prison terms, as they are not eligible for alternative sentencing. As expressed, 50,135 of the crimes committed in 2007 were so serious that the imposition of an alternative sentence to imprisonment would have not been proportional punishment. Consequently, the question becomes, is a crime considered as “serious” deserving of being excluded from alternative sentencing, or are the definitions and classifications of “serious” crimes too punitive? The question is both subjective and substantive. The redefinition and reclassification of “serious” s and their proportional punishments are capable of being as unabated as current definitions and punishments. Of equal importance, is understanding the cases in which judges have discerned that alternative sentences are not appropriate.

#### The Non-Citizen Effect

As outlined by the United States Sentencing Commission, the Non-Citizen Effect refers to the criminal alien offenders sentenced in Zones A, B, and C, composing a substantial portion of the federal caseload. The increases in criminal alien offenses affect aspects of federal detention policies due to their inability to be tried, considered, and adjudicated using standard procedures and policy. Further, the United States Sentencing Commission reported in 2007 that more than one-third (37.4%) of offenders were non-citizens, the majority of whom were illegal aliens. Explicitly, of the 72,865 offenders sentenced in fiscal year 2007, 3,346 were excluded from the calculation due to missing citizenship status. However, of the 26,016 non-citizen offenders, 80.3 percent (20,812) were in the United States illegally. Pursuant to U.S.C. § 1227,

illegal aliens are subject to deportation from the United States. As a result, the United States Bureau of Prisons assigns its second-highest level of confinement to deportable aliens, which prescribes a normal level of institutional supervision; however, this prohibits work details or programs outside the institution. This is in accordance with the United States Bureau of Prisons, Inmate Security Designation and Custody Classification Program Statement of 2006. Due to current sentencing policies, the alternative sentencing rates of U.S. citizens are different from those of non-citizens.

As has been noted, federal sentencing caseloads comprise a substantial amount of cases relating to non-citizens. As a result, proportional explanations are inflated by the data of cases that are not subject to standard sentencing policy. The data reveal that U.S. citizens are substantially more likely to receive alternative sentences than non-citizens ostensibly for the reasons discussed previously. However, when eliminating the non-citizen effect, the number of alternative sentences imposed on U.S. citizens is still considerably low. Still, when the data exclude non-citizens, U.S. citizens on average are not receiving alternative sentences to imprisonment. The rise in illegal immigration and the subsequent, more punitive immigration laws will only distort the data more. The immigration debate and the resulting policy will continue to affect the composition of prison populations as well as federal caseloads. The non-citizen effect will then become an ever-increasing concern with regard to sentencing policy. Efforts and successes in decreasing the prison population of U.S. citizens will be met by a rise in the prison population of non-citizens, thus, not resolving the growing physical and financial demands on the U.S. justice system. Sentencing reform must now also be concerned with a negative externality: how to resolve the non-citizen effect.

### Trends in Sentencing

The United States Sentencing Commission found in 2009 that “The predominance of prison sentences has been consistent and accompanied slightly increasing rates over the past ten years. [The] proportion of federal offenders sentenced to alternatives has remained low and decreased slightly with that same time period” (Hinojosa et. al., 2009, p. 5). In fact, prison rates were found to increase about 10 percentage points since 1997 from 75.4% to 85.3%. Consequently, that increase has been found to correspond with decreases in alternative sentences. Probation declined from 13.1% to 7.7%, while probation with alternative sentencing declined from 7.1% to 3.9%, and prison with alternative sentencing declined from 4.4% to 3.1%. However, the U.S. Sentencing Commission notes that the decline in alternative sentencing is attributed to non-citizen offenders in the sentencing population. Though short, this section is meant to serve as a mere statement of fact: there is a predominance of traditional prison sentences in spite of the availability of alternative sentences.

### Offense Types

The USSC further found that “Offenders committing certain types of offense more frequently receive alternative sentences” (Hinojosa et. al., 2009, p. 7). Specifically, offenders convicted of committing larceny have the greatest likelihood of receiving an alternative sentence. Nearly two-thirds (61.2%) were sentenced to prison/community split, probation with confinement, or probation. While offenders committing white-collar crimes are primarily sentenced to prison, they are also more often sentenced to alternatives. In contrast, offenders convicted of robbery (97%), drug violations (92.1%), and firearm offenses (91.8%) are sentenced to prison. This is in part due to determinate sentencing, which requires a fixed period of incarceration for a particular offense, with a possible reduction for parole. An element of determinate sentencing contributing to a predominance of prison sentences is mandatory

minimums. Although typically concerned with drug offenses, mandatory minimums force much stricter sentencing guidelines on judges, taking away any discretion. In 1986, Congress enacted mandatory minimum sentencing laws, which mandate that judges deliver fixed sentences to individuals convicted of a crime, regardless of mitigating factors. Specifically, mandatory drug sentences consider three factors: the type of drug, the quantity, and the number of prior convictions. As previously mentioned, judges are unable to consider mitigating circumstances such as the likelihood of repeat offense, role, or motive. This sort of determinate sentence exacerbates the problem of prison overcrowding because imprisonment is often the only sentence allowable. Therefore, prison populations are comprised of offenders who have committed nonviolent offenses, as they are predominately drug offenses. This then is the primary contributor to the inefficiencies of criminal justice systems across the United States.

### Sentences Imposed

Imprisonment accounts for the majority of sentences imposed despite the availability of alternative sentences. This is primarily the result of an overreliance on punitive policies and guidelines, such as mandatory minimums, determinate sentencing, three-strike laws for nonviolent offense, and the “War on Drugs” philosophy. Mitigating factors are a touchstone of due process in the U.S. justice system. Such factors are relevant in the assessment of what is a *proportional* punishment for the crime committed. Further, they have the potential to lessen the seriousness of the offense in order to provide alternative solutions (sentencing), as well as discretion to judges. In a society committed to human rights principles, the assessment of mitigating factors to ensure that punishments befit crimes is completely justified. Therefore, it follows that sentencing guidelines provide judges the discretion required to ensure that societal standards and basic legal tenets are protected.

Determinate sentencing is proven to violate and distort the nature of sentencing in the United States. Policies designed to be tough on crime (i.e., the War on Drugs policy and mandatory sentencing) have caused a shift away from the American paradigm of redemption. As previously noted, there are three models of punishment in the U.S. justice system: deterrence, retribution, and rehabilitation. Over the past two decades, sentencing policies have become less concerned with rehabilitation; they are now more concerned with deterrence and retribution. This is expected to be a contributing factor in the rise in prison population and the subsequent rise in administrative costs. The current sentencing policy mandates only one thing, the length of a prison sentence. However, it does not mandate that, in cases where an alternative sentence would prove equally effective, such a sentence be issued. In 2009, the United States Sentencing Commission reported that:

Prison sentences account for 81.1 percent of sentences imposed for United States citizens in fiscal year 2007. The remaining sentences are probation (8.4%), probation with confinement (5.8%), and prison split with community confinement (4.7%). For United States citizens, the average prison sentence is 76 months. The average prison sentence for offenders sentenced to prison/community split is nine months. Average sentence lengths for the two categories of offenders sentenced to probation are about three years; the average term for offenders sentenced to probation only is 33 months, and the average for offenders sentenced to probation with confinement is 39 months. Home confinement is the most commonly imposed alternative sentence. Three-quarters (74.0%) of offenders sentenced to prison/community split are sentenced to home confinement. A substantial proportion (23.0%) also is sentenced to community confinement (*i.e.*, residence in a community treatment center, halfway house, or similar facility). Prison/community split sentences average nine months of prison and six months of alternative confinement. Nearly all (90.0%) offenders sentenced to probation with confinement received home confinement. Probation and confinement sentences average six months confinement and 39 months of overall probation (Hinojosa et. al., 2009, p. 10).

Monetary penalties (such as fines, restitution, and court costs) were reportedly imposed on one-third of U.S. citizen offenders in fiscal year 2007 and are more common penalties for

offenders sentenced to alternatives. The United States Sentencing Commission further reported in 2009 that:

Two-thirds of offenders sentenced to probation (64.9%) and offenders sentenced to probation with confinement (62.9%) have monetary penalties imposed. Half (50.1%) of offenders sentenced to prison/community split are ordered to pay monetary penalties. In contrast, less than one-third (28.5%) of offenders sentenced to prison also are ordered to pay monetary penalties. The median monetary penalties (for those offenders ordered to pay them) range from \$3,834 for offenders sentenced to probation, to \$20,568 for offenders sentenced to prison/community split (Hinojosa et. al., 2009, p. 10).

When considering the effectiveness of monetary penalties as an alternative, several things must be considered. Therefore, it is suggested that a cost-benefit analysis be done to determine the potential risks or monetary gains. Risk could be defined as the likelihood of recidivism due to the gentle nature of monetary penalties relative to more traditional sentences.

#### Sentences Relative to Guideline Range

Another indicator of a problem inherent within the sentencing policy is the need for judges to deviate. The United States Sentencing Commission (2009) reports that “More than half (59.7%) of sentences imposed on U.S. Citizens for fiscal year 2007 [were] within the guideline range” (Hinojosa et. al., 2009, p. 10). The remaining portion of that number were sentences that were “below-range” or “departed” from sentencing guidelines. Deviations from sentencing guidelines were justified by judges citing factors in the United States Sentencing Reform Act of 1984. The three most common factors were: (1) to take into account the nature and circumstances of the offense and the history and characteristics of the defendant; (2) to reflect the seriousness of the offense/to promote respect for the law/ to provide just punishment for the offense; and (3) to afford adequate deterrence to criminal conduct. The U. S. Sentencing Commission further noted that, “Judges also cite similar reasons identified by Congress; they were: to protect the public from further crimes of the defendant; to avoid unwarranted sentence

disparities among defendants with similar records who have been found guilty of similar conduct; to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and to provide restitution to any victims of the offense” (Hinojosa et. al., 2009, p. 11).

All of these justifications for departing from sentencing guidelines reflect a tone of reverence to several key tenets of justice mentioned earlier. A major failure of current sentencing guidelines is the inability to consider mitigating circumstances. Another is the disregard of society’s dedication to human rights principles. Moreover, there seems to be little regard for the concept of proportionality and rehabilitation. Judges have identified many reasons to depart from the current sentencing guidelines. Yet, any glimpse of positive change is challenged by continued faith in the notion that a deterrence model of punishment is still the most appropriate.

### Evaluating Alternatives

The criteria that should be used to evaluate proposed policy alternatives are accountability, equity/ethics, efficiency, effectiveness, economic viability, and political and technical feasibility. Patton and Sawicki (1986), suggest that analysts establish criteria to evaluate alternatives. The criteria previously identified are conventionally used in policy evaluation (e.g. Bardach, 2011). They are used to weigh and rank the various alternatives under consideration. It is important to note that in order to develop a range of alternatives, the policy analyst must first objectively define the problem. As Clemmons and McBeth (2008) explain, definitions determine what, if any, policies are implemented. Moreover, varying definitions lead to varying policies. Additionally, analysts are advised to research the problem and determine its location, its history, and its time frame. They must also develop a fact-base, i.e., research utilization (discussed later), and operationalize terms. Lastly, the way the problem is stated should ultimately lead to action (Clemmons & McBeth, 2008). Policy alternatives must also



satisfy four key standards: (1) the proposed punishment fits the crime (proportionality); (2) the punishment is consistent with modern thought (human rights); (3) the proposed punishment should consider the rights of the victim as well as those of the accused (mitigating factors); (4) the punishment should be sustainable and responsive; and (5) the alternative should be executable within a bureaucratic setting. To satisfy the suggestions made in this section, Weimer and Vining (1999) provide several options; including the use of best practices, the use of experts, client orientation (stakeholder analysis), incrementalism, research utilization, use of generic solutions such as deregulation, or do nothing (take no action).

Equity and ethics are grouped together because of their similar ability to determine which policy alternatives are proportional to a crime; moreover, they ensure equitable application of the law. Equity and ethics were also used in evaluating whether the proposed policy alternatives reflected a societal commitment to human rights and just treatment. Sustainability concerns the systematic, procedural, and technical aspects of the proposed policy alternatives, i.e., sentencing guidelines, overhead costs, and the required composition and levels of staff. Technical feasibility should also be applied to determine whether the proposed policy alternatives are executable within the bureaucratic system. Mitigating circumstances were not considered during this analysis as they are evaluated best through more specialized and traditional means, i.e., the adjudication process. Political viability is the least important because the implementation of crime management strategies, sentencing policy, and other legal guidelines should be objectively evaluated to determine their effectiveness; this point will be discussed in detail later. Further, the judicial system is to be apolitical; therefore, the analysis of political viability after a policy or program has been initiated becomes less relevant of the discussion of the administrative justice. Due to the adjudication process being concerned primarily with the neutral application of law,

the belief that policy influences the process is of a deeper legal or constitutional concern. The potential for politics to influence the adoption of an alternative must be carefully measured.

It is important, as expressed in the section of the ecology of administration, to consider environmental factors. Because the average citizen is typically unaware or is incapable of understanding the technical nuances of law – and, therefore, the administration of justice – a vital check on administrative behavior is weakened. Often, if attempts at sentencing reform are defeated, it is the result of a political force or a judicial opinion; as there have been few instances of the public determining sentencing policy or crime prevention methods. These methods are traditionally relied on in the criminal justice system; however, there is a slow emergence of new methods. The following policy alternatives are concerned primarily with pragmatic changes, and less so with subjectivity or political speculation.

### Policy Alternatives

The proposed policy alternatives can be divided into three general categories that aim to redefine and reclassify offenses: (1) reduce the length of prison sentences; (2) strengthen alternatives to incarceration; and (3) incorporate evidence-based policy. Within each section are specific policy alternatives, which have been enacted throughout the United States over the past decade, with proven success.

#### (1) Redefine and Reclassify Criminal Offenses:

Redefining or reclassifying crimes would substantively change criminal codes in a manner that would warrant shorter sentences. This sort of reform would bring proportionality back to the criminal justice system by reducing the number of and the length of imprisonment for nonviolent, “low-level” offenders. In addition, a few states are noted as going beyond the basic

redefinition of criminal codes by establishing sentencing review boards whose purpose is to review the criminal code and make policy recommendations (Austin, 2010).

As previously mentioned, changes to criminal codes must be substantive; there must be additional mechanisms in place that aid in the continued development and monitoring of the initiatives. For example, the state of Colorado, pursuant to HB 1352, 2010, reclassified drug offenses by “lowering the classification levels for possessing a controlled substance other than marijuana”. For instance, “possession of Schedule I or II controlled substances was lowered from Class 3-4 to Class 4-6, threshold quantity demarcations for possession of controlled substances were increased from one gram to four grams, and possession of Schedule III and IV controlled substances were reclassified from felonies to misdemeanors. The law substantially changed offenses related to marijuana with regard to the amount required to constitute a crime and it lowered associated penalties” (Austin, 2010, p.6).

Many states, like Colorado, have already endowed boards or commissions with the authority and task of reviewing criminal codes and making recommendations. State sentencing commissions often establish policies that require the regular review of criminal codes to ensure that they meet their intended design. However, in order for these commissions to engage effective monitoring, states and local governments must first have a comprehensive, integrated system of reporting. According to Colorado’s the fiscal impact statement, the law is projected to save \$1,468,196 in FY 2010–2011, and \$6,156,118 in FY 2011–2010. The legislation required these savings to be reinvested in the Drug Offender Treatment Fund (Austin, 2010).

Given the creation of endowed boards and commissions in many states, there should be a more focused effort to reclassify criminal codes with the aim of altering the threshold of serious offenses. The design should be one that excludes harsh punishment for low-level, nonviolent

offenders, for instance, reclassifying drug offenses so that marijuana-related offenses are no longer felonies requiring imprisonment. This would include reducing or eliminating mandatory minimum sentences or redefining them in such a way that they are deemed proportional to crimes that are more serious. Eliminating the use of three-strike laws when considering nonviolent or low-level cases or eliminating them all together is also advisable. There should also be a review and/or reclassification of penalties with regard to simple assault cases where serious injury was not proven as intentional. Another component, which should accompany a proposed change to sentencing guidelines, is the mandatory regular review of criminal codes in each state. Moreover, sentencing trends should be regularly reported to ensure the continuous assessment of policies and programs. This should include analysis of sentencing trends, in traditionally poor or underdeveloped areas, areas with high concentrations of minorities, and the composition of offenders and the sentences imposed. Further, state sentencing commissions should be held liable for not maintaining accurate data and information, which prevents the development of substantive, timely policy recommendations.

Drug crime definitions must be reformed in a similar manner to criminal codes because drug crimes are subject to the guidelines of the criminal code. The solution to reducing the high number of drug offenses committed requires a reclassification of the offense. The primary and most viable alternative here is to reduce the classification of possessing a controlled substance; this includes mandatory minimum laws as a component of reclassification. For example, Colorado reclassified drug possession pursuant to SB 318, 2003, which established that: possession of less than a gram of Schedule I or II drugs to Class 6 (lowest felony class) for first offenders; and downgraded possession of less than a gram of Schedule I or II drugs from Class 2

to Class 4 for repeat offenders (Austin, 2010). These types of reforms can also incorporate reducing the penalty for possessing drug paraphernalia, regardless of the alleged or intended use.

This policy alternative also targets penalties imposed for low-level property offenses. Alternative policies concerning property offenses seek to reclassify and increase for the thresholds for the class of felonies that constitute serious offenses. This is as simple as increasing felony thresholds. This can be as simple as reclassifying and shifting the threshold of a Class B felony from \$1,500 to \$2,000. However, reforms such as these are typically used only when reclassifying low-level property crimes. Other property crime thresholds typically remain unaffected because they comprise so few criminal cases and because the punishments for property crimes are not seen as disproportionate. Penalties for property crimes are monetary penalties, community service, or short prison sentences.

## (2) Reduce Prison Terms

Policy alternatives in this section vary greatly, depending on the type of offense being considered. The alternatives include shortening criminal sentences for particular offenses, i.e., the repeal of mandatory minimum laws or the modification of other determinate-sentences schemes. Additionally, evidence-based prison completion programs are known to reduce recidivism and are widely accepted as a means in accelerating sentence completion rates. For the purposes of this analysis, the policy alternative suggested here would require both of these elements as well as a mechanism that would work to shorten the sentence length for nonviolent offenders.

In 2009, the State of New York revised its Rockefeller Drug Laws (S 56-B), ushering in one of the most comprehensive and effective reforms of mandatory minimum law. For this

reason, the New York Rockefeller Drug Law will serve as a proposed policy alternative. The policy accomplished the following:

The state eliminated mandatory minimums and restored judicial discretion in low-level drug cases. Prison is no longer mandatory for

- First-time, nonviolent Class B, C, D, and E felonies;
- Second-time, nonviolent Class C, D, and E felonies; or
- Second-time, nonviolent Class B felonies in which the offender is deemed by a drug treatment counselor to be drug-dependent or to have abused alcohol or drugs.

Additionally, the reforms:

- Reduced the minimum penalty for Class B felonies from three years to two years;
- Sealed records for drug offenses and some non-drug, nonviolent offenses—upon successful completion of treatment;
- Invested \$71 million to expand drug treatment and alternatives to incarceration;
- Authorized judges to retroactively release approximately 1,500 incarcerated offenders; and
- Left intact mandatory minimums for second-time Class B felonies if the defendant was convicted of, or had pending, a violent felony in the previous 10 years; and Class A-I and A-II felonies (Austin, 2010, p. 12).

Another alternative would be the creation of policies that expand discharge options of offenders. This, in conjunction with relaxed or repealed mandatory minimum sentences, prison sentence acceleration programs, and reclassified offenses, should serve to greatly reduce the present and future demands of the criminal justice system. Expanded discharge options include supervised community release (i.e., halfway houses), as well as mandatory participation in drug treatment programs. For example, Wyoming’s unique Recidivism Risk Reduction Incentive (AB 500, 2009) grants judges the option of sentencing offenders to an early “risk reduction” release date, which allows offenders who successfully complete required prison programs to be released prior to the expiration of their sentences. Following an intake assessment, the Department of Corrections determines which prison programs are required (Austin, 2010). Another policy alternative is to enhance current “good time” credit policies, which allow for reduced sentences

in exchange for the good behavior of the offender. These types of credits can help increase the completion rates of sentences and prepare offenders for a more positive prison experience prior to returning to society.

### (3) Strengthen Alternatives to Incarceration

This policy alternative provides for enhanced or mandated substance abuse treatment, mandated evidence-based supervision, the use of performance incentive funding, and expanded court-monitored treatment. Further, the the inclusion of all these components in likely to provide a more comprehensive sentencing structure. For example, Texas increased treatment resources through its Justice Reinvestment Initiative of 2007. The initiative reinvested \$241 million from averted prison growth to expand substance abuse treatment and transitional reentry programs. It further provided:

- Prison/jail substance abuse treatment: 500 beds for in-prison treatment targeting DWI offenders, 1,200 slots for intensive substance abuse treatment in the state jail system.
- Reentry transition: 300 beds in halfway houses for parole reentry; 1,000 slots for in-prison to post-prison substance abuse treatment programs.
- Community substance abuse treatment: 800 inpatient beds and 3,000 outpatient slots for probationers; 1,500 inpatient beds for the Substance Abuse Felony Punishment, a program that provides six months secure inpatient treatment and three months non-secure residential transitional treatment for probationers and parolees who have violated their supervision terms (Austin, 2010, p. 8).

As a result, Texas immediately saved \$210.5 million for the 2008–2009 fiscal year. From 2006 to 2008, probation revocations to prison declined by 4%, and parole revocations decreased by 25 percent. The parole board’s rate of approval for supervised releases rose by 5% (Austin, 2010). This policy included all of the previously outlined elements that helped decrease the prison population, provided substance abuse treatment, mandated supervision, and, most importantly, reduced parole revocations.

Performance funding incentives provide another mechanism for strengthening alternatives to incarceration. These incentives consist of financial rewards to probation agencies that reduce the recidivism rates of people under their supervision. These bills often contain a

reinvestment mechanism, mandating that the cost savings generated from prison diversions be redirected into a fund that supports evidence-based supervision reforms and human services such as substance abuse treatment (Austin, 2010). For example, Arizona created the Performance Incentive Funding Program (SB 1476, 2008). The law established an Adult Probation Services Fund for counties and awards them 40% of any costs they avoid by reducing the percentage of probationers who return to prison for technical offenses or new convictions. The law authorizes counties to direct these cost savings toward three areas:

- Increasing the availability of substance abuse treatment programs for probationers;
- Increasing the availability of risk-reduction programs and interventions for probationers; and
- Providing grants to nonprofit victims' services organizations (Austin, 2010, p. 9-10).

There are many similar state programs aiming to reduce recidivism rates while promoting increased accountability on the part of probation agencies. More efficient policies have resulted in increased cost savings, which are reinvested to develop further programs.

#### Evaluation and Selection of Policy, and Recommendation

As outlined, current sentencing guidelines are flawed throughout, imposing seemingly insurmountable challenges in the path of administration, adjudication, and policy formulation. Continuation of such a policy threatens to destabilize other criminal justice systems across the country. Increased monetary demands, overburdened staff, and mounting political pressures threaten total collapse. Comprehensive, substantive changes must be made in order to bring the entire criminal justice system to its required performance level. Because of the dysfunctional nature of sentencing in the United States, widespread reform is required. This demands that policy alternatives take on a holistic approach in order to identify the damage done by decades of punitive sentencing. Due to systemic damage, an incremental yet comprehensive policy alternative is often the only viable solution. The literature on sentencing policy most commonly



recommends the following alternatives: normally advocating the redefinition and reclassification of criminal offenses, specifically criminal codes, drug crimes, and property crimes. This also includes the reduction of prison terms by: (1) relaxing or repealing mandatory minimum laws, (2) expanding discharge options for certain types of criminal offenses, and (3) shortening the sentence length for nonviolent offenses. The final component in sentencing reform calls for the strengthening of alternatives to incarceration, such as: enhancing substance abuse treatment options; mandating evidence-based supervision; establishing performance incentive funding for states; and expanding or enhancing court-monitored treatment programs. It is possible that the use of only one of these policy alternatives without the incremental incorporation of the other parts could potentially prove successful. However, the proposed alternatives are viable if administrators and practitioners remain committed to providing a balance between the principles of deterrence, retribution, and rehabilitation. The above policies, as a whole, promote such an environment.

When evaluating the policy alternatives, the criteria should measure whether or not there would be a balance among the alternatives. This analysis is concerned with four primary standards in conjunction with each independent criterion. These standards were: what punishment fits the crime (proportionality); what modes of punishment are acceptable in modern society (human rights); what modes of punishment considers (to some degree) the rights of the victim as well as those of the accused (mitigating factors); and how sustainable are the alternatives (i.e., economically, technically and socially). Prior to the 1984 Sentencing Reform Act, for example, Frost (1983) examined mandatory sentencing laws, and found that:

...they tend to induce dismissals, acquittals, and other outcomes that make laws ineffective, so that the longer average sentences for those convicted are approximately offset by increases in the number of persons not convicted and

sentenced. Thus, sentencing disparity actually increases under mandatory sentencing.

The criminal justice system must become concerned with the universal principle of effective administration. A continued willingness to rely on punitive sentencing poses a grave threat to the sustainability of the criminal justice system. The current administrative methods employed in the justice system make it difficult to evaluate whether this new penology is producing a desirable outcome. Policies and methods that do not meet their intended aims, exacerbate sentencing disparities, increase costs, or cannot properly be evaluated should be reformed. However, the limitations of the administration of justice make it difficult to determine the best means for evaluating the effectiveness of the current sentencing scheme. There is no standardized method of reporting across the various levels of criminal justice. The most comprehensive reporting system is found at the federal level, as there are many agencies and commissions devoted to the oversight and monitoring of criminal justice. Reporting on the state and local level is not consistent as these systems often face insurmountable limitations, such as severe decreases in the budget, the workforce, and other resources. Many criminal justice systems are facing decreases in resources, increased demands, and lessened public support. This is even more reason for the justice system to become more concerned with efficient management techniques rather than focusing solely on crime prevention, recidivism, and incarceration of low-level offenders.

#### SECTION IV: CRIME PREVENTION, EVALUATION, and EVIDENCE-BASED PRACTICE

Again, it is important to measure the effectiveness of any organization, and in the case of the justice system, this is achieved through evaluating the effectiveness of crime prevention methods. Further, it is important to not just survey the effectiveness of conventional crime prevention methods, it is also important to consider the management of the initiative. The

primary aim of this research is to examine the administrative methods used in the management of justice system functions. This section will also discuss the evaluations methods used in the justice system, as well as the utility of evidence-based practices.

Eckblom and Pease (2005), “Crime prevention is intervention in the causes of criminal and disorderly events to reduce the risks of their occurrence and/or the potential seriousness of their consequences” (p. 204). Moreover, crime prevention and sentencing policy are inextricably linked; in order for sentencing policy to be effective, it must not only provide a means for punishment, but must also meet the standard of crime prevention. The purpose of any preventive measure is to produce a projected outcome. Crime prevention may aim to reduce crime in a geographic area, it may be an effort to prevent drug trafficking, or it may seem to reduce the number of domestic-violence cases each year. Whatever the purpose, it is imperative that the problem be solved as well as the program objective being clearly defined. As Eugene Bardach (2005) notes in *A Practical Guide to Policy Analysis*, the way in which the problem is defined gives “...both a reason for doing the work necessary to complete the project and a sense of direction for your evidence-gathering activity” (p. 57). In public administration, and hopefully in the administration of justice, definitions are used in the consideration of problems to help describe the problem, explain the factors believed to contribute to the problem, and predict potential outcomes (Clemmons & McBeth, 2007). Crime prevention is not immune to this simple requirement; however, in the examination of crime prevention literature, this requirement is not satisfied very well. In his discussion of evaluation methods in crime prevention, Stephen Lab (2007) focused primarily on three areas; they are: (1) the different types of evaluations available; (2) theoretical and measurement problems; and (3) the foundation for understanding the importance of evaluation in crime prevention. However, before evaluation methods can be

discussed, it is important to survey the types of crime prevention in order to understand the successes and limitations of evaluation methods in this context.

There are three approaches to crime prevention. Each of these three approaches to prevention addresses crime at different stages (Lab, 2007). The first approach, primary prevention, aims to prevent the initial development of crime in a community. This includes addressing environmental factors such as high unemployment, inadequate housing, low levels of educational attainment, and other socioeconomic variables that are believed to contribute to the committing of a crime. However, to achieve the objective of primary prevention, criminologists would need to conduct “cross-level analysis.” The goal of cross-level analysis, as explained by Janet B. Johnson and H. T. Reynolds (2005), “[uses] data collected for one unit of analysis to make inferences about another unit of analysis” (p. 120). This method examines data to describe relationships, often stereotypically, to make an ecological inference; that is “... the use of aggregate data to study the behavior of individuals” (Johnson & Reynolds, 2005, p. 120). In this case, the intent is to examine aggregate socioeconomic data to determine the likelihood that an area will have high instances of crime, inferring that the individuals in that area are potential criminals. However, engaging in such a practice can lead to decision makers committing an “ecological fallacy,” that is, assuming that the individual has the same characteristics as the entire group. Johnson and Reynolds (2005) explain, “Yet, if a relationship is found between group indicators or characteristics, it does not necessarily mean that there is a relationship between the characteristics for individuals in the group” (p.121). In this case, although socioeconomic data suggest that an area is susceptible to frequent crime, individuals cannot be characterized adequately as potential criminals. Johnson and Reynolds (2005) explain that “Using information that shows a relationship for groups to infer that there is the same

relationship for individuals when, in fact, there is no such relationship at the individual level is called an ecological fallacy” (Johnson & Reynolds, 2005, p. 121). Further, it is an unfair assumption that an area with poor socioeconomic conditions is more likely to have higher crime rates than another area. This approach, as described, does not consider “time” or the history of the area. An area facing tough socioeconomic conditions may be in a temporary period of turmoil, as tough economic conditions may have caused temporary circumstances, such as high unemployment, the loss of adequate housing, and the temporary suspension of one’s educational pursuits. Historically speaking, an area may not traditionally face such tough circumstances; rather, the socioeconomic decline was triggered by a recession. Further, it is unclear if this prevention approach considers whether the poor socioeconomic conditions are generational or a relatively new occurrence. Moreover, the line of demarcation is unclear as to specifically what constitutes poor socioeconomic conditions. Primary crime prevention provides no feedback loop to allow the proper evaluation of community crime prevention efforts.

Secondary prevention methods focus on the individual and situations that initiate criminal behavior. Secondary prevention “engages in early identification of potential offenders and seeks to intervene” (Brantingham and Faust, 1976). As Lab (2007) notes, secondary prevention seeks to identify existing problems and attempts to intervene prior to the commission of a crime. This approach, however, is questionable, as it would require considerable foresight into the behaviors of individuals. Without prior contact with any agent of the criminal justice system, it is nearly impossible to know if an individual is inclined to commit a crime. Further, it is arguable that engaging in such preventive activities would require the profiling of individuals in order to determine if they are inclined to commit crimes. It is never clearly stated how secondary crime prevention, as Brantingham and Faust suggested in 1976, “engages in early identification of

potential offenders.” According to Lab (2007), “implicit” in this approach is the “ability to identify correctly and predict problem people and situations” (p. 26). Prevention predicated on prediction, if possible, violates the sixth, seventh, and fourteenth amendments of the U.S. Constitution by assuming guilt in the process of “identifying problem people.” Furthermore, to suggest the subscription to or execution of such a preventive measure is antithetical to the intent of the criminal justice system.

Tertiary crime prevention, the third approach, “... deals with actual offenders and involves intervention ... in such a fashion that they will not commit further offenses” (Lab, 2007, p. 27). Further, tertiary prevention is described as including the arrest, prosecution, incapacitation, or rehabilitation of offenders, which comprise the normal function of the criminal justice system. However, it is debatable if tertiary prevention is an actual prevention method, as the “prevention” takes place once an individual enters the system. Prevention methods should precede contact with formal criminal justice actors, not during or after. Once an individual formally interacts with the criminal justice system, i.e., is arrested, prosecuted, and is subject to formal corrections, the focus shifts from prevention to recidivism reduction. That is, the focus shifts to identifying “high-risk offenders,” those likely to reoffend, with the intent to determine the best way to handle the offender. Often the preventive aspect of tertiary prevention is the offender’s natural aversion to the system, resulting from the initial contact with criminal justice actors – not as a result of intent or design.

Therefore, it is suggested here that tertiary prevention is not a traditional preventive measure; rather, it is the offender’s aversion that deters the committing of future crimes. As previously mentioned, there is little agreement regarding the intent of the criminal justice system. If the intent of the system is to punish or incapacitate, then very little prevention takes place, as

criminal justice system actors are not actively applying preventive techniques. Again, the offender's natural aversion to incarceration often prevents a future offense. If, however, the criminal justice system's primary aim is the rehabilitation, treatment, and reemergence of offenders with society, this could constitute prevention because a skilled professional actively employs methods believed, designed, or known to prevent future offenses. Unless and until the objectives of the criminal justice system are known, it is inappropriate to assert that tertiary prevention and the criminal justice system are linked. Lastly, evidence must be provided to prove that the preventive measures employed are successful in preventing future offenses.

### Evaluating Crime Prevention

As with any government program, it is essential to evaluate regularly the effectiveness and responsiveness of public programs and services. Rossi, Lipsey, and Freeman (2004) explain, In public administration, program evaluation uses research methods (quantitative/qualitative) to evaluate the effectiveness and sustainability of programs by assessing inputs, outputs, and outcomes, in order to diagnose potential problems and gauge program responsiveness for better implementation. However, Lab (2007) notes, that the evaluation of crime prevention "...refers to investigating the impact of a prevention technique or intervention on the level of subsequent crime" (p. 32). The goal of prevention evaluation, according to Ekblom and Pease (1995), is to understand the implementation of the intervention and its bearing on society. Further, crime prevention methods are assessed using two forms of evaluation: impact evaluation and process evaluation.

Impact evaluation concerns the changes that occur within society because of the implementation of prevention methods, including prevention policies such as those discussed previously. However, impact evaluation is characterized as difficult due to the dynamic nature of

crime prevention methods (Lab, 2007). Crime prevention, like many other public initiatives, incorporates a vast array of resources, functions, and policies, and often comes to fruition only as a result of much collaboration. Lab (2007) notes that “The problem for evaluators is identifying which of the many prevention activities is responsible for the observed changes (if any)” (p.33). It is asserted here that proper evaluation considers environmental factors (ecology, public opinion, geographic location, political support), the structure of the organization, collaborative efforts, the decision-making process, allocated resources, administrative process, and stakeholder support, to name a few. Another obstacle, according to Lab (2007), is that “...the target of [crime prevention] initiatives is a neighborhood or other geographic location,” thus making it the unit of analysis” (p.33). The problem arises when the research begins to evaluate the multivariate nature of a neighborhood, and then it becomes difficult to determine what variables, internal or external, influence the neighborhood and, thus, community programs. Simply, and as Lab (2007) explains, neighborhoods as a unit of analysis cannot be isolated, making it hard to identify what factors influence crime rates.

As previously mentioned, primary crime prevention attempts to address factors believed to contribute to crime, such as high unemployment, inadequate housing, and low levels of educational attainment, etc. Yet it is a challenge to identify and isolate the various factors that contribute to crime. Further, the presence of the same variables, to the same degree, in different neighborhoods may not affect crime prevention initiatives or contribute to the crime rate for that area. Simply, neighborhoods with high unemployment are not necessarily susceptible to crime, nor are the unemployed necessarily more prone to commit a crime. For example, rural communities, per capita, typically have lower average household incomes, lower levels of educational attainment, and lower property values. In 2001, the United States Department of



Agriculture reported in its Rural Conditions and Trends (RCaT) report, that “Rural areas lag urban areas on many indicators” (Bowers, Cook and Gibbs, 2001, p.5). The report went on to note that “Even in the face of favorable economic conditions, rural areas lagged urban areas on many indicators. Following a longstanding trend, poverty rates were two percentage points higher in rural than in urban areas.” However, the National Institute of Justice has reported, “Most research concludes that crime is less frequent in rural areas, and it is often speculated that greater informal controls in rural areas protect against high crime rates” (Weisheit, Falcone & Wells, 1994, p.1). There are various indicators that suggest that impact analysis of crime prevention initiatives is a weak means of assessment.

Despite the limitations of impact evaluation, Stephen Lab (2007) asserts that the previous method does contribute to the assessment of crime prevention initiatives when used in conjunction with process evaluation. The latter is said to consider the implementation of a crime prevention initiative and aids in the determination of the procedures necessary for successful implementation. Process evaluation, according to Lab (2007), considers the interplay of the numerous variables that influence the initial goals of the prevention initiative as well as the implementation of the initiative to its completion. The factors typically considered are the mission/goals of the program, the level and quality of program staff, the funding and other resources of the program, and the obstacles faced in the implementation and sustaining the initiative (Lab, 2007). Moreover, the degree to which the project is carried out as planned, the level of support for the programs, the degree to which the clients complied with the intervention, the quality of the data gathered, and any changes made in the program over time are considered (Lab, 2007).

Although seemingly comprehensive, several key considerations are missing. Most notable in this regard is the suggestion that there is never a discussion of how the initiative is selected. In public administration, proposed initiatives are weighed against a series of criteria, and ranges of alternatives are produced. Then statistical methods are used to aid in the determination of the most viable options; from this, the correct alternative is selected. It appears, at least when considering crime prevention initiatives, that the initiatives are designed by the decision maker and are employed and assessed during and after the fact. In public administration, evaluation takes place before, during, and after. The purpose of process evaluation in crime prevention, as noted by Lab (2007), is "...pivotal in answering questions about the context of an intervention and what actually took place in the initiative" (p.33). However, it is important to note that process analysis cannot explain the degree to which an initiative or program did or did not work. As explained previously, impact analysis is the process most often used to determine the effectiveness of crime prevention methods. Yet again, these methods are weak in meeting this aim, as there are too many considerations not discussed. Although process evaluations are conducted, the intent of crime prevention initiatives is to produce a desired outcome. Therefore, outcomes are of primary importance and process is only evaluated to ensure that the desired outcomes are achieved. There is a confluence of factors that influence program outcomes, such as political and public discourse, economics, case law and precedent, and geographic location, to name a few. It cannot be stressed enough that intergovernmental collaboration, technical administrative mechanisms, the use of empirical research, and the quality of methodological instruments equally affect program outcomes. However, these factors rarely take center stage in criminal justice literature, making it difficult for external evaluation of the criminal justice processes.

Though it is not easy to determine the impact of crime prevention initiatives, Lab (2007) identified several key reasons that process evaluations remain useful. First, process evaluation's indicators are often the catalyst for outcome studies. Second, process evaluations provide the context of the intervention, and provide additional insight into the problem, what took place during the intervention, operational methods used in the program, and whether the intervention method can be used in another location or time. This means "...process evaluation provides insight into the potential generalizability of the intervention" (Lab, 2007, p.35). However, the ability to generalize the usefulness of an intervention (prevention initiative) is questionable. As expressed in the discussion of impact evaluation, there are often conditions unique to a geographic location that are unidentifiable. The uniqueness, or ecology of an area, can prevent the generalizability of such a tailored program or initiative. Crime prevention methods, i.e., primary, secondary, and tertiary, are unique and specific in design, without knowing all the variables that contribute to the successful implementation of a prevention initiative, generalization is difficult to justify. It is argued that there are various social, physical, and situational factors that affect the utility of a prevention program (Eckblom and Tilley, 2002). Despite these concerns, it is believed that, if used in conjunction with impact evaluation, a process evaluation provides valuable information concerning the various factors that influence prevention initiatives. Of more concern, and systemic in criminal justice literature, is the inability of scholars to propose innovations or reforms to the methods identified as insufficient in meeting their intended design.

However, there are additional methods used in the assessment of crime prevention. Cost-benefit evaluation assesses whether incurred costs are justified by the quantified benefits or outcomes that result from the implantation of a program. Steven Lab (2007) describes cost-

benefit evaluation as "...a form of process evaluation that requires that an impact evaluation be completed at the same time." He continues, "...you cannot determine whether the costs are justified if you do not measure the ability of the program to bring about the expected change" (p.35). Again, this depicts an unhealthy commitment to processes that are not necessarily consistent with crime prevention, and the assertion made here is later contradicted by Lab. "Undertaking cost-benefit analysis in crime prevention and criminal justice poses problems not always found in other disciplines. The largest problem involves placing monetary values on factors that are not easily enumerated" (Lab, 2007, p.35). For example, "doing justice" as previously suggested by Charles Logan (1993), and other factors traditionally considered in crime prevention, such as fear, emotional distress, or successful thwarted crimes, cannot be assessed using cost-benefit methods. However, as mentioned previously, the case is made for the regular use of these methods in the evaluation of crime prevention initiatives.

There are also theoretical limitations in crime prevention evaluation. Most notable, crime prevention programs are said to be implemented and evaluated in a "theoretical vacuum" (Holcomb & Lab, 2003). Simply, it is not uncommon throughout the implementation of crime prevention initiatives for the theoretical foundation of the initiative to be ignored. The theoretical foundation of crime prevention initiatives both defines and prescribes what activities are necessary to achieve the desired outcome. If theory is ignored, it is possible that the overall model of the initiative could prove less effective as they prescribe functions to be executed that are not clearly defined. A fact-base must be established in order to operationalize the goals of a policy, program, or initiative (Clemmons & McBeth, 2008). In addition to theoretical limitations, Lab (2007) notes, "The types of interventions found in crime prevention present some interesting measurement problems" (p.38). The measurement of initiatives in geographic areas, according to

Lab, is a significant limitation. There is often little available data on small areas, such as a neighborhood or city block. Crime data are rarely aggregated in such a way that evaluators can determine if crime in a specific geographic area has decreased because of a crime prevention initiative. Therefore, it appears that there is a need to abandon or reform these evaluation methods, and to develop others that are better suited in measuring outcomes; yet, this is not advocated in the literature. It is possible that continued use of, and subscription to methods unbecoming of the objectives of the criminal justice system as a whole, will lead only to the further degradation of the system, ultimately diminishing its utility.

The primary focus of the administration of justice appears to concern outcomes of administrative efforts, more than processes of administration. This then is a primary distinction between the discipline of public administration and the administration of justice. Public administration considers the various resources, environmental factors, and methods that are known or believed to contribute to the proper management of the organization's objectives. The administration of justice, however, appears content in applying methods that are not necessarily consistent with the mission of the justice system, so long as there is a perceived benefit. The justice system, concerning administrative methodology, has been characterized as fitting into one of two schools of thought: "what works" versus "nothing works." The "what works" philosophy contends that criminal justice administrators and scholars would better serve the system by embarking on a fact-finding mission. The aim must be to determine "what works" in the administration of criminal justice; on the other hand, the "nothing works" philosophy is the contention that nothing has been proven to produce intended outcomes. Thus the "nothing works" philosophy does not agree that a shift to evidence-based policy will produce any considerable advances or desirable outcomes. It is important to note that neither of these

philosophies speak to administrative function, specifically; rather, they concern correction practices, i.e., sentencing policy, recidivism reduction, and crime prevention initiatives. Perhaps these opposing philosophies and their limited frame of reference are the primary factors limiting the advancement of management techniques in the administration of justice. There will be a more in-depth discussion of these two philosophies in the following section.

#### SECTION V: INADEQUATE ADMINISTRATIVE DISTINCTIVENESS

The final section of this chapter will discuss the inadequacies of administration of justice theory and practices. Further, this section will discuss the need for the development of an integrated and sustainable criminal justice system. This discussion also incorporates traditional public administration theory as a means comparison. It is a primary contention of this research that the administration of justice lacks the distinct theories and methods devoted the management of bureaucracy. Therefore, this section will attempt to highlight those differences and advocate for a paradigm shift in the justice system.

As stated previously, the administration of justice as discipline, and even as a function of the criminal justice system, lacks the distinctive administrative qualities found in other public organizations. In criminal justice literature, administrators are often defined as judges, lawyers, police, and correctional officers; there is very little mention of traditional administrative personnel such as operations officers or program analysts. As a result, there appear to be few qualities that would justify the administration of justice as a subsystem or discipline related to public administration, or a traditional management structure for that matter. Discussions of the tasks of criminal justice “administrators” often focus on their role in adjudicating or processing cases and the management of offenders post-adjudication. Again, this allows for little conjecture as to the organization’s identity in relation to its applied function, organizational theory

(structure), adaptability, or sustainability. Many suppositions regarding the previous identity traits are based on information concerning the organization's products, such as how well it reintegrates offenders with society or its ability to prevent re-offense. The identity of the justice system, therefore, is one that concerns the treatment and role of offenders. The management of the offender gives the justice system its administrative identity, yet there is so much more to the justice system than the cases that pass through it. Again, the way in which the discussion of the criminal justice system as a "system" has been framed reduces the system to nothing more than a process that manages criminal and civil cases; it is hardly characterized as an observable system. To characterize the criminal justice system as a system, the focus then is its principles, not its methods, order, complex and systematic interactions, or structure. The criminal justice system, described here, is a fragmented compilation of completing claims and interactions facilitated through legally established norms, traditions, and unstandardized practices. It is important to note that much of the literature reviewed in this section is at least twenty-years-old. The reason for this is simple; much of today's literature, as stated previously, concerns singular issues, thus, contributing very little to the discussion of entire justice system. Moreover, the research of this time was the result of much unrest regarding the role of the criminal justice system. The paradigm shift from a rehabilitative criminal justice system to a retributive system, gave rise to fundamental discussions of the administration of justice.

Malcolm M. Feeley's (1973) article, *Two Models of the Criminal Justice System: An Organizational Perspective*, illustrates the models of criminal justice organization and provides a third model that he finds more accurate in describing criminal justice administration. He explains, "A system of administration of justice, whether it is adversarial or inquisitorial, entails the key elements of organization: institutionalized interaction of a large number of actors

whose roles are highly defined, who are required to follow a highly defined rules and who share a responsibility in a common goal – that of processing arrests” (Feeley, 1973, p.407). Again, the primary actors in the criminal justice system, most often mentioned in literature, are the defendant, lawyers, judge, police and correctional officers. To extend this list, clerks, parole officers, psychiatrists, social workers, and friends and family of the defendant are also included, according to Feeley (1973). It is worth reiterating that this list does not include administrative personnel traditionally spoken of when addressing the administrative staff of an organization. The list of “actors” in Feeley’s discussion is limited to those who are directly involved with the processing of criminal cases. Therefore, no specific discussion of the methods used by non-legal specialists in the daily management of programs and processes is offered, thus, limiting the discussion of the administration justice to topics regarding “procedural law.” Though procedural law provides the rules and procedure by which a case is adjudicated and serves as the conduit by which due process takes place, procedural law does not allow for the proper of full discussion of the administration of the entire justice system. Regardless of this limitation, two models of organization are provided to characterize the structure of the criminal justice system. As first described by Etzioni in 1960, there is the “goal model” and “functional-systems model” in the administration of justice. First, the goal-model concerns “organizational effectiveness”, which is derived from the goals of the organization (Etzioni, 1960). However, Charles Logan (1993) disagrees maintaining that “...effectiveness or efficiency of the criminal justice system in achieving various "goals" or "purposes" should be kept separate from, and secondary to, an evaluation of the performance of the justice system in its most basic mission: doing justice” (p.11). However, Feeley (1973) vehemently disagrees with the “basic mission: [of] doing justice” proposed by Long, stating:



While only a highly abstract level, the goal – as opposed to the means – of the criminal justice system might be stated in terms of achieving justice, this goal has no empirical referent or context by itself. In the dominant tradition of the West at least, the goal, justice, usually acquires meaning in a normative, legal, and empirical context, only when operationalized in terms of viewing “organizational effectiveness” and “formal goal setting activities” (p.408).

However, evaluative criteria such as efficiency or effectiveness, in public administration at least, are neutral standards that provide a varied measure of an organization’s ability to meet its intended design. Efficiency and effectiveness, therefore, are relied on to evaluate the overall performance of the organization, its parts, policies, or programs and processes. However, in the administration of justice, these criteria are primarily used to evaluate the performance of the individual components or programs of the criminal justice systems. The above criteria allow decision makers to make an inference regarding the performance of the entire organization, thus, working in the inverse. The functional systems model, as clarified by Etzioni (1960), allows for the continuous evaluation of organizational responsiveness in that:

The starting point is not the goal itself, but a working model of a social unit, which is capable of achieving a goal. Unlike a goal, or a set of goal activities, it is a model of a multi-functional unit. It is assumed *a priori* that some means have to be devoted to such non-goal functions as service and custodial activities, including means employed for the maintenance of the unit itself. From the viewpoint of the systems model, such activities are functional and increase the organizational effectiveness (p.261).

This model of the criminal justice system seems more in-line with traditional administrative theory in that it takes into account the multidimensional and dynamic qualities and functions of the organization. Etzioni explains that “The rational model is concerned almost solely with *means* activities, while the goal model focuses attention on goal activities” (Etzioni, 1960, p.261). This would be closely akin to the rational public policy analysis method, used in public administration. However, as Stephens and Wikstrom (2007) described, this method of analysis, which is also a method of management, focuses on administrative practice (means)

rather than theory (goals/ends); yet, both should be considered. Theory is still included in this method because it provides insight into the catalyst of the issue and aids in identifying and defining the problem. After understanding of the issue is gained, the focus shifts to the execution of a myriad of technical steps and statistical analysis. Of course, no discussion of public administration theory would be complete without mentioning the father of modern day public administration, Woodrow Wilson. In his 1887 book, *The Study of Administration*, Wilson professed his faith in the role of scientific management in administration. Believing that politics and selfish ambition were too rampant in government administration, Wilson (1887) asserted the need for a professional administrative body. Paul Appleby echoed this sentiment (1949) explaining, that as public problems became more complex, elected officials would need to turn to administrative experts to help find solutions. This, according to Stephens and Wikstrom (2007), created the role of the policy analyst, as well as other administrative professionals, in public administration. Like the rational model of criminal justice administration, the rational method takes into account various factors. One of which is the role of the stakeholder, those internal and external to the issue, as well as numerous other environmental factors, i.e. the ecology of public administration.

Dissatisfied with both the goal model and the functional-systems model, Feely (1973) proposes a modification of the two models, which is called the rational-goal model. The rational-goal model examines the "...interrelationships of the rules of criminal procedure in order to identify and overcome problems of ambiguity, fairness, and discretion" (Feeley, 1973, p.408). It is worth noting another stark distinction between the administration of justice and public administration. The rules and goals of the justice system, i.e. justice and procedural law, define the role of the justice system; the justice system does not define its role. In public administration,

through a plethora of methods, the organization defines both its mission and means of executing its objectives, while environmental factors serve as a check on action, and provide continuous feedback. The continuous feedback loop present in most government organizations allows for the continuous evaluation of programs, policies, and procedures. Therefore, the environment plays a pivotal role in defining and sustaining the mission of the organization.

Moreover, through intergovernmental methodologies, the various parts of the organization are able to interact with one another, or other organizations with a similar mission. Stephens and Wikstrom (2007) explain “Intergovernmental relations [as] the complex interactions and interrelationships between the levels and units of government in a complex multilayered (federal) system of government” (p.1). Intergovernmental relations were never explicitly discussed in any of the literature reviewed on the topic of the administration of criminal justice. Collaborative interaction is the essence of administrative function in any system of governance, without it; there is no means of interaction between the various parts that comprise the system. Because criminal justice system is comprised of three independent parts, the police, courts, and department of corrections, it is imperative that their formal means of interaction be discussed. As Stephens and Wikstrom (2007) explain, interaction is either *de jure* or *de facto*, i.e. legal or extra-legal, or both – both aiding in the explanation of the distribution of that guides their interaction. Again, it is impossible to explain a system without discussing the interactions between the independent parts that comprise the system.

Feeley (1973) asserts that a primary problem of administrative theory, is that it assumes efficacy, while there many known competing goals at play. However, the point that Feeley misses is that efficacy, effectiveness, and efficiency are achieved through the standardization of the administrative function that can remove bias. The acknowledgement that there is self-interest

on the part of practitioners and administrators, yet not providing systematic means of preventing negative effects was Woodrow Wilson's greatest concern. However "...the functional systems approach is at least open enough to allow for and acknowledge the existence of other goals and not accept as "normal" the perfect coincidence of formal organizational goals with the goals of the individual actors inside the system" (Feeley, 1973, p.412). Again, many theories of public administration recognize, and have for some time, that the lack of "perfect coincidence of formal organizational goals with the goals of the individuals", thus, the need for processes that prevent the self-interests in the individual from influencing outcomes (p.412).

Cole (1970) uses the conflicting goals of the prosecutor and defense to describe the "mutually advantageous exchanges" that arise out of conflict, thus leading to cooperation, which, "...seeks to maximize the administrative and personal goals of the individual actors rather than the formal organizational goals of due process" (p.413). A plea bargain is offered by Feeley as an example of competing goals (conflict), resulting in a mutually advantageous exchange, allowing each party to overcome the rigidity of procedural law. However, such interactions leave open the possibility for self-interest and laziness to dominate administrative process. Moreover, plea bargains, as an "administrative practice", cannot be standardized or duplicated in all cases (or in most cases for that matter) across time and geographic location. The functional-systems model, as advocated by Skolnick (1967) and Feeley (1973) is unsustainable as it is not a replicable system, and does not provide a standard means of evaluating intergovernmental relations or a continuous feedback loop. This makes interactions between the various parts of the system, and response to environmental conditions, i.e. internal or external stakeholders and economic conditions, impossible. Lastly, no actionable plan or "model" was provided and much of the discussion was speculative conjectures.

Literature concerning the administration of justice, specifically, literature that asserts that the integration of reform of criminal justice systems is undesirable, appears to rely on assumptive language as proof. Simply, there is little evidence offered to substantiate claims that standardizing administrative practice, or the integration of the criminal justice of systems, *will or will likely* impede the overall system. As Rick Lovell (1988) notes, “In criminal justice, particularly in corrections, there is scant research on the use of empirical information and too little consideration of the potential role of research information as an input in decision making and policy formation” (p.257). Although this argument was made twenty-three years ago, the sentiment still rings true today, as there is little discussion of the role has research in the formulation of decision-making and policy systems. Research utilization is defined as documentable and observable changes in the functions of an organization as supported by empirical studies (Patrick, 1979). Research, as means in standardizing administrative processes, clarifies logic and substantiates methods not yet widely used in a particular discipline. Therefore, research can be viewed as a brochure of, or guide to achieving innovations, which set the stage for future innovation. In academia, research is said to contribute to the body of knowledge however, here it is argued that research can be used to help overcome the defragmentation of the administration of justice.

Lindblom and Cohen (1973) assert that research utilization is in competition with a “...mountain of ordinary knowledge which it cannot replace but only reshape here and there.” However, research utilization is not claimed as being a one-size-fits-all solution that will completely transform the administration of justice. As discussed in *Ecology of Public Administration* section of this research, there are multitudes of environmental factors, as well as competing claims that must be respected and considered. Research utilization does not attempt to

overcome, ignore or change these circumstances, therefore, consistent with the assertions of Lindblom and Cohen. Simply, research is used to "...substantiate a previously held position, marshal support, or cast doubt on propositions at odd with those of the user, among other such possibilities" (Weiss, 1977, p.157). Much of the literature on public administration addresses structural issues and the multiplicity of competing claims, objectives, and response systems at play. Again, the aim is to provide substantiated processes (options), allowing for information and responsibility to be efficiently carried through the various parts of the system. Moreover, administrators, practitioners, and decision makers can rely on this body of research as a means of quick remedy. Rather, as problems arise, they can select from the various proven alternatives available, therefore, limiting the number of delayed responses and potentially reducing harms.

However, there is an equal amount of literature available that counters claims for the reform or integration of the criminal justice system. Kevin Wright (1980) in, *The Desirability of Goal Conflict within the Criminal Justice System*, declares that:

...the long-term implications of increased integration and unification cannot be regarded as favorable. Unification would create inequities to the extent that any new structure could not accommodate the diverse interests, which currently have impact on the system. ... Any system which exhibits high diversity, even in the form of fragmentation, allows conflicts to be played out and resolved on a continual basis. Any degree of centralization and unification, on the other hand, promotes rigidification and creates bureaucracy known to be an inefficient structure for change. A more unified criminal justice system would be more static, less able to respond to various interests (p.217-218).

Although emphatically stated, there is little evidence provided to substantiate the assertions of Wright. The claim that fragmentation allows for "conflicts to be resolved on a continual basis," is counterintuitive to most public administration theory, further declassifying criminal justice as a "system" (Wright, 1980, p.218). As Max Weber (1946) in, *Essays in Sociology*, described the characteristics of bureaucracy – a system is described here as

synonymous to a bureaucracy. Weber explains, in short, “There is the principle of fixed and official jurisdictional areas, which are general ordered by rules, that is, by laws or administrative regulations” (p.196). The fragmented nature of the criminal justice system has been described by many as a “non-system.” Peak (2007), explains that many observers note that “...the three segments of the U.S. system that deal with criminal behavior do not always function in harmony and that the system is neither efficient enough to create credible fear of punishment nor fair enough to command respect for its values” (p.10).

Despite this fragmentation, each of the components, i.e. police departments, courts, and departments of corrections, are dependent on one another. Interdependence, however, is not enough to meet the threshold of constituting a system. There must be an established (de facto or de jure) means by which cooperation, collaboration, and coordination can take place. Moreover, “The fragmentation within the three components of the non-system of criminal justice is compounded by the decentralized government” (Peak, 2007, p.10). As previously mentioned, intergovernmental relations play a pivotal role in the creation and sustaining of the various subsystems of government. Predicated on, and sustained by federalism, intergovernmental relations are the original systems theory. Wright though is correct that bureaucracy can create rigidity and inefficiencies; never addresses the proven ability of bureaucracies to develop sustainable and replicable solutions to complex problems. Conversely, the inability of the criminal justice to do the same has been established.

Deil Wright (1963) suggested an “overlapping authority model” of intergovernmental relations. He found: (1) that there are areas of exclusivity in terms of political authority and/or government activity; (2) that the levels have independent, interdependent, and overlapping authority with both cooperation and competition and a large degree of bargaining; (3) that

actions taken by one level or jurisdiction often has primary and secondary consequences on the other areas and jurisdictions; and (4) that authority models are widely dispersed, making bargaining a necessary activity. This authority model addresses the concerns previously addressed in this discussion.

Authors such as Cole (1970) and Feeley (1973) expressed their displeasure with traditional administrative practice because it would limit “mutually advantageous exchanges.” However, Wright’s (1963) overlapping-authority model specifically mentions the importance of bargaining as a mechanism of intergovernmental relations. The key distinction between Wright’s model, and the models of Feeley, is that Wright’s model captures the complexity of administration. Feeley’s model never mentions the potential for primary or secondary consequences or addresses the exclusivity of political authority and/or government activity. Simply mentioning that there is a division of authority does nothing to add to the substantive development and objective development of administrative theory. What is needed in criminal justice literature is the objective and explicit discussion of the various factors that contribute to, or detract from the overall utility of the system – independent of crime control or sentencing policy. The preoccupation of the criminal justice system with the previous topics has stunted its organizational development. There is more to an organization or system than its mission, the mechanics which sustain the mission are often more important. Without an efficient means of execution, the mission of the organization exists in vein, as it will produce little measurable benefit.

What has been established, as Kellogg (1976) noted, “Criminal justice is characterized by conflicting goals, lack of integration, and overlapping jurisdictions which promote inequities of justice and create inefficiencies which result in higher costs of operation...” (p.209). An



indication that the criminal justice system is inefficient, unresponsive or unsustainable is observed in its increased costs, poor crime and recidivism prevention, and the inconsistent results of its sentencing policy. The intent here is not to emphasize or focus on the singular goals of crime prevention, recidivism reduction, and enhanced sentencing policy. The efforts of the criminal justice system should be directed toward the development of systems, processes and methods that will allow for the proper evaluation, implementation and sustainment of these goals. Simply, it is possible that these goals are not being met because of inadequate management strategies and/or because the poor functioning of functioning of the system.

The administration of justice need not necessarily be concerned with the goals themselves, but rather, should be concerned with the proper definition and operationalizing of the methods responsible for their execution. For the public, legislative bodies and judicial opinions are the primary mechanisms that determine the values and goals of the criminal justice system. As Weber (1946) asserts, “Precision, speed, unambiguity, knowledge of the files, continuity, discretion, unity, strict subordination, reduction of friction, and of material and personal costs – these are raised to the optimum point in the strictly bureaucratic administration, and especially in its monocratic form.” (p.214). However, it is not naïvely argued that Weber’s characterization is a constant in bureaucracy. Nevertheless, to varying degrees, bureaucracy is an embodiment of the traits listed above.

In order for the administration of justice to become a distinct discipline, there must first be the development of functional theory and processes. As discussed previously, theory and research aid in the development of sustainable processes. The development of complex and specialized processes will aid the criminal justice system in developing a distinctive administrative character. That is a character that should seek to resemble the bureaucracy

described by Weber (1946), the functions as advocated by Wright (1963), and supported by a theoretical foundation as articulated by Lindblom and Cohen (1973). It is important to reiterate, that the purpose of this analysis is to assess for the development of an administrative scheme that is distinct in order to support the unique mission of the criminal justice system. Further, administration of justice literature should begin to focus on the specialized non-legal staffs that contribute to the management of its functions. Though the formal tasks of the criminal justice system are to arrest, prosecute, and correct offenders, these do not constitute all of the tasks of the system. There are statisticians, analysts, clinicians, specialists, clerks, and other staff that contribute to the administrative identity of the organization. Perhaps if decision makers would focus the responsibilities assigned to them, then a better understanding of the organization would be gained.

## **CHAPTER IV: DISCUSSION**

### Ecology, Administration, Research Utilization and Theory

It is worth noting again that the criminal justice system is fragmented, unresponsive to external stimuli, inconsistent, unsustainable, and ultimately inefficient in the management of its most basic functions. Ultimately, the criminal justice system is unresponsive to the various factors that comprise its environment. The acknowledgment that there is ecology of public administration, and in this case an ecology of administration of justice, will allow for a better understanding of the utility and capacity of the administrative system. Riggs observed that, “Administrative prerogative and performance, therefore, is conditioned by its environment – producing the context in which functions are executed; guided by the preferences and parameters of the immediate environment concerned” (Riggs,1980). Criminal justice systems must move beyond evaluating the environmental factors believed to contribute to crime. For those same environmental factors influence the impact the criminal justice system has on society, in particular the effectiveness of its initiatives. Therefore, the administration of justice as a discipline should recognize its environmental limitations and begin to develop a system that is capable of overcoming those limitations. Further, Malcolm M. Feeley (1973) asserts that, “Despite the scholarly and popular interest in the administration of criminal justice, there are few theoretical discussions of the process” (p.407). As Rick Lovell (1988) more recently notes, “In criminal justice, particularly in corrections, there is scant research on the use of empirical information and too little consideration of the potential role of research information as an input in decision making and policy formation” (p.257). The indistinctive character of the criminal justice system makes it difficult to engage in theoretical discussions of its administrative behavior. The inability to do so ultimately results in a diminished ability to contribute to the

body of knowledge on the subject. Further, the lack of a comprehensive theoretical foundation prevents the development of methods that can be empirically evaluated. The lack of empirical evaluation and criminal justice theory ultimately limits research utilization as a tool in enhancing the administration of justice as a theory and a function.

Currently, the criminal justice system operates as a “non-system.” As a non-system, “Each system component fails, however, to engage in any coordinated planning effort; hence, relations among and between these components are often characterized by friction, conflict, and deficient communication” (Peak, 2007, p.7). The uncoordinated efforts of the various parts of the criminal justice system only exacerbate conflict and limit coordination. As previously mentioned the inability to conduct comprehensive studies of the decision-making or administrative processes of the “system” makes it difficult to identify the origin of system failure. Moreover, it is also difficult to determine its successes because of inconsistent methods and weak reporting. Again, the proper theoretical and methodological foundation might aid the system in overcoming these inefficiencies, producing a rational administration. However, “Administrative rationality demands that objectives be determined and sights set in conformity with a realistic appraisal of power position and potential...” (Long, 1949, p.257).

Comparatively speaking, and as a matter of opinion, the administration of justice as a discipline lacks the depth and breadth found in the study of public administration. Ultimately, the consensus amongst scholars and practitioners makes it difficult to separate the ends or outcomes from administrative process. Simply, there is no one guiding principle or noticeably dominant philosophy to guide progress. As Kellogg (1976) noted:

Official decisions...are made by a patchwork of separate jurisdictions, in a system of independent prosecutors, judges, prison administrators, and parole and probation officers. Respective policies vary arbitrarily from place to place, or even from time to time within the same place. Sentencing decisions within the

same jurisdiction, not to mention among different ones, vary widely with the attitudes of individual judges. Decisions are based upon limited and inconsistent information, generally without adequate explanation to benefit other officials in the decision-making process (p.50).

Because of the primary focus on “ends”, i.e. crime prevention and reduction, few clear advances have been made in creating a sustainable criminal justice system. Peak (2007) further noted, “...the three segments of the U.S. system that deal with criminal behavior do not always function in harmony and that the system is neither efficient enough to create a credible fear of punishment nor fair enough to command respect for its values” (p.8). The negative consequences that result from the fragmented criminal justice process have the potential to undermine the administrative legitimacy of the justice system. As Peak observed, there is the potential that the goals of the criminal justice system will go unnoticed in society. The dysfunctions of government have the ability to overshadow the intentions and values of the agency. Without the public’s respect and support, the legitimacy and authority of the agency is threatened. The systemic limitations of the criminal justice system may potentially be affecting the outcomes of its initiatives. There is an apparent lack of subscription to the values and targets of the justice system, which only further degrades the quality of the system and its functions. The system must first be deemed as capable by society in order to produce desired outcomes. If there is a perception in society that the criminal justice system is unfair, and at the same time incapable, then utility is lost. The justice system must be able to influence its environment, as its outcomes depend upon the public’s willingness to subscribe to its values. Unfortunately, the justice system faces many seemingly insurmountable challenges; the most damaging being a lack of administrative distinctiveness and comprehensive purpose.

### Sentencing & Crime Prevention

Again, it is possible that crime prevention initiatives and sentencing policies fail because of public perception. Sentencing policies are often seen as overly punitive and unsustainable, while crime prevention initiatives fail to evoke fear. The limitations of the criminal justice system are seen as weaknesses that prevent the successful execution of its mission. Further, the multidimensional nature of the criminal justice system gives rise to many competing claims and interests. Moreover, the lack of communication between the parts of the criminal justice system makes it difficult to create a unified front in crime management. The lack of collaboration prevents not only planning, but it also prevents the sharing of resources, knowledge, and techniques. The criminal justice system is by nature independent and interconnected. However, it appears that the parts of the criminal justice system focuses solely on their official jurisdictions, neglecting the need for interagency collaboration. Very few functions of government are executed by a single agency with absolutely no help from another part of government. This is the nature of administration in the 21<sup>st</sup> century, and the administration of justice is no exception. In fact, though the parts of the criminal justice system have clearly defined jurisdictions, they are still interconnected. One part cannot successfully satisfy its obligations without the existence of the other parts.

The failed policies and initiatives of the criminal justice system are also likely the result of the reasons mentioned in the previous section, as well as, poor design and implementation. For example, determinant sentencing has been shown as contributing to prison overcrowding, increased administrative costs, and judicial burdens. Moreover, there have been very few proven benefits. Again, there is much disagreement concerning the effectiveness of crime management initiatives, rendering many findings inconclusive. The multifaceted nature of sentencing policy and crime prevention initiatives makes it difficult to determine their effectiveness in reducing

crime. What can be proven, however, is their contribution to the destabilization of numerous criminal justice systems. Therefore, the following suggestions seem appropriate: (1) relax or repeal mandatory minimum laws; (2) expand discharge options for certain offenses; and (3) shorten the sentence length for non-violent offenders. Additionally, states and localities should consider a reinvestment program similar to those in Texas and Arizona and, adopt evidence-based initiatives. Evidence-based practices promote collaboration as well as contribute to the theoretical foundation of the justice system, and promote research utilization. It is the suggestion of this study that criminal justice systems seriously reevaluate their sentencing policies in order to produce a more sustainable and effective system.

### Theory and Methods

It is important to note that criminal justice is useful in that it allows for crime control, sentencing, and the correction of some our most dangerous citizens. However, criminal justice lacks a focused direction outside of crime control. There is little available that would allow anyone the opportunity to assess the system of justice, or the theoretical foundation of justice outside of what is pronounced in the U.S. and state constitutions. As stated previously, there is little depth or breadth to criminal justice: in scholarship, as a professional discipline, or as a systematic function of government. As Peter B. Kraska (2006) insists, “Studying criminal justice is tactically, and sometimes explicitly, relegated to the narrow role of evaluation and descriptive scholarship” (p.167). The lack of empirically substantiated methods and theory has prevented the burgeoning of an integrated and capable justice system. The methods often employed in the justice system seem insufficient in their intent, design and implementation. There must be a commitment to developing new methods of evaluation and administration that will complement

the goals of the criminal justice system. However, this will require the development of a strong theoretical base, as well as a commitment to research utilization in the justice system.



## CHAPTER V: CONCLUSION

The primary limitations of the administration of justice are an: (1) indistinctive administrative structure; (2) poor collaboration and intergovernmental relations; (3) insufficient methods (processes and evaluation); (4) unresponsiveness to environmental factors; (5) inadequate research utilization; (6) an insufficient theoretical foundation; and (7) an unhealthy preoccupation with end results. As previously stated, substantive modifications of the current criminal justice system are necessary in order to: (a) create a system capable of addressing complex problems; (b) actively employ collaborative intergovernmental relations methods; (c) respond to environmental demands; (d) capitalize on traditional public administration methods; (e) develop a distinctive administrative identity.

The primary contention of the thesis is confirmed. Decision-makers and criminal justice scholars must stop ignoring the most fundamental and universal principles of administration. The administration of justice, as a function, is fragmented, unresponsive, inefficient and ineffective, and is an indistinctive characteristic of the justice system. It is difficult to identify in literature and through observation, the bureaucratic qualities that engender a legitimate and sustainable system. Separately, each component operates within their specified legal construct, i.e. police, courts and corrections carry out their functions in accordance with the authority explicitly granted to them by the state. As a criminal justice “system,” many of their interactions are *de facto*, or extralegal, meaning that they are not rooted in or supported by legal prescription. The “system,” in the case of criminal justice, is a compilation of insufficient or completely unsubstantiated processes agreed upon by the various parts. As they exist currently, the administration of justice (as a theory/discipline), and criminal justice (as a system), do not suggest a functional bureaucracy or collaborative system.

The significance of this study is simple, the criminal justice system, and the administration of justice are neither widely supported, nor substantiated in literature, or empirical observation. Criminal justice as an academic pursuit and criminology (including police and criminologist) as a profession are legitimate and empirically proven. Criminal justice as an observable, substantiated, and sustainable “system,” however, is not a widely accepted assertion in literature, empirical study, or in a legal context. The “criminal justice system,” nor the “administration of justice” as a means of managing a system, is a replicable process. Their goals, outcomes and programs, to a certain extent, are the only common and replicable products between them. Further, and as an additional assertion of this research, the criminal justice system and the administration of justice are antithetical, as they have competing “ends.” Each administrative apparatus of the various parts of the criminal justice system, i.e. police, courts and corrections, has different characteristics, goals and processes. The goals and process of the criminal justice system are also a topic of contention among scholars and practitioners. Therefore, to assert that the “administration of justice” is a discipline or singular source of management practices is unfounded. There is judicial administration, corrections administration, and police administration – but there is no administration of justice, as there is no identifiable criminal justice system.

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