PRISON AND JAIL CROWDING: WORKSHOP PROCEEDINGS

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Committee on Research on Law Enforcement and
the Administration of Justice

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PREFACE

The explosive growth of prison populations in the past decade and the crowding that has accompanied it are matters of concern to prison administrators, judges, and many others in the United States. Correctional administrators strive to stretch limited resources; prisoners cope with difficult and sometimes inhumane conditions of confinement; trial judges and prosecutors are faced with capacity constraints when deciding on sentences; legislators and taxpayers are faced with the costs of building new facilities. The concerns and policy issues in this area involve not only important value choices--who should go to prison?--but empirical questions as well: What has caused the recent surge in prison populations? What will happen in the future and are there techniques available to help predict future trends? What are the consequences of the crowding for the prisoners? Will various strategies that have been proposed to deal with increased prison populations and crowding have their intended effects? What are the likely effects on levels of crime in our society of reliance upon imprisonment as opposed to other sentencing alternatives? These are but a few of the vexing questions that surround our under-

standing and response to the doubling of our prison populations that has occurred in recent years.

This volume reports on a conference designed to bring together correctional administrators and other concerned policymakers and researchers to discuss the important issues surrounding prison crowding. The often spirited discussion at the conference revealed both the limitations of our knowledge and the extent towhich many of the empirical issues are intertwined with value questions in ways that are difficult to disentangle. Yet the presentations and discussions did serve the goals of the National Research Council and the National Institute of Justice, the convener and the sponsor of the conference: practitioners were able to learn about and become more discriminating consumers of the findings of researchers; at the same time, the practitioners sensitized scholars to the many nuances of the world they study and to the perspective of practitioners.

The Working Group was assisted in its efforts to organize and present the conference by the following staff: Jeffrey A. Roth, senior staff officer; Dale K. Sechrest, consultant; and Gaylene J. Dumouchel, administrative secretary. We are greatly appreciative of their efforts.

Jonathan D. Casper, Chair
Working Group on Prison and
Jail Crowding

THE WORKSHOP

On October 15-16, 1986, a workshop for criminal justice researchers and policymakers on the subject of prison and jail crowding was held in Chicago, Illinois. It was convened under the aegis of the National Research Council's Committee on Research on Law Enforcement and the Administration of Justice (CRLEAJ), with financial support from the National Institute of Justice. The workshop was planned by a working group of the committee (see Appendix C for biographical sketches).

The workshop had four major purposes:

(1) To inform the criminal justice research and policy communities about the extent of prison crowding and to share perspectives about the future course of the problem;

(2) To disseminate and discuss insights based on recent analyses of the dynamics of prison populations, the consequences of crowding, and the role of population forecasts in policymaking;

(3) To share scholarly and policymaking perspectives on the origins and outcomes of prison conditions/crowding litigation and on strategies to alleviate crowding; and

(4) To share perspectives on ways in which future research might help correctional administrators deal with institutional crowding more effectively, and to encourage collaborative strategies between researchers and practitioners for encouraging the needed research.

Workshop presentations and discussions were focused on five papers prepared especially for the workshop, five previously published papers, two court cases, and a report on prison and jail crowding in Washington, D.C. The papers were intended to stimulate thought and discussion, and served that purpose effectively. The workshop was organized in eight working sessions, which are described in the program at Appendix A. As shown in the participant list in Appendix B, there were 104 attendees, including 34 presenters. Speakers included researchers, criminal justice planners, state and local criminal justice practitioners, and federal officials. Attendees included nine current directors of corrections, four former directors, and superintendents of correctional institutions, members of parole and probation agencies, and state criminal justice planning and research units. Participants also included the executive director of the American Correctional Association and private-sector correctional administrators.

In the first session, "The Dynamics of Prison Populations," data were presented on the magnitude of the crowding problem. American and British data were presented on the level and composition (by race, ethnicity, length of

sentence, crime type, etc.) of the incarcerated population (S. Gottfredson, this volume; R. Tarling, this volume). Following Gottfredson, alternative theories of variation in prison population were discussed, including demographic explanations, theories relating prison population to the prevalence of participation in serious crime, "homeostatic" (i.e., constant fraction of the population) theories of incarceration, and explanations in terms of increasing harshness of punishment. Population data were discussed in relation to the social and political choices that appear to control changes in prison and jail populations. Evidence in the Gottfredson paper was discussed that suggested that criminal justice policymakers may overestimate the harshness of punishment desired by the public--a possibility that could lead to prison populations that are higher than would occur under policies that more accurately reflected the public will.

Measures of punitiveness in the United States were discussed in relation to other countries. The issue of whether alternative punishment structures could be designed that might achieve social goals was discussed. Concern was expressed about properly evaluating the effectiveness of new strategies for punishment.

In the second session, "Measuring Crowding and its Consequences," research on the consequences of crowding for inmates and staff was presented and discussed (Gaes, 1985, was included as background for this session). Controversies in this area seemed to reflect differences in interpretation of data rather than questions about data validity. However, the discussion made clear the need for researchers in this area to attend to administrative practices in the facilities they study, and also the limitations of self-reports compared to physiological measures of consequences of crowding.

In the third ("How Do Courts Make Policy?"), fourth ("Case Study of Court Policymaking--Texas: Ruiz v. Estelle"), and seventh ("Jail Crowding: A Case Study of the District of Columbia") sessions, the origins of prison conditions litigation and the role of litigation in reducing crowding were addressed, using Texas and the District of Columbia as case studies. Background materials included: a commissioned paper (Feeley and Hanson, this volume); court opinions in Ruiz v. Estelle and in Inmates of D.C. Jail, et al., v. Jackson, et al.; and excerpts from McConville (1985). The discussion brought out strong evidence that court orders have led to improved conditions in prison, such as stronger administrative structures, improved medical services, and improved inmate access to legal services. There was debate over whether litigation and court orders also produce unintended consequences in such areas as staff morale and authority over inmates.

The remaining sessions were concerned with remedies for prison crowding. In the fifth session ("Forecasting: Policy Uses of Population Prediction Models"), population forecasts by Rich and Barnett (1985) and others were discussed. These indicated that for states with steady or rising populations, prison populations could be expected to continue increasing well into the next century, following a pause during the 1990's. The appropriate uses of models for forecasting and policy analysis were discussed. Questions were raised about the accuracy of forecasting procedures, the potential uses of forecasting in reducing facility populations, and how correctional administrators can best use forecasting techniques or models in policy planning. Additional data needs of administrators were also considered.

Two major themes emerged from the discussion. First, the proper criterion for evaluating prison forecasting models is only rarely the accuracy of their predictions for some future date. Forecasts are generally made under certain assumptions about criminal justice policy and practices, as baselines for policy analysis; to the extent that the forecasts stimulate policy changes that affect population growth patterns, the policy changes will cause actual future populations to differ from the forecasts regardless of the accuracy of the model. Second, a model's forecasting horizon defines a trade-off between forecasting accuracy and policy flexibility. With horizons exceeding a decade, forecasting accuracy will be relatively poor, but a wide range of policy options, even adding capacity, is available. With shorter horizons, accuracy will be somewhat greater, but policy options that involve long lead times or major changes in practice may be foreclosed.

The sixth ("Sentencing and Release Strategies") and eighth ("Responses to Crowding") sessions were devoted to other remedies being proposed and tested to relieve prison crowding. The discussion of sentencing and release strategies was focused on the paper by Austin (this volume) and provided an opportunity to share state experiences with these strategies. The discussion of responses to crowding was framed by the paper by Michael Gottfredson (this volume), which presented a framework for comparing alternative remedies. Besides sentencing and release strategies and capacity expansion, the remedies discussed included the following post-incarceration release alternatives: work release and home furlough; reentry and prerelease centers; community correction programs; intensive probation supervision; electronic monitoring to limit the activities of offenders who are under supervision; and probation subsidies. There was disagreement on the consequences of these strategies for reducing prison

crowding. Most alternatives, including electronic monitoring, were seen more as supplements than alternatives to incarceration.

It was concluded that there are many unresolved social, political, and empirical issues regarding prison crowding that would benefit from additional research. These include: cross-cultural measures and comparisons of punitiveness; modeling the dynamics of prison population change and using such models to test alternative theories of population growth; the effects of crowding on staff and prison administration, as well as inmates; improving medium- and long-range prison population forecasts; and the potentials and limitations of litigation as a force for change in the prison context.

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Gaes, G., 1985, The effect of overcrowding in prison. Pp. 95-146 in M. Tonry and N. Morris, eds., Crime and Justice: An Annual Review of Research Volume 6. Chicago, Illinois: University of Chicago Press.

McConville, S., 1985, A review of the correctional policies of the District of Columbia, Unpublished manuscript available from the German Marshall Fund of the United States, Washington, D.C.

Rich, T.F., and Barnett, A.I., 1985, Model-based U.S. prison population projections. Public Administration Review, 45:780-789.

BACKGROUND PAPERS

The five papers included here were either commissioned or invited by the working group for presentation and discussion at the Workshop on Prison and Jail Crowding. All were drafted, distributed to the working group for comment, and revised by their authors in light of the working group members' comments. The papers were presented to the workshop as second drafts representing the views of their authors rather than the working group, and they succeeded in stimulating discussion and informing workshop participants. Following the workshop, the working group decided not to seek support for further publication and therefore released the draft papers back to their authors for their own use and possible publication in other forms. Inclusion of the papers here does not necessarily imply that they represent the views of the working group.

Draft - September, 1986

The Dynamics of Prison Populations

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Temple University

Paper prepared for the Working Group on Jail and Prison Crowding of the Committee on Research on Law Enforcement and the Administration of Justice, National Academy of Sciences/National Research Council. This draft is for discussion purposes only, and should not be quoted or cited without permission of the author.

Introduction

Prison populations are now higher than they have ever been and they are growing at an extraordinary rate. At present, inmate populations exceed cell capacity in almost all states--in most cases by a very substantial amount. In addition to being extremely crowded, many prisons and jails are old and in a state of physical decay. The average (median) prison in the United States was built in 1946. One prisoner in ten is housed in a prison built before 1875; and almost one-quarter are incarcerated in prisons built before 1925 (Bureau of Justice Statistics, 1986b). America's prisons often are inadequately staffed; routine medical care, adequate nutritional requirements, and protection from physical abuse often are lacking. Educational, vocational, and other rehabilitative programs typically are no longer available or have been curtailed sharply.

As of February 1986, 46 states and U.S. territories either were under court order, or were involved in litigation likely to result in court orders, concerning prison conditions (American Civil Liberties Union Foundation, 1986). Issues of extreme crowding and other atrocious conditions are central to the overwhelming majority of these suits, and under present interpretation, the U.S. Constitution forbids the kind of treatment prison inmates in almost all states presently receive.

The principal focus of this essay is a discussion of what is known concerning the "causes" of the unprecedented prison

populations now facing this country. In the first section, I briefly describe the extent of the recent growth in prison populations. Remaining sections of the paper focus on a variety of presumed causative factors, such as increases in crime, changes in population demography, changes in sanctioning practices, and changes in attitudes toward sanctioning. I will show that although some of these factors readily can be described and modeled empirically, other factors also felt to influence prison populations cannot easily be modeled (although they easily may be described). The extent of impact of these other factors remains to be investigated well.

Case Study: The State of Maryland

Data from the state of Maryland will provide illustration of many of the points to be made in the paper. Two of Maryland's largest institutions are antiquated relics of the past: The Maryland State Penitentiary originally was constructed in 1811, and the House of Correction was constructed in 1879. At present, almost one-quarter (23%) of Maryland's male inmate population is housed in these institutions.

Maryland ranks high in the rate of reported violent crime among states in this nation, and has a history of making substantial use of incarceration. According to a recent report made by a Johns Hopkins University study committee, in 1984, the State ranked third in the United States in the percentage of its population in prisons (behind Nevada and Louisiana) (Task Force on Criminal Justice Issues, 1984). As prison populations have increased, so has the number of persons on probation. Maryland ranked second (behind Georgia) in its use of probation. Approximately two percent of the State's adult population was then either incarcerated or on probation. (This does not include the number of men and women confined in local jails.) In the same year, Maryland ranked third (behind New York and Florida) in the rate of violent crime. Thus, data from this jurisdiction should suffice to illustrate the problems encountered, in somewhat less severe form, by most states.

The Dimensions of the Prison Population Crisis

Population Increases

Prison populations in the United States are now higher than they have ever been. Since 1925, America's prison population has experienced an overall annual growth rate that is twice that for the general population (Criminal Justice Newsletter, 1983). During the 1960s, the adult prison population was relatively stable (Mullen, et al., 1980 at 12 -15). Beginning in the 1970s, however, this population began a dramatic rise, growing from 196,441 in 1970[1] to 503,601 in 1985 (Bureau of Justice Statistics, 1986a)[2] (Figure 1). Since 1972, the state and federal prison population has experienced a compound average annual growth rate of 8 percent per year (Blumstein, 1986).

An additional 223,511 persons were confined in local jails as of June 1983 (Bureau of Justice Statistics, 1984) up from 160,863 in 1970 (Mullen, et al., at 151). Thus, there are now about three-quarters of a million persons in jail or prison in this country.

The growth of America's punishment systems has not been limited to increases in imprisonment (Harris, 1986). According

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[1] This discussion excludes the states of Alaska, Arkansas, and Rhode Island, and reflects federal prisoners, and state prisoners sentenced to more than one year. Data are from Mullen et al. (1980), at pg. 151.

[2] This figure includes 21,985 persons sentenced to less than one year's confinement. Thus, the more strictly comparable figure is 481,616 prisoners in 1985.

State and Federal Prison Populations

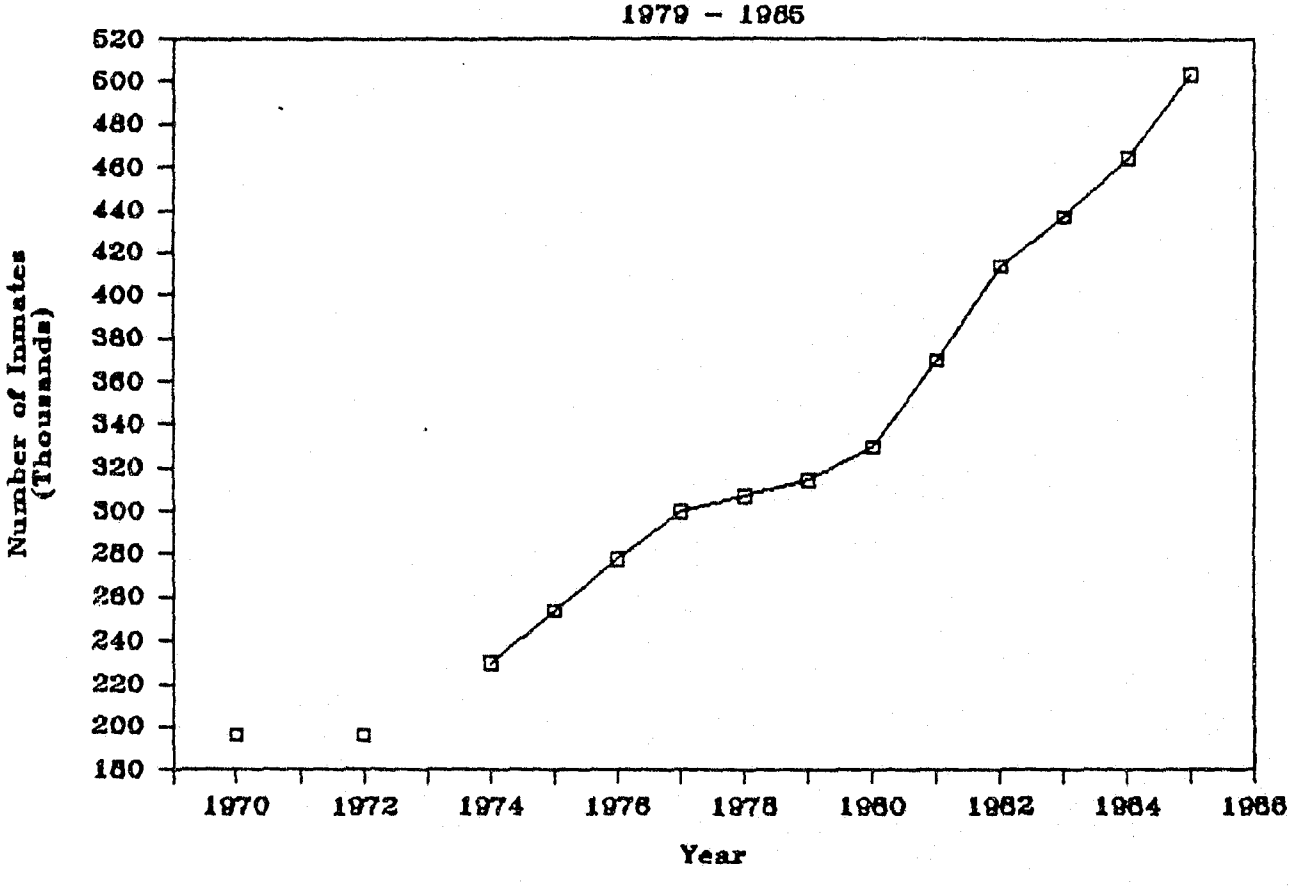

Figure 1

to Steven R. Schlesinger, Director of the Bureau of Justice Statistics, "Throughout the 1980's the probation population in this country grew faster than the prison population did" (Philadelphia Inquirer, 1986). Schlesinger reports that at yearend 1984, more than 2.3 million men and 323,000 women were under the control of correctional systems, with 1.7 million people on probation, 268,500 on parole, 464,000 in state and federal prisons, and about half that number in local jails. In 1984, then, about one out of every 35 adult men in the United States was under some form of correctional control.

This dramatic growth has placed an extraordinary burden on our inadequate and antiquated prison systems. Prison populations in most jurisdictions so severely strain the fiscal, structural, and personnel resources of correctional agencies that courts increasingly have examined the operation of correctional institutions in light of the Eighth Amendment's prohibition against cruel and unusual punishment (Ingrahams and Wellford, 1986). Based on a survey conducted in 1978, two thirds of this nation's prisoners are confined in less than 60 square feet of floor space (Mullen, et al., p. 81).[=] Even though about 700 new county, state, and federal prisons reportedly have been constructed in the last few years, (or are in planning), with estimated capital costs totalling $8 billion (Philadelphia

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[=] This is the American Correctional Association's minimum standard. According to Mullen et al. "no standard setting body has recommended less than 60 square feet of floor space per inmate" (pg. 80).

Inquirer, 1982), and approximately 165,000 beds have been added at the state prison level alone since 1978 (Bureau of Justice Statistics, 1986a), our prisons remain well over capacity. In 1985, the Federal prison system operated at 121% of capacity, and our state systems were at 119% of capacity (Bureau of Justice Statistics, 1986a).

Case Study: Maryland's Prison Population

> Since 1975, the prison population in Maryland has more than doubled (Figure 2): between Fiscal Years 1980 and 1985, the average daily population in the Division of Correction increased 58%, from 7,923 to 12,545 inmates. The latter exceeds the designed capacity of the Division's secure institutions by almost 140 percent (Figure 3). Only Maryland's pre-release system operates below design capacity. All of Maryland's more secure institutions operate with populations exceeding that for which they were designed, and often by dramatic numbers.
>
> Crowding in Maryland's Division of Correction has resulted in wide-spread double-celling of inmates (including double-celling of segregation units), caused conversion of program space to inmate housing, increased idleness among inmates due to both the lack of program space and staff, and made prisons more dangerous for both staff and inmates by severely increasing the potential for violence.
>
> Since 1980, Maryland has completed construction of three major institutions (two medium security prisons, and one minimum security facility), with a combined design capacity of 1,482. By December 1985, these three facilities housed 2,559 inmates. Thus, shortly upon opening, these new prisons operated at 173% of their design capacities. A fourth major prison currently is under construction.

Imprisonment Rates

Historically, the United States has an imprisonment rate that is high relative to other western cultures. Indeed, Doleschal (1977) estimates the United States' imprisonment rate

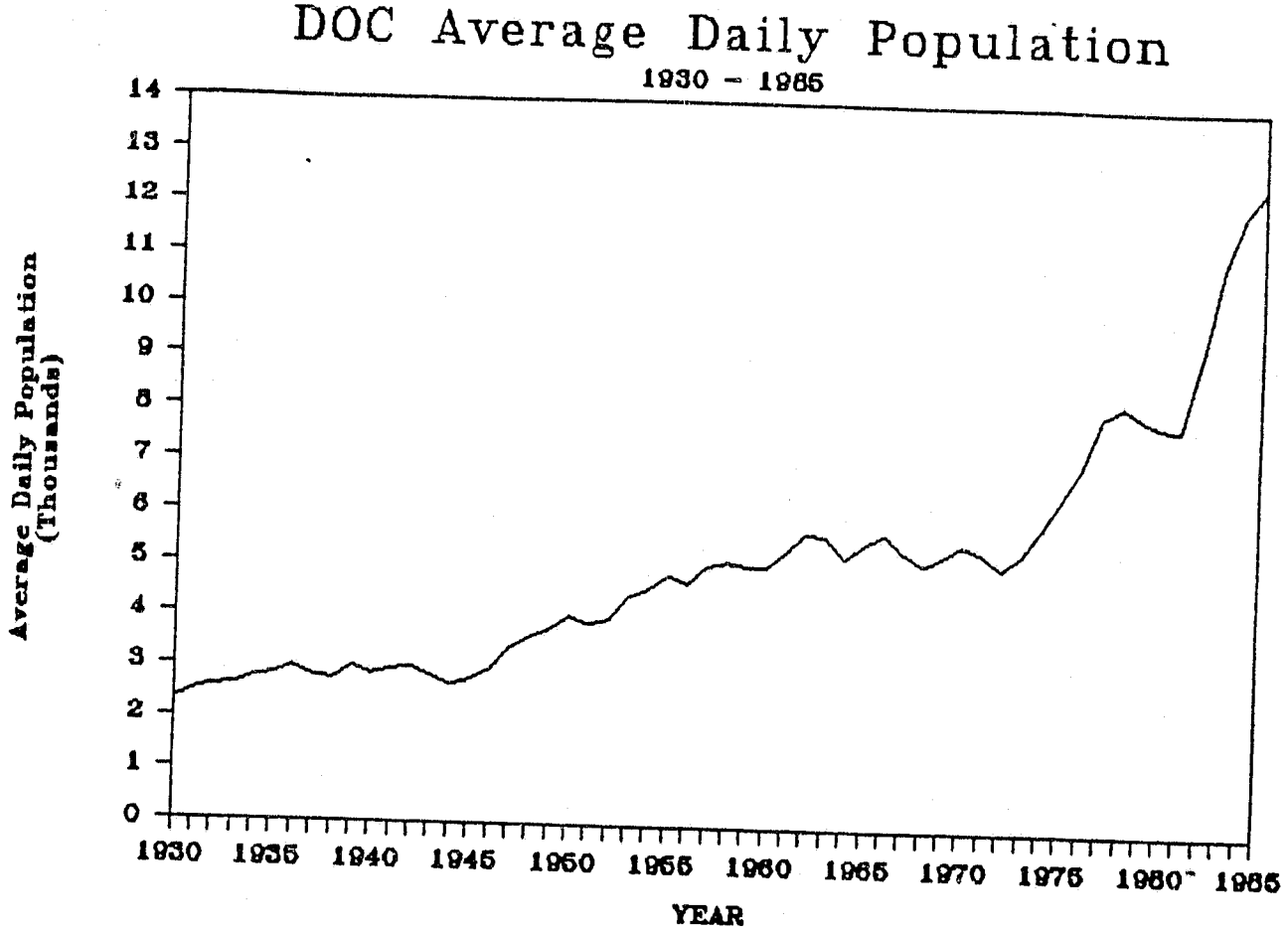
DOC Average Daily Population
1930 - 1985
Average Daily Population (Thousands)
0
1
2
3
4
5
6
7
8
9
10
11
12
13
14
1930
1935
1940
1945
1950
1955
1960
1965
1970
1975
1980
1985
YEAR

Figure 2

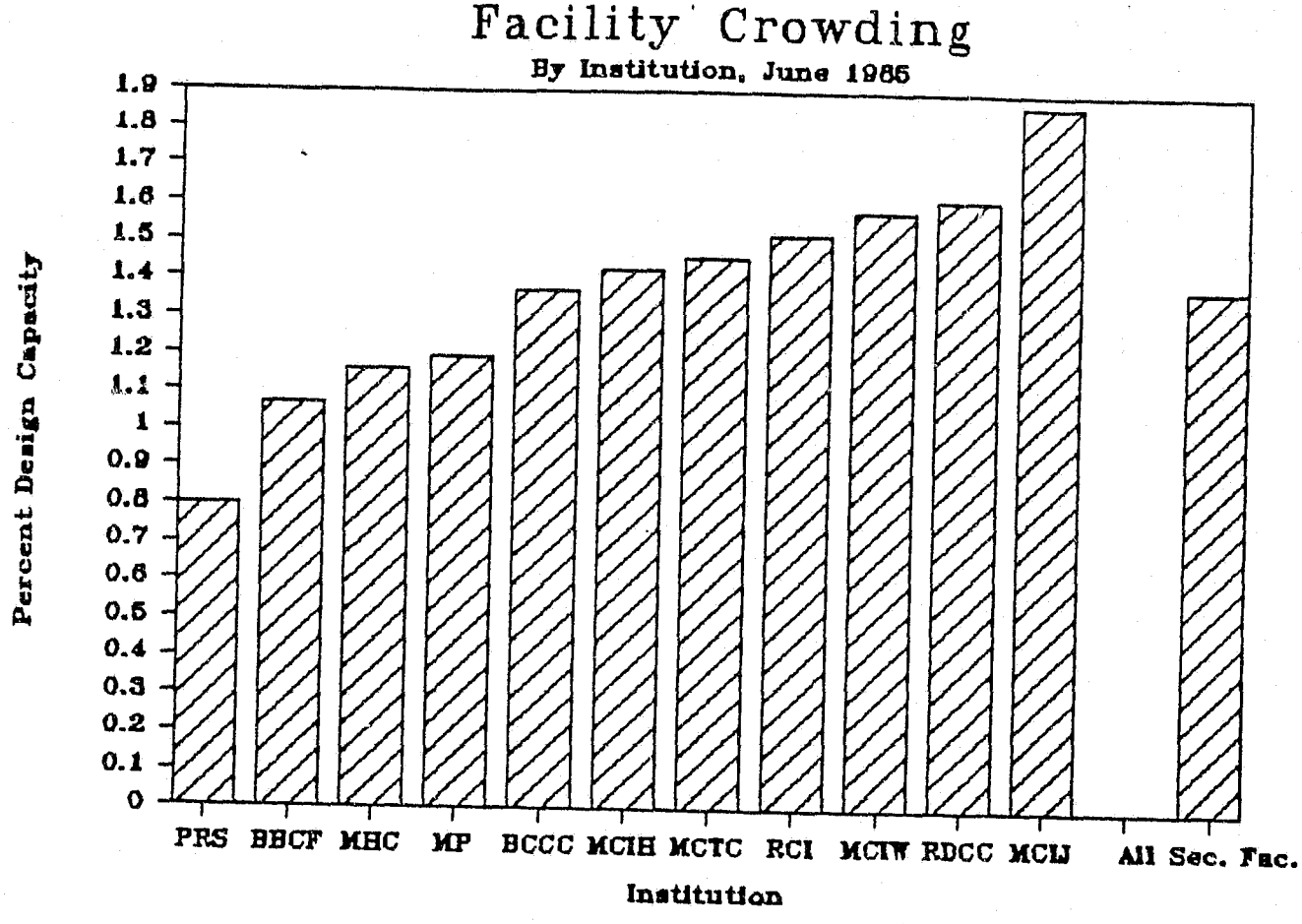
Facility Crowding
By Institution, June 1985
Percent Design Capacity
1.9
1.8
1.7
1.6
1.5
1.4
1.3
1.2
1.1
1
0.9
0.8
0.7
0.6
0.5
0.4
0.3
0.2
0.1
0
PRS
BBCF
MHC
MP
BCCC
MCIH
MCTC
RCI
MCIW
RDCC
MCIJ
All Sec. Fac.
Institution

Figure 3

to be the highest in the entire world. In contrast, he estimates the Netherland's to be the lowest, about 1/12 of the U.S. rate. Whether this results from the application of a different "social calculus" (Blumstein and Nagin, 1979) or from other phenomenon is unclear; yet the fact remains that the average imprisonment rate over extended periods of time in the United States is over twice that of Norway and about 2.5 times that of Canada (Blumstein, Cohen and Nagin, 1979).

It may be that over extended periods of time, imprisonment rates (that is, the proportion of the population under incarcerative sanction) are relatively stable, despite rather large short-term fluctuations (Blumstein and Cohen, 1973; cf. however, Rauma, 1981; Berk, Rauma, Messinger, and Cooley, 1981). Relative stability over extended periods, however, does not belie the immediacy of problems concomitant with relatively short-term shifts -- particularly in an upward abberation in the trend of imprisonment rates.

The past fifteen years have seen an unprecedented and startlingly dramatic rise in imprisonment rates. For example, in 1970, our state and federal prison incarceration rate per 100,000 civilian population was 97 (Mullen et al., 1980).[4] In 1978, the state and federal prison incarceration rate was 136 per 100,000 persons (Mullen et al., 1980). By 1985, this rate had risen to

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[4] This excludes consideration of the states of Alaska, Arkansas, and Rhode Island.

201: a 107% increase in the imprisonment rate in just a decade and a half (Bureau of Justice Statistics, 1986a).

These figures are based on persons sentenced to periods of confinement of at least one year, and exclude consideration also of those confined in local jails. When these are included, the rates are substantially higher. In 1970, the combined state, federal, and local jail confinee incarceration rate per 100,000 civilian population was 177 (Mullen et al., 1980). By 1978, this had climbed to 207 (Mullen et al., 1980), and by 1985, to about 294 per 100,000 persons (Bureau of Justice Statistics, 1984; 1986a)[3] (Figure 4).

Case Study: State Variations

The national figures discussed above mask considerable variation, both on a state by state and a regional basis. For example, in 1970, Maryland had a state and local jail imprisonment rate of 205 per 100,000, making it the 10th highest ranked state in the nation in terms of incarceration (while it ranked 22nd in civilian population). By far the highest rate was that for the District of Columbia: 629 per 100,000 persons were incarcerated by the District in 1970. In contrast, Vermont and Connecticut had quite low incarceration rates (41 and 52 per 100,000, respectively). By 1978, Maryland (among the top ten states for both time periods) had increased incarceration from a rate of 205 to 271 per 100,000 persons. Vermont and Connecticut had increased to rates of 69 and 70 respectively. (All data discussed are from Mullen et al., 1980, or Bureau of Justice Statistics, 1986.) Considering <u>just</u> those sentenced to state and federal institutions and serving terms of at least one year, by 1985, 16 jurisdictions had an incarceration rate of over 200 per 100,000 civilian population: these ranged from 738 (District of

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[3] The latter figure is based on a) extrapolation of the civilian population from data presented in Bureau of Justice Statistics, 1984, and b) persons incarcerated in local jails in June 1983 (Bureau of Justice Statistics, 1984).

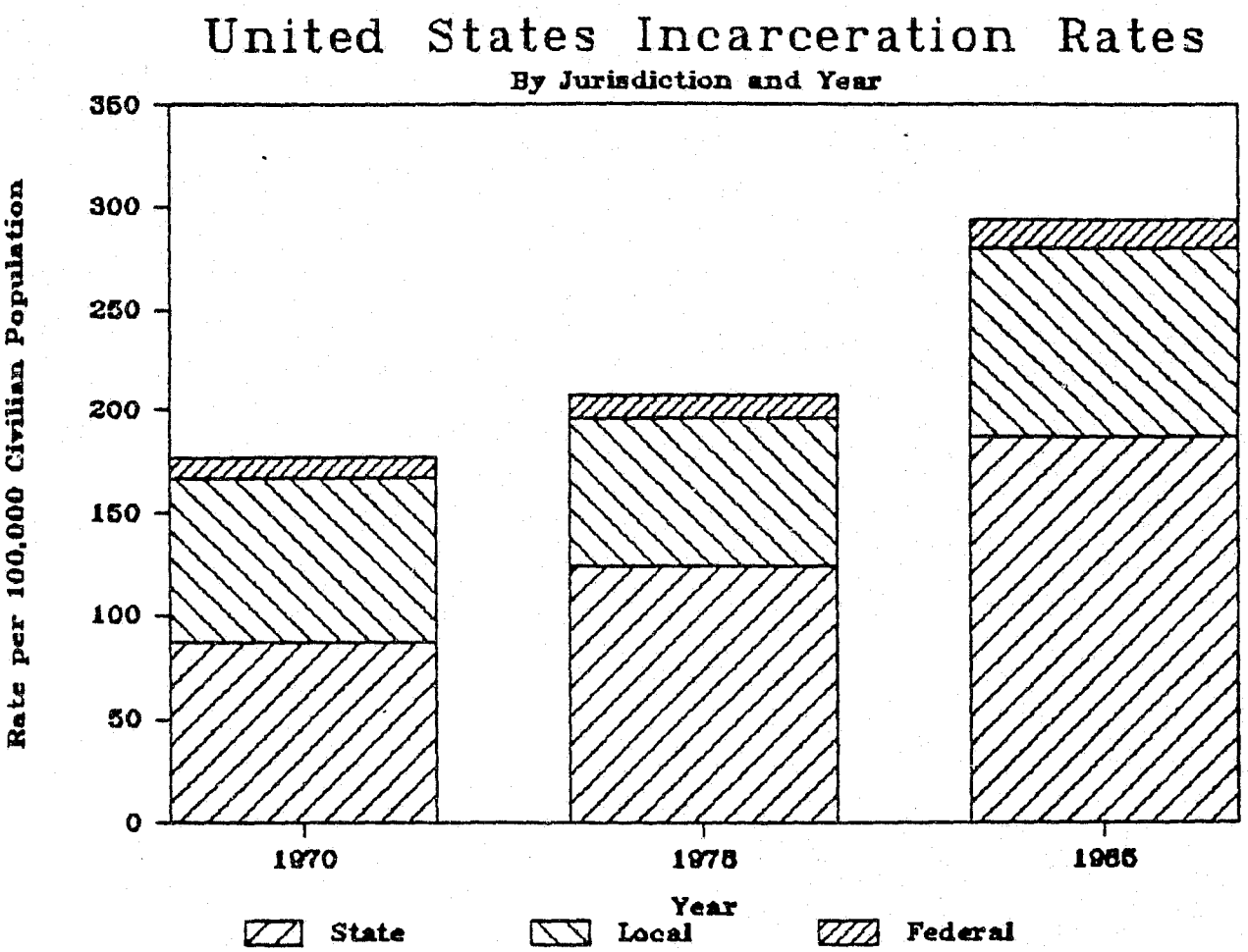
United States Incarceration Rates
By Jurisdiction and Year
Rate per 100,000 Civilian Population
350
300
250
200
150
100
50
0
1970
1975
1985
Year
State
Local
Federal

Figure 4

Columbia) to 204 (Virginia). Only ten jurisdictions had an incarceration rate of 100 or less: these ranged from 52 (North Dakota) to 99 (Rhode Island). Maryland's rate, with over 13,000 persons incarcerated, was 279 per 100,000 civilian population.

Causative Factors

This section discusses a number of factors felt to contribute to the recent unprecedented increase in prison populations.

Theories of a Homeostatic or Oscillatory Punishment Process

Some evidence (Blumstein and Cohen, 1973; Blumstein et al., 1977; Cohen, 1978) suggests that when considered over extended periods of time, imprisonment rates remain fairly stable. This evidence, however, is subject to debate (Rauma, 1981a, b; Blumstein, et al., 1981; Berk et al., 1981). For the United States, the average imprisonment rate (exclusive of the local jail population) from 1930 through 1970 was 110.2 (per 100,000) with a standard deviation of 8.9 (Blumstein and Cohen, 1973). Thus, about 95% of the time we would expect the annual rate to be somewhere between about 93 to 128 per 100,000 persons. Until very recently, then, rates were not far above the expected, and certainly were within statistically anticipatable boundaries. Thus, one interpretation is that until around 1980, we simply were in the midst of an expectable aberration from "normal" levels of incarceration.

Observation and modeling of the imprisonment series from 1930 to 1970 led Blumstein and colleagues to posit a theory of

the stability of punishment (Blumstein and Cohen, 1973), and their subsequent modeling efforts attempted to describe the dynamics of this homeostatic or self-regulating process. Very briefly, the theory is a direct extension of Durkheim's thesis that crime is a normal, rather than pathological, component of society, but that it is regulated through the collective conscience of that society. Thus, both the occurrence of crime and its regulation are seen as normal, self-regulating phenomena. A corollary to the argument is that "the extent of crime in any particular social group will generally be maintained at a specific level" (Blumstein and Cohen, 1973:198). The Blumstein and Cohen advance was to posit and test not a theory of the stability of crime, but of punishment--that is, the collective response to crime--and to model this homeostatic or self-regulating phenomenon using only parameters of the criminal justice system (Blumstein, Cohen and Nagin, 1977).

Attempted replications using data from the state of California failed to support the Blumstein et al. model (Berk et al., 1981; Rauma, 1981a; see also Blumstein et al., 1981; Rauma, 1981b). However, it may well be that state-specific processes are different from the national processes described by Blumstein and colleagues, and, in testing the applicability of the homeostatic process in 47 states, Blumstein and Moitra (1979) did find broad, if not universal, support for the hypothesis (as, more recently, has Tremblay, 1986).

A competing theory is that punishment is not homeostatic,

but oscillatory: that is, that punishment cycles with other social phenomena such as unemployment or national productivity (Greenberg, 1977; Fox, 1979; Berk et al., 1981). These models also tend to fit rather well, and it is not entirely clear which -- the homeostatic or the oscillatory -- is "best."

It is the case that there are limitations to both the homeostatic and the oscillatory models of punishment, and that both are important theoretical propositions which could have very different explanatory and practical consequences. Probably the major limitation is that both are explanatory in a rather post-hoc way: the ability of either model to predict the future is limited.

Now, for example, only 15 years have been added to the series examined by Blumstein and colleagues, and the current imprisonment rate is over 10 standard deviations above the mean rate for the first 40 years of the series. Clearly, it is unreasonable to conclude that we are experiencing a "normal" abberation in the punishment process. As Blumstein and colleagues have noted (Blumstein et al., 1981), it is possible that societies may change punishment levels, and perhaps our society has done that. However, our understanding of how and why this has occurred (if in fact it has) is tenuous at best. Unless the theory can predict these kinds of dramatic changes, it is of little value in predicting other things of interest, such as future prison capacity requirements.

The oscillatory model similarly is limited, in that it typically relies on estimates of things which may be fully as problematic as imprisonment rates to predict well (e.g., unemployment rates, GNP).

Crime

Some argue that prison populations reflect simply a response to increases in crime. The U.S. crime rate rose almost continuously through the 1960s, and precipitously in the 1970s. The crime rate peaked in 1980, and has declined since (Blumstein, 1986). As already described, prison populations were stable during the 1960s, began climbing in the 1970s, and are continuing to rise dramatically in the 1980s. For the past several years, then, crime rates have decreased, while the prison population has increased.

To many, the interpretation of these facts is clear: since more criminals are incarcerated, there are fewer of them in the community, where they might otherwise commit crimes. Because more offenders are incapacitated through imprisonment, the crime rate drops. Some may feel that increasing the use of imprisonment (as evidenced by the proportion of the population sanctioned) may have a general deterrence effect: that is, fear of the imprisonment consequence currently deters a larger proportion of potential offenders, thereby also reducing the crime rate.

As compelling as this causal argument may appear, other explanatory mechanisms are a) more powerful, and b) more reflective of the systemic nature of the factors contributing to prison crowding. Thus, in interpreting the facts of a rising prison population and a decreasing crime rate as causally related, the possibility of a third common cause (such as demographic changes) is ignored. Further, given recent estimates made concerning the probability of arrest for a given offense, conviction if arrested, and incarceration if convicted (Greenwood and Abrahamse, 1982) -- and given that these probabilities are multiplicative -- we would have to see an extraordinary increase in prison populations (far beyond that currently experienced) to see any substantial effect on the crime rate.

Population Demography

As is well-known, the age distribution of our society is changing dramatically. Particularly dramatic among these changes is that associated with the post-World War II "baby boom:" these are persons born in the years 1947 - 1961.[4] Following 1961, birth rates in the United States declined until 1977, when the children of the "baby boom" generation appeared as a new population growth factor. This simple demographic fact has had dramatic consequences on our society, and as this generation has matured, major societal accomodations have been made. For example, in the 1950's and 1960's, severe shortages of classroom

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[4] This discussion, and the data cited are from Blumstein, 1986).

space and teachers were encountered. Many thousands of schools were built and teachers trained; now that the boom generation no longer requires these, teachers are unemployed, universities are dismantling Departments of Education, and schools are closed.

As this generation continues maturing, many other major social institutions likely will require adjustment (e.g., health care institutions, social security systems, etc.). Not surprisingly, this population bulge also has had a dramatic effect on crime rates and prison populations.

In particular, President's Commission (1967), Sagi and Wellford (1968), Ferdinand (1970), and Wellford (1973) all showed that the increases in reported index crime experienced in the 1960s and 1970s could be explained well by changes in the age composition of the population.

Blumstein and colleagues have extended this work by showing that, since the ages during which offenders are most likely to be incarcerated lag by several years those during which they may be most criminally active, prison populations also may be explained rather well by demographic changes (Blumstein, Cohen and Miller, 1980a, b; Blumstein, 1986).

The age structure of our society continues to do a good job of predicting crime. In particular, projections that crime rates would decline as the boom generation aged out of the years during which people are most criminally active (the "peak" crime-prone years are about ages 16 - 17; see Hirschi and Gottfredson, 1983)

have, as already noted, been borne out (Fox, 1976; Toby, 1977; Blumstein, 1986).

Projections of prison populations based on demographic factors, however, have fared rather less well. Since the "peak" imprisonment age is about 23 (Blumstein, 1986), estimates made in the 1970's for the state of Pennsylvania suggested that the prison population would peak approximately in 1990 (Blumstein, Cohen and Miller, 1980a, b). It may well be that the population will peak in or close to that year. However, the Pennsylvania prison population projected for 1990 was about 10,200: for 1985, it was estimated to be about 9,500.[7] At yearend 1985, the actual Pennsylvania prison population was 14,227 -- about 67% above that expected.

Clearly then (and as anticipated by the models developed and used to estimate the Pennsylvania prison population),

> demographic factors, of course, cannot alone explain crime rates or imprisonment rates, but they do represent an important projected baseline from which other factors can still move prison populations up or down. It is important that they be considered because they clearly have a strong effect; for example, the age-specific arrest rate for robbery reaches a peak at age 17, falls off with age to a level of half the peak

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[7] This figure is estimated from visual inspection of Figure 8 in Blumstein, Cohen and Miller, 1980b.

by age 23, and continues to decline exponentially with increasing age.

Also, it is important to account for the demographic effect because it represents one of the very few windows through which one can have any reasonable vision of the future for the criminal justice system; of the many candidate causal factors influencing crime (for example, family structure, economic conditions, unemployment, social mores) or prison populations (for example, crime rates, political and judicial mood, resources), the large majority are no less difficult to anticipate for the future than are crime rates and prison populations themselves. With demography, however, we can know the future much better. Virtually everyone of interest to the criminal justice system until the end of the twentieth century has already been born; even beyond that, demographic trends are reasonably forecast.

(Blumstein, 1986)

Increasing Punitiveness

In addition to the increased numbers of persons sentenced to incarcerative sanctions, the types of incarcerative sanctions employed have changed. In 1970, half of all those incarcerated were in state prisons (Figure 5). By 1985, almost 64% of those incarcerated were in state prisons (Figure 6). Thus, our use of

Figure 5

Inmate Populations, 1970

By Type of Incarceration

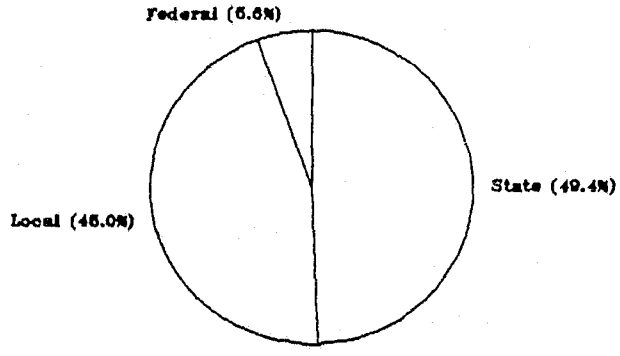
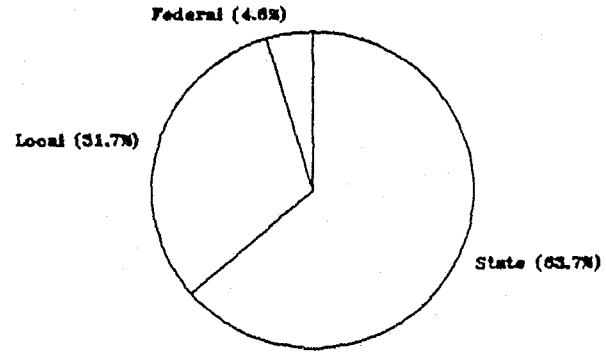


Figure 6

Inmate Populations, 1985

By Type of Incarceration



local jail sanctions has declined relative to the generally harsher state prison sanction. Further, and suggestive that this trend reflects an increasing punitiveness, there is evidence that "marginal" offenders -- that is, those whose offenses and offense histories are not terribly serious -- are receiving harsher sanctions (Blumstein, Cohen, Martin and Tonry, 1983; Ku, 1980; Sparks, 1981; Brewer, 1980; Casper et al., 1982). Thus, increasing punitiveness (as suggested also by the enormous growth in the overall rate of incarceration [recall Figure 4]) undoubtedly contributes to the growth of prison populations. Also, there is evidence that there has been an age-specific change in the incarceration rate. In Pennsylvania, for example, the rate of incarceration for those persons in the "prison-prone" age group (defined as 20 - 34) rose 12 percent during the period 1977 - 1983 (Pennsylvania Commission, 1985).

Further, almost all states in this country have experienced an increase in the proportion of adults arrested for serious offenses committed to prison (Bureau of Justice Statistics, 1986a). Thus, and again suggestive of a trend toward increasing punitiveness, the probability of imprisonment given arrest for a serious offense has increased.

Finally, another factor contributing to the problem of prison crowding is that those sentenced to state facilities appear to be serving longer terms (Joint Committee, 1978; Beha, 1977; Rubinstein et al., 1980; Heumann and Loftin, 1979; Bureau of Justice Statistics, 1986b). As noted by Mullen (1986),

> Small changes in time served can result in large changes in incarcerated populations. In a state with a two-year average term of imprisonment, each week added to or subtracted from the sentence will change the inmate population by 1 percent.

Although not much is known, it does appear that states vary widely in the severity of sanctions imposed (Bureau of Justice Statistics, 1984; 1986b). Mullen points out that:

> [t]he most important factor in determining time served for many offenses may be the side of the state border on which the offense was committed. Thus, for instance, in 1982, serious property criminals were confined an average of about 10 months in Delaware, but stayed over twice as long (22 months) in Maryland's prisons. In Oregon, robbers served an average of 25 months, while the same offense in Washington was worth about 39 months.

Case Study: Prison Terms in Maryland

In recent years, Maryland's prisons have witnessed an increase in the number of persons who have entered the Division of Correction and a decrease in the number leaving the Division (indeed, this must be true for growth to occur). For example, in Fiscal Year 1982, the year in which the greatest disparities occurred, the average number of monthly intakes was 508 persons; the average number of releases was 337. Were that rate of increase to continue (an average growth of 171 persons per month), Maryland could build a new 1,000 bed prison every year, and, every year, fall further behind in its ability to house inmates in conditions that meet constitutional standards.

As illustrated in Figure 7, the average length of stay in Maryland's prisons increased from 16.8 months in 1980 to 26.4 months in 1985--a 57% increase in just six years. Over the decade 1975 - 1985, this percentage increase in average time served is a phenomenal 89%.

It is possible, of course, that this is a simple reflection of the types of persons (or the types of offenses committed by those persons) sanctioned through incarceration having changed over time. At present, almost 62% of Maryland's prison population is serving time on convictions for assault, kidnapping, manslaughter, murder, rape, or robbery (Office of Research and Statistics, 1985).

Legislatively Mandated Changes in Sentencing Practice.

As noted by Gottfredson and Taylor (1983), to limit discussion of a correctional "crisis" to crowding alone is simplistic. In addition to rising inmate populations, the past 15 years has seen rising concern over the objectives of our correctional systems. At issue are the very foundations of correctional treatment; and the relative merits of rehabilitation, deterrence, punishment, and incapacitation increasingly are subject to debate.

In part, concern over goals and objectives arises from debate over the <u>effectiveness</u> of correctional treatment. Although the problem of assessing the effectiveness of correctional treatment is difficult indeed, many have not found the available evidence encouraging -- particularly with respect to the goal of rehabilitation. The indeterminate sentence represented a central aspect of the rehabilitative strategy, and dissatisfaction with the strategy partly is responsible for

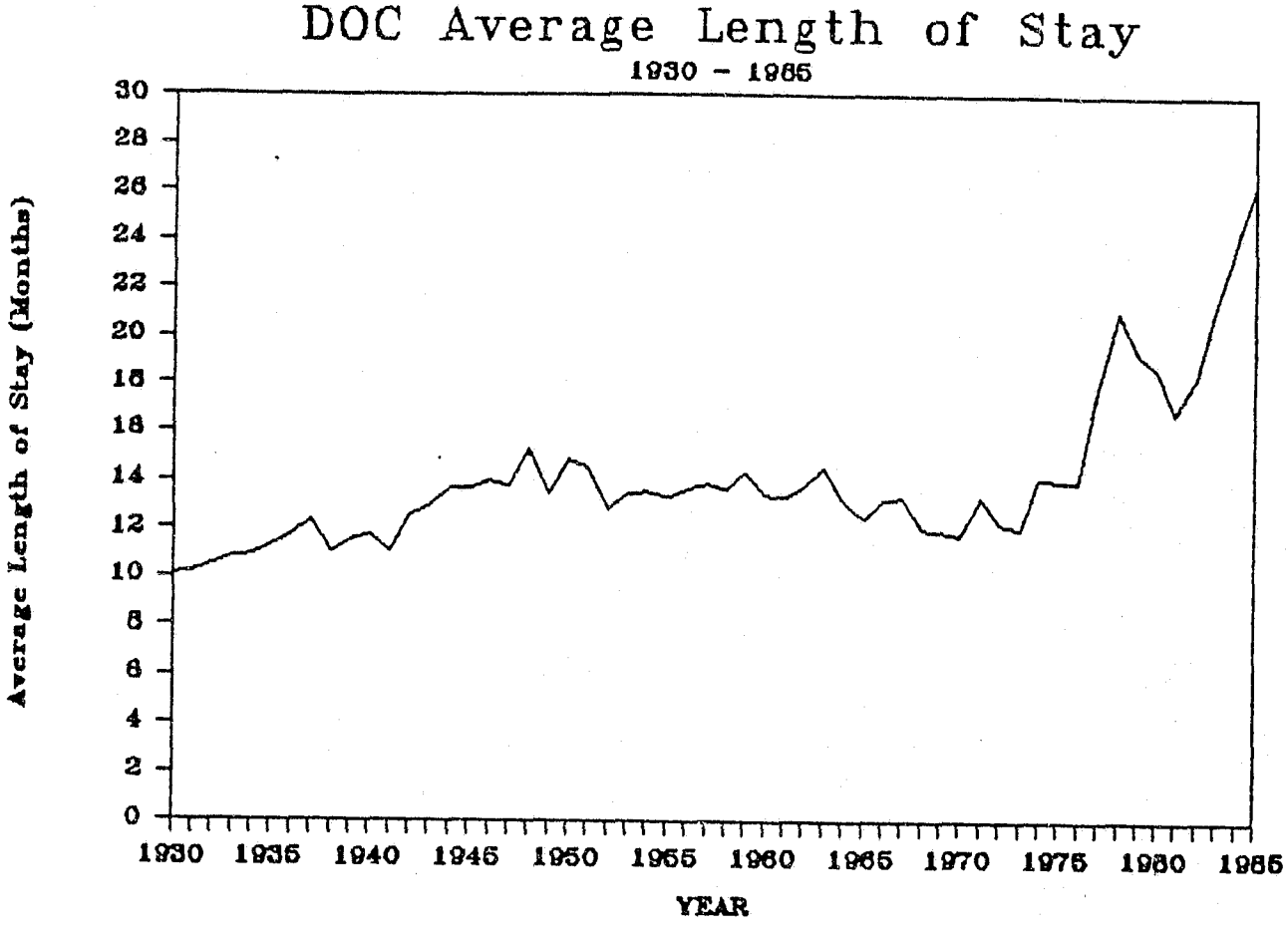

DOC Average Length of Stay
1930 - 1985
Average Length of Stay (Months)
30
28
26
24
22
20
18
16
14
12
10
8
6
4
2
0
1930
1935
1940
1945
1950
1955
1960
1965
1970
1975
1980
1985
YEAR

Figure 7

recent shifts toward the determinate sentence.

Accordingly, changes in legislation governing sentencing and release decisions have occurred in the past 15 years:

- Twelve states have adopted determinate sentencing legislation, eliminating the discretionary power of a paroling authority to release prisoners prior to the expiration of their full terms (Bureau of Justice Statistics, 1986c);

- A number of states as well as the federal system have adopted or are developing sentencing guideline systems (Bureau of Justice Statistics, 1983).

- Most states have adopted mandatory sentencing laws in recent years. Prison terms are mandatory for specified violent crimes in 43 jurisdictions, for "habitual" offenders in 30 jurisdictions, for drug offenses in 30 jurisdictions, and for violations involving firearms in 38 jurisdictions (Bureau of Justice Statistics, 1983).

Some (although certainly not definitive) information concerning formal changes in sentencing practices and their impacts on imprisoned populations is available. This includes work on determinate sentencing laws (e.g., Casper et al., 1981; Casper, 1984; Loftin and colleagues, 1979, 1981), mandatory minimum statutes (Joint Committee, 1978; Beha, 1977; Rubinstein et al., 1980; Heumann and Loftin, 1979), and prescriptive

sentencing guidelines (Knapp, in press). Much of this is reviewed in Cohen and Tonry (1983); in general, the evidence appears inconclusive or, where effects are demonstrated, they appear transitory (Knapp, in press).

Reviewing this evidence, the Panel on Sentencing Research of the National Academy of Sciences concluded that

> [t]he substantial increases in prison populations in jurisdictions that have adopted sentencing reforms continue preexisting trends in sentencing and do not appear to be substantially caused by these sentencing reforms.
>
> Blumstein et al., 1983, at 31.

It should be noted, however, that studies reviewed concerning mandatory sentencing legislation principally were concerned with estimating the deterrent effects of these laws; the impact on prison populations was not of paramount concern. It is the case that both the probability of conviction and terms given increased where studied (Heumann and Loftin, 1979; Loftin and McDowall, 1981). The Pennsylvania legislature recently authorized the new construction or renovation of almost 3,000 cells based on expected increases in inmate populations concomitant with passage of that state's mandatory sentencing law [Act 54 of 1982] (Pennsylvania Commission, 1985).

In 1983, Cohen and Tonry expressed considerable skepticism about any substantial impact of mandatory sentencing laws:

> Polemically and politically speaking, mandatory sentencing laws have much to offer. As a means of gun control, they sidestep the gun lobby. They are simple and easy to understand. They sound severe. It makes intuitive sense that crime will abate if miscreants are inexorably convicted and imprisoned. Practically speaking, the case for mandatory sentencing is more ambiguous. Prosecutors can always and everywhere elect whether to file charges bearing mandatory minimum sentences or some other charge, and whether to dismiss charges. As under any severe but rigid rule, sympathetic cases cause decision makers to seek ways to avoid the rule. Juries, judges, and lawyers have routinely evaded mandatory sentencing laws for 300 years (Hay et al., 1975:Chapter 1; Michael and Wechsler, 1940). Finally, if literally applied, mandatory sentence cases would engorge the prisons.
>
> . . . Mandatory laws can be seen as only political theater: The purposes are rhetorical and are achieved at the moment of passage.
>
> Cohen and Tonry, 1983:340-341

That such laws always can be circumvented certainly is true; and it is almost certainly true that they always will be. It also is true that if the law is there, it almost certainly will be used; undoubtedly selectively. Since such laws generally specify

rather harsh sentences, they almost certainly will contribute to the growth of the imprisoned population. (For example, the Supreme Court recently ruled that a sentence of life imprisonment without possibility of parole was not an inappropriate sanction for a history of three felony larcenies, the total loss from which amounted to about $500 [Rummel v. Estelle]). To date, however, the issue has been understudied.

Case Study: Mandatory Sentencing in Maryland

> Maryland's mandatory sentencing statute (Article 27, Sec. 643B, Annotated Code of Maryland) specifies terms to be served, without possibility of parole, for a variety of "crimes of violence" (including burglary). For three prior convictions, a person must be sentenced to a term of 25 years; for four, the penalty is life imprisonment.
>
> Given the offense history of Maryland's current inmate population, subsequent convictions of releasees under the Statute could necessitate the building of one new 500-bed facility a year for each of the next 9 years just to handle inmates sentenced under the statute, were the law to be applied in full (Tamberrino, 1985).
>
> It is unlikely that the law ever will be applied in full, although undoubtedly it will be applied increasingly. Although the judiciary (by and large) either is not supportive of, or is agnostic toward, the statute, there exists a strong and effective police/prosecutor coalition that actively is supportive of this legislation, and which, in several jurisdictions, has organized programs designed to ensure that offenders eligible for sanctioning under the statute in fact are so sanctioned.

Other Changes in the Punishment Process

In addition to legislatively mandated changes in sanctioning, other less formal change mechanisms also may be

thought to affect prison populations. Voluntary sentencing guidelines may be adopted, parole boards may change policies and/or adopt decision guidelines, prosecutors may adopt "no-plea" policies, corrections administrators change, and gubernatorial and legislative task forces may be commissioned.

Where studied, plea bargain bans do not appear to have had a "substantial overall impact" on prison populations (Blumstein et al., 1983; Cohen and Tonry; 1983) other than, as noted earlier, to increase the severity of sanctions meted out to less serious offenders (Rubenstein et al., 1980; Church, 1976; Heumann and Loftin, 1979). Similarly, voluntary descriptive sentencing guidelines, where adopted, are unlikely to have a considerable effect on prison populations (cf. Cohen and Tonry, 1983; Gottfredson and Gottfredson, 1986a, 1986b). Prescriptive sentencing guidelines, as in the case of Minnesota, had a controlling effect on prison populations soon after their implementation, but the effect may have been transitory (Knapp, in press).

As discussed earlier, dissatisfaction with the rehabilitative ideal (whether this is warranted or not) has resulted in increasing attention being given to other sanctioning purposes, such as deterrence (general or specific), desert, and incapacitation. The movement toward determinacy, with concomitant reduction of paroling mechanisms, generally is codified by law and in some cases is aided by the establishment of a sentencing commission. Mandatory sentencing laws of the

three or four-time loser type often are justified on the grounds of desert, general deterrence, and incapacitation (Rummel v. Estelle).

Recent popular but controversial crime control strategies such as selective (Greenwood and Abrahamse, 1982) and collective (Cohen, 1983) incapacitation have received wide attention in the public press (Newsweek, 1982; The New York Times, 1982a, 1982b; U. S. News and World Report, 1982) and also have stimulated much scholarly debate about both the scientific and ethical issues involved (von Hirsch and Gottfredson, 1984; Cohen, 1983; Greenwood and von Hirsch, 1984; Cohen, 1983b; Gottfredson and Gottfredson, 1985; 1986).

Under a collective incapacitation strategy, the same or very similar sanction would be applied to all persons convicted of common offenses; a selective incapacitation strategy involves sentences based on predictions of future rates of offending. Studies of collective incapacitation effects are rare and report widely varying potential effects (ranging in estimated crime reduction effects of from one to 25 percent, depending upon crime rate assumptions and crime types considered) (Cohen, 1983). When mandatory terms are considered, expected crime reduction efforts are somewhat larger, but probable impacts on prison populations appear unacceptable given the modest impact on crime.

Studies of selective incapacitation strategies also are rare and also report varying potential impacts on crime and prison

populations (Blumstein and Cohen, 1979; Greenwood and Abrahamse, 1982; Cohen, 1982). In general, selective incapacitation strategies are of two types: those that make use only of information concerning criminal history and current offense (as in the Cohen and Blumstein studies) and those that make use of a wider variety of information thought to be predictive of rates of offending (as in the Greenwood and Abrahamse study). As already noted, the latter has been criticised on ethical and empirical grounds; the former requires complex estimates of average individual arrest and crime rates and estimates of average lengths of criminal careers. Either general strategy depends heavily upon (1) predictive power, and (2) the accuracy of estimates made. Considerably more research will be required before either may be applied in practice with sufficient predictive validity and with equity. The scientific and ethical problems are intertwined, and both present formidable obstacles to utilization in policy formulation.

Although to my knowledge no jurisdiction has <u>formally</u> adopted either of these incapacitation strategies, it is clear from discussion with judges, prosecutors, and other public officials that the concepts are applied in practice. Many state and local jurisdictions have "career criminal" programs (usually, but not always, operating in prosecuting agencies in collaboration with policing agencies). The extent to which these programs may be contributing to prison population increases is not known.

Changes in Public/Official Attitudes

It widely is assumed that recent years have seen a "get tough" approach on crime, and that this may be partly responsible for the dramatic recent increase in prison populations. The "get tough" attitude is presumed to be fueled in part by public sentiment and in part by the efforts of special interest groups. Although it is true that some opinion polls show an increasing punitiveness on the part of the public, there also is some evidence to suggest that the public is not as retributive or punitive as commonly is assumed (Gottfredson and Taylor, 1983; 1984).

Riley and Rose have summarized various characterizations of the general public's attitudes toward corrections and correctional issues as (1) ambivalent, (2) vague, (3) unconcerned, (4) apathetic and uninformed, (5) uncertain and lacking consensus, (6) disinterested, (7) punitive, (8) ignorant, and, infrequently, (9) optimistic (Riley and Rose, 1980). However (and as noted by Riley and Rose), the sources of these sentiments typically provide little, if any, data supportive of their rather gloomy characterizations. Given the relative paucity of information available concerning the general public's actual attitudes toward corrections, it is surprising that correctional policymakers so readily claim knowledge of what these views are.

In 1973, Berk and Rossi conducted a study of correctional

policymakers in three states (Florida, Illinois, and Washington). Of principal concern was the understanding of policymakers' attitudes toward correctional goals and proposals for change. While Berk and Rossi noted important variations in opinions of and receptivity to different change strategies among the members of different groups within the sample, more striking were the differences they observed between the opinions and attitudes of the policymakers and their assessments of the public view on these issues. In general, it appeared that the correctional policymakers held personal views that could be characterized as liberal, reform-oriented, and rehabilitative. In stark contrast, they saw the general public as punitive and generally concerned only with its own protection and safety.

Berk and Rossi, although clearly concerned with the accuracy of policymakers' views of public opinion, were unable to examine it with their data. However, in 1975, Riley and Rose conducted a large-sample survey of residents of Washington State, one of the states whose policymakers were surveyed by Berk and Rossi in 1973. In the main their findings do indeed suggest (1) correspondence between the views of the policymakers and those of the general public, but (2) important misperceptions of the public view on the part of the policymakers.

Case Study: Maryland's Policymakers and Public

> In a study conducted in the State of Maryland, we observed this same pattern of findings Gottfredson and Taylor, 1983; 1984). Our sample of correctional policymakers appeared to hold relatively liberal views of the proper goals for correctional systems: they stressed rehabilitation, they opposed the abolition of

parole, and they typically did not favor simple retributive punishment. Also clear was that they perceived the positions of the general public to be very different from their own views.

As noted above, it usually is assumed that the general public is not only uninterested in correctional issues, but ignorant of these issues as well. We know from our survey that this is not the case--at least in Maryland. We found that the vast majority of our sample were very interested in corrections and correctional issues. They were quite aware of the major problems facing the state corrections system, and they followed these issues rather regularly in the media. Finally, they held strong opinions concerning the proper goals of a correctional system.

Contrary to general belief, we found the general public not to be especially punitive--rather, they stressed more utilitarian goals, such as rehabilitation, deterrence, and incapacitation. These attitudes were reflected in the public's views of the various proposals for correctional reform. The reform strategies that received most support stressed rehabilitation and increasing localization of correctional programs and facilities. The majority of the general public in Maryland felt that more institutions are needed, but unfortunately it cannot be determined from our data whether this stems from a simple concern over a lack of space, or from knowledge of the conditions in Maryland's present facilities (or both).

Almost without exception, these attitudes were echoed by our sample of policymakers. In no important respect did the attitudes of the policymaker sample differ from the attitudes of the public. In fact, where they did differ, the views of the policymakers would appear more liberal and more reform-oriented.

We also discovered that our policymakers felt that they knew the public mood--and that the public's attitude concerning correctional issues is at substantial variance with their own. When we systematically assessed the accuracy of that perception, we observed almost complete congruence between the public and the policymakers with respect to most key corrections issues, but severe misconceptions among policymakers of the public will with respect to these same issues.

Concerning correctional system goals, we found a striking lack of correspondence between the policymaker group's assessment of public opinion and the reality of

that opinion. While the policymakers reported that the general public would strongly support the goal of retributive punishment and would offer only very weak support to the goal of rehabilitation, this was not the case. However, we found relatively good agreement between the policymakers' own goals for corrections and those of the general public. Both groups assigned high priorities to the goal of rehabilitation or treatment and agreed that simple retributive punishment is the least desirable goal for a correctional system. Thus, both the public and those who are charged with setting and implementing correctional policy appear to support utilitarian, as opposed to retributive, goals.

We observed virtually this same pattern in the assessment of various proposals for correctional reform. Virtually no important differences existed between the policymakers' assessment of various change strategies and the public assessment of these same strategies. Yet with the exception of whether or not to build prisons, the policymakers consistently misperceive the public sentiment. While the attitudes of both the public and the policymakers can be characterized as rather liberal, nonpunitive, and reform-oriented, the policymakers attributed almost the reverse to the public.

One could take the position that the policymaking and implementing groups studied in Maryland are failing to meet the responsibilities with which they are charged. A basic assumption of representative democracy is that public policy should be responsive to the public will; and one can argue that this principle applies to both administrative and legislative branches of government. Our data clearly suggest not only that our policymakers are poor judges of the public's wants, but that the system they are charged with operating is not responsive to the priorities as assigned by the public. To this point, then, the evidence would seem to suggest that with respect to correctional system goals and their implementation, those whom we charge with

public responsibility are failing to meet that charge.

I prefer a less cynical interpretation, and in fact feel that the data better fit a model of "pluralistic ignorance"-- a term commonly used to describe situations in which persons underestimate the extent to which others share their beliefs and sentiments (Merton, 1968; O'Gorman, 1975; O'Gorman and Garry, 1976). We also examined the relation between policymakers' perception of the public will and their perception of the functioning of the correctional system. This relation was strong and positive. It appears that correctional policy may indeed be made and implemented in accordance with the public will as the policymakers perceive that will. This, of course, is the critical issue: the extent to which policymakers misperceive or misunderstand the views of the public may determine the extent to which public policy will be non-responsive to the public will.

As noted by Hedlund and Friesma:

> Representative democracy requires at least a fairly high level of accurate information about constituency attitudes and opinion. Without that ... [policymaking] institutions may provide the stamp of legitimacy and perform other functions, but they do not provide a decision-making system that reflects the views and values of the citizenry.
>
> Hedlund and Friesma (1972:736).

As noted earlier, some have posited that societies may adjust

otherwise rather stable levels of punishment (Blumstein et al., 1981). Although more evidence is needed, it may well be that part of the problem of increasing prison populations represents an administrative response to perceived public pressure to increase punitiveness. To the extent that this perception is in error, our society may be changing punishment levels inappropriately.

Summary and Policy Implications

An unfortunately short summary of the dynamics of prison populations over the past 15 years can be provided: They have gone up dramatically. Prison populations have increased well beyond expectations based on prior experience (history), crime rates, population changes (demography), or other presumed causative factors such as national productivity or unemployment.

In part, this appears to be because of increasingly harsh treatment of those who offend against society. The rate at which we imprison has increased, and we increasingly make use of prisons rather than jails when we incarcerate. Not only do we incarcerate more people than ever in our history, and a larger proportion of our population, but we imprison them for longer terms. Some of this tendency toward increasing punitiveness is reflected in law, but where studied, preexisting trends could not be ruled out as plausible alternatives to changes in sanctioning patterns.

Of the various factors discussed as contributing to the

dramatic recent increases in prison populations--crime, demography, increasing punitiveness, legislative and other changes in the punishment process--it is tempting to ask which is most important, or to attempt some relative ordering of these factors. Unfortunately, the question cannot be answered well.

In simplest expression, prison populations only are a function of the numbers of persons sentenced to prison and the length of time they stay there. That is:

Prison Population = Number Sentenced x Length of Stay

The difficulty arises in the estimation of the terms on the right hand side of the equation. In general, we might expect that different of the presumptive "causes" discussed in this paper would be important in estimating each of these terms (that is, the number sentenced and the length of stay). For example, the crime rate and population demography presumably are critical to estimating the term, "number sentenced." Of these, current evidence would suggest that demographic effects are more critical: this is because of their effect also on crime. However, many other factors may be presumed also to contribute to the crime rate (e.g., unemployment, social conditions, etc.), and these are either difficult to measure or to predict.

Further, the variable of interest--number sentenced--may itself have an effect on crime rates, be this through processes of deterrence, incapacitation, or rehabilitation. As is well-known, however, the estimation of these effects is

difficult.

Consider the second of our two terms, "length of stay." At first blush, it would appear that increasing punitiveness, and/or legislative and other changes in the punishment process would be critical in estimating how long people spend in prison once sentenced there. However, as discussed in previous sections, these factors also have been difficult to assess.

Finally, it is not at all clear that the two terms on the right side of our simple equation are independent. For example, increasing punitiveness could as easily affect the number sentenced as the length of prison stay. The situation is further complicated by the fact that, in attempting to deal with the deteriorating situation in the nation's prisons and jails, public officials have flirted with a variety of strategies designed to meliorate the situation. Although few if any such strategies have been successful in alleviating crowding, it is difficult to model their effects, given their typically haphazard administration. Still, these must be seen as confounds in other explanatory schemes.

In a real sense, it is incorrect to discuss issues such as crime or population demography as "causes" of prison populations. Imprisonment is an administrative response to certain behavioral acts; it is in no direct sense "caused" by the acts, or by the numbers of persons available to perform them. The true causes of prison populations are to be found in social policy--that is, in

the administrative response to criminal acts.

From this framework, it readily may be seen that the amount of crime, or the numbers of persons available to commit crimes, only should be construed as the baseline from which to investigate the role of social and administrative policies--which are the true causes of prison populations. This is not to deny, of course, that changes in social policy may be partly affected by crime and demographic factors, but to assert simply that the causes of prison populations lie in social policy rather than in some external reality. Prison populations do not reflect a simple natural phenomenon which responds solely to the dynamics of past trends: they are subject not only to crime trends and population demography shifts, but to social and political inluences and constraints on resources as well.

Already noted were the projections made for the Pennsylvania prison population. Full attention was given to concerns of population demography and to flow characteristics of the justice system. The model suggested that the prison population would peak approximately in 1990, with about 10,200 persons incarcerated. By yearend 1985, five years earlier than the presumptive peak, the population stood at over 14,000, and was about 67% above the expectation for that year.

Changes in the punishment process that were not included in the projection modeling efforts account for the inaccuracy of the predictions made. When these factors are known, they can of

course be included in the model. For example, current estimates are that the Pennsylvania prison population still will peak approximately in 1990, but with about 16,000 (rather than slightly over 10,000) persons incarcerated (Pennsylvania Commission, 1985). The revised estimate takes into account the facts that: (a) a mandatory sentencing law was passed; (b) the population under life sentences is growing (a 69% increase over the period 1977 - 1983); and (c) there has been an increase in the rate of incarceration for the prison-prone age group (a 12% increase over the period 1977 - 1983).

Each of these factors appears to reflect an increasing harshness of sanctioning: a phenomenon that to date is little understood. However, there can be little doubt that perceived public sentiment is responsible, at least in part, for this increasing punitiveness. The administration of our punishment systems is the responsibility of elected officials from all three branches of government (although only the executive actually shoulders the burden, and bears responsibility for actions of the legislative and the judiciary). In their study of correctional system policymakers, Berk and Rossi (1977) noted that many were

> rather sensitive to the possibility of political losses resulting from support of reform. Were strong anti-reform sentiment to arise...-- perhaps led by law enforcement interest groups -- many of our [policymakers] would probably back off...

Case Study: Reform Failures in Maryland

In our studies in Maryland (Gottfredson and Taylor, 1983; 1984), we observed exactly this. Although there existed strong support for correctional reform efforts, that support was widely scattered throughout the criminal justice system.

For one series of analyses, we reclassified members of our system-wide survey samples based on (a) the priority which they would personally assign to the goals of rehabilitation, deterrence, and punishment, and (b) their assessments of the priorities which the corrections system actually assigns these goals. One important finding that resulted from this analysis was that the various subsamples contacted (judges, prosecutors, legislators, police officers, etc.) are not as homogeneous with respect to correctional goals as one might have thought. In fact, the relation between position in the criminal justice system and personal and perceived goals is so weak as to be indicative of considerable differences of opinion among persons functioning in similar roles within the criminal justice system.

Six groups were identified in this analysis, and we labeled these groups "satisfied" if their personal goal priorities and the priorities under which they felt that the system actually functioned were consonant. Groups whose personal and perceived priorities were not consonant we called "dissatisfied." Fully 60% of the sample fell into one or another of the "dissatisfied" groups. Regardless of personal goal preference, the majority of persons in the criminal justice system reported that the correctional subsystem functioned in opposition to the goal desired.

The heterogeneity of attitudes that we observed suggested, with the exception of law enforcement groups, that coalitions would form with considerable difficulty. During the period of our study, Maryland's law enforcement community was very active in correctional policy debates. Thus, in addition to a serious misperception of public support for correctional reform, Maryland's policymakers were also faced with a criminal justice system which in the aggregate was rather sympathetic to proposed change strategies, but in which coalition formation along traditional, functionally-defined system roles was difficult. Finally, one effective coalition repeatedly stressed the dangers and failures of proposed reforms. The result was the "retreat" predicted by Berk and Rossi; and an enormous increase in the prison population.

If in fact our society demands the current extraordinary levels of punishment, then that should be known and acknowledged, and sufficient resources should be made available to accomodate the level of punishment required. However, if current administrative responses do not reflect the actual public will, then that too should be known, and the punishment process adjusted accordingly.

To date, little is known about the causes underlying our increasingly harsh treatment of offenders, or about its consequences. That we now are more punitive than ever in history is clear, and whether that is appropriate is a political, rather than a scientific, question. To inform the political argument, however, information concerning the nature of the change is needed.

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IMPRISONMENT, THE PRISON POPULATION AND OVERCROWDING: THE EXPERIENCE OF ENGLAND AND WALES

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The purpose of this paper is to discuss some of the main issues surrounding the use of imprisonment and the size of the prison population in England and Wales. In so doing it provides insights which may be useful in contrasting practices and policies in other jurisdictions in the United States. In addition to presenting basic information and changes over time, the paper outlines the research that has been, or is being, undertaken and discusses the policies and legislation that have been implemented or enacted in the recent past, or are currently under consideration.

The size and composition of the prison population

Overcrowding in prison is essentially a question of 'supply' and 'demand': a balance between the number of places available compared with the number of prisoners. In 1984 the average prison population was 43,296. In 1985 the average prison population rose to 46,300 but as full details have not yet been published, 1984 data are presented. The 1984 population was in excess of the authorised certified normal accommodation (CNA) at 30 June 1984 of 39,033. However, the extent of overcrowding varied by type of establishment as can be seen from Table 1.

Table 1 Average population in 1984 and certified normal accommodation on 30 June 1984

Type of establishment	Average population in 1984	Certified normal accommodation on 30 June 1984
Male establishments		
Remand centres	3,418	2,437
Local prisons	15,219	10,934
Open prisons	2,971	3,281
Closed training prisons	12,096	11,821
Youth custody centres	5,634	6,910
Detention centres	1,485	2,259
Female establishments	1,473	1,391
All establishments	43,296	39,033

Overcrowding is not spread uniformly across the system and the problem is most acute in the remand centres (which contain defendants awaiting trial or sentence - discussed further below) and local prisons (which also contain remand prisoners and offenders serving short prison sentences). Many training prisons, youth custody centres and detention centres (the latter two being institutions for juvenile and young adult offenders) are little affected by overcrowding.

The government is committed to ending overcrowding and its strategy is designed both to increase prison capacity and to contain the demands on the prison system. Several new prisons were opened in 1985 and more are at various stages of construction. In addition accommodation is being expanded at existing establishments.

A starting point for considering the factors influencing the demand on prison system is to identify who is in prison establishments and the

reasons for their being there. Table 2 shows the composition of the prison population in 1984. The second column of the table shows the average population by each category. However, as the population in prison at any one time is a function of how many prisoners are sent to prison and the length of time they stay, the first column shows the numbers received into prison during the year. As less than 4 per cent of the prison population and about 5 per cent of receptions are females, disaggregation of the data by sex is omitted from this paper only totals are presented, but this should not be interpreted as minimising the concern about the females receiving prison sentences or their treatment and containment in prison.

Table 2: Receptions and population in prison department establishments by type of custody, 1984

Number of persons

Types of custody	Receptions	Average Population
Prisons on remand		
-Untried criminal prisoners	51,940	7,173
-Convicted unsentenced prisoners awaiting sentence or enquiry	18,156	1,514
Prisoners under sentence	92,810	34,321
-Immediate imprisonment (excluding life)	42,101	22,542
-Life	197	1,930
-Youth Custody	17,149	7,633
-Sentenced to detention centre	11,532	1,481
-committed in default of payment of a fine	21,761	793
Non-criminal prisoners	3,683	288
Total	*	43,295

Source: Prison Statistics England and Wales, 1984

* A total number of persons received in to custody cannot be calculated by adding together receptions in each category, because there is double-counting: for example, while a case is proceeding through the courts an individual may be included in any one or more of the categories.

It can be seen then that there are three broad categories of persons in custody. First, there are prisoners on remand who may be awaiting trial or, having been tried and convicted, are awaiting the preparation of psychiatric or social inquiry reports before being sentenced. The second major category comprises offenders sentenced to imprisonment or, in the case of juveniles and young adults, youth custody or detention centre orders. This category also includes those offenders committed to prison because they are in default of paying a fine previously imposed by the court. The third category comprises civil offenders and persons held under the Immigration Act 1971. This third category, which is numerically much smaller, will not be considered further in this paper. Attention will focus on the first two categories.

By comparing the two columns of Table 2 (receptions and average population) it is possible to see the importance of length of stay in prison. Two extreme examples illustrate this point: 11 781 prisoners were received into prison in 1984 in default of payment of a fine. But because they stayed on average just under 2 weeks, they comprised, on average, 753 of the prison population. Obviously for offenders sentenced to life imprisonment the relationship is the other way round: average population greatly exceeding receptions in any one year.

Changes in receptions and the prison population 1971 to 1984/85

Figure 1 shows for the last 13 to 13 years the changes in the number of offenders received into prison disaggregated by the main categories: sentenced offenders and remand prisoners. For the latter

group both those awaiting trial and those tried and convicted but awaiting sentence). Figure 2 shows, for the same period, the annual average population. In addition to this information, monthly data are collected by the Statistical Department of the Home Office and reveal seasonal variation in both receptions and the prison population. Seasonally adjusted figures are produced and presented in *Prison Statistics England and Wales* .

Remand prisoners

From Table 2 it can be seen that 8,687 persons on average were in prison on remand on any one day in 1984. This represents about 20 per cent of the prison population; 16.6 per cent are prisoners awaiting trial while 3.5 per cent have been convicted and are waiting for reports to be prepared prior to being sentenced. Reference to Figures 1 and 2 show more clearly the changes that have taken place. The number of persons received into prison having been convicted but awaiting sentence has remained constant over much of the last decade and has even declined recently. The rapid increase, since about 1980, in the remand population is entirely attributable to the increase in the number of defendants received into custody to await trial and an increase in the length of time they wait before coming to trial. The estimated average number of days in custody awaiting trial for males has risen from 36 in 1980 to 51 in 1984.

Morgan (1983) examined in greater detail the increases in the remand population to 1982. However, before summarising the results of her research it is necessary to explain briefly the court system in England and

Wales. Offenders charged with very serious crimes such as murder or rape must be tried on indictment before a judge and jury at the Crown Court. However, the remainder (and vast majority) of 'notifiable' offences, (principally other violence and sexual offences, robbery, burglary, theft and handling stolen goods, fraud and forgery and criminal damage) can be tried either at magistrates' courts or the Crown Court. Magistrates can commit these cases to the Crown Court and if they do not defendants have the right to elect Crown Court trial.

Returning to Morgan's research, she found that several factors were contributing to the size of the remand population. First, as shown in Figure 1, there has been an increase since 1979 in the number remanded in custody which is a reflection, in some years, of the increased number of persons prosecuted. In 1981 and 1982, in particular, there was a sharp increase in the number of offenders proceeded against for offences of burglary and robbery and these are the kinds of offences which are more likely to attract a custodial remand rather than bail pending court appearance.

A second causal factor has been the increase in waiting times at the Crown Court. Between 1979 and 1984 the number of adult offenders to be tried at the Crown Court rose by about 49 per cent and this has inevitably contributed to the deterioration in waiting times. A third fact noted by Morgan was the considerable variation between regions of the country. Much greater increases in the remand population were experienced in some parts of the country and Crown Court waiting times are much greater in London and the rest of the South-East region of the country.

Analyses such as that discussed above have prompted further questions

several recent policy initiatives and additional research. In order to get cases dealt with more expeditiously the government is contemplating introducing time limits analogous to those in the Federal and State Speedy Trial Acts in the U.S.. Field trials have been set up in four areas of the country and the Research and Planning Unit is monitoring their impact. Examining a sample of cases in each area, noting the point at which key decisions are taken and the reasons for delay will provide new insights into the factors determining the time cases take to come to trial.

The government is also planning to alleviate pressure at the Crown Court by redistributing court business. Research is also underway in an attempt to discover why some defendants elect to have their case tried by a judge and jury at the Crown Court while others elect for summary trial at the magistrates' courts. Other policies have also been initiated, such as the prosecution giving advance disclosure of its case to the defence, which, it is hoped, will eliminate some court adjournments and unnecessary court time in trying cases. The Statistical Department of the Home Office is also collecting new data on waiting times in order that this can be monitored more closely.

Attention so far has focussed on [illegible] however it is interesting to note that receptions of remand prisoners were as high or higher in the first half of the 1970s especially 1974 and 1975, as they have been in recent years, although the earlier peak did not have the same impact on the prison population. The sharp decline in receptions of remand prisoners in 1976 was clearly the result of the Bail Act 1976 which was implemented in April 1976. Although a mitigation of the Act may have

resulted in some decline earlier). Under the Act, a presumption in favour of bail for the accused became a rule of law by the creation of a general right to grant bail except in certain circumstances. The recent rise in the remand population has led to renewed interest in factors influencing courts' bail decisions and variation in bail rates between different areas of the country (Jones, 1985). Further research is in hand.

Sentenced prisoners

It can be seen from Table 1 that offenders sentenced to imprisonment are, not surprisingly, the largest group in prison (79.3 per cent). The number in prison at any one time will be a function of the number sent there, the length of sentence imposed by the courts and the length of time prisoners serve in custody before being released.

With regard to the first of these factors it has been the policy of successive governments to divert less serious offenders from custody and to reduce the use of custody for offenders who can safely and suitably be dealt with in the community. Legislation particularly in respect of young offenders, has emphasised that custody should be used as a last resort and several non-custodial sentences have been introduced or expanded by the provision of extra expenditure and resources.

Courts in England and Wales now have a wide range of sentencing options available to them. Non-custodial options include discharges (for the least serious offenders where the court believes that it is inexpedient to inflict punishment), financial penalties (fine and compensation orders), probation and supervision orders (broadly the juvenile equivalent of a probation order)

community service orders (a requirement to perform unpaid work on behalf of the community), and attendance centre orders (available for young offenders - under 21 - who are required to attend every Saturday for a fixed number of weeks). Several of these options have been expanded. For example, the number of attendance centres has been increased, the community service order has been made available for younger offenders - those aged 16 or over, and additional funds have been made available for intermediate treatment schemes (which form an adjunct to a supervision order and provide a wide variety of recreational, educational or socially valuable activities in a community context.

In addition to non-custodial alternatives, courts have the power to suspend sentences of imprisonment of not more than two years. The suspended prison term is not served at all unless the offender commits a further imprisonable offence within the period set by the court (between one and two years). More recently partly suspended sentences have been introduced which, as the name implies, require the offender to serve part of the sentence in prison, the remainder being suspended.

Attention is also being given to the specific needs of certain types of offenders: those with drink, drugs or mental health problems. Another target group are fine defaulters. Offenders who do not pay a fine previously imposed by the court can be sent to prison. The number received into prison for default has risen sharply - more so than sentenced offenders generally. 11,781 were received into prison in 1984 which constitutes about a quarter of all sentenced receptions into prison. Although their proportion of the prison population is much less - about -

per cent of the sentenced population: because their stay is short, they present an administrative burden and contribute disproportionately to overcrowding as they serve their sentences in the most overcrowded sector - the local prisons. To deal with this problem courts have been encouraged to take account of offenders' means when deciding the level of the fine to be imposed and to take account of changes in the offenders' circumstances during the period of payment (fines are often paid in instalments). In the case of default, other steps should be tried, imprisonment should only be used as a last resort for those who will not pay rather than those who cannot.

The extent to which offenders have been diverted from custody is difficult to assess as it is not possible to measure how many would have been sentenced to prison otherwise. Figure 1 shows that the number received into custody has gone up considerably over the last 13 years suggesting that strategies to divert offenders from custody may have had limited impact. However the picture is much more complex and these data have to be considered in context. First, much of the increase is attributable to the increase in the number of fine defaulters received into custody. Second, increases have to be considered in the light of general increases in offending and the number of offenders appearing before the courts. For example, the sharp increase in 1981 and 1982 is partly attributable to a similarly large increase in the number of offenders found guilty of offences of burglary in those years (which also contributed to the increase in remand prisoners, discussed earlier).

The increase in offending can be taken into account by considering the proportion of all offenders sentenced who were sentenced to imprisonment -

although even this will be affected slightly by policies to divert less serious offenders from court proceedings. This proportion has risen slightly but not uniformly across all sub-groups when the data are disaggregated by offence, age and sex of the offender and by the type of court - magistrates' court or the Crown Court. For some combinations the proportion has remained constant or has fallen. Another perspective can be obtained by looking at offenders receiving non-custodial alternatives. Research into community service suggested that in about half of all cases, offenders would have otherwise received a custodial sentence. The most likely conclusion from this limited analysis, therefore, is that some diversion has taken place, at least for certain types of offender.

Despite the increase in receptions the average population under sentence has risen less sharply (see Figure 2) and this is because the length of prison sentences imposed and the time served before release have fallen. For example, the average sentence length of males aged 21 and over received into custody fell from 16.6 months in 1976 to 13.2 months in 1984. This decline reflects an intention, expressed by governments and the Court of Appeal, to keep prison sentences for non-violent petty offenders short, reserving longer sentences for more serious offenders. The more recent decline in sentence lengths may also be associated with the introduction of partly suspended sentences in 1982.

Prisoners in England and Wales can receive one-third remission of their sentence for good conduct. In addition, release on parole licence can also affect the length of time served. Since the introduction of parole in 1967 the shortest sentence for which parole could be considered was about 20

months, but this was reduced to about 11 months following changes in the rules governing parole eligibility introduced in July 1984. From an analysis of those discharged it was estimated that this change in policy had the effect of releasing about 2,500 additional prisoners and resulted in a decline of 1,200 in the average sentenced prison population from 1983 to 1984.

The rapid rise in the sentenced population in 1985 was associated with substantial increases from the fourth quarter of 1984 in the numbers received into prisons reflecting mainly increased numbers given custodial sentences by the Crown Court.

Projecting and modelling the prison population

In order to anticipate demand as much as possible and to provide a basis for assessing the implications of policies, the Statistical Department of the Home Office produce each year projections of long term trends in the prison population. The latest projections, to 1994, are given in Home Office (1986) from which the following extract is taken.

The method used to produce the projections is to divide the population into subsets defined by type of custody (eg immediate imprisonment, untried, age and length of sentence. For most of the subsets, including all the larger ones, projections of historical series on the numbers received are produced and then converted to projections of population by means of 'time served' factors - the average time spent in custody for those in each of the subsets, projected from past data. For some of the smaller subsets there are too few [illegible] for this method to be employed and historical

population data are projected directly. Past trends whether in receptions, time served or population do not always follow a clear pattern and there is therefore considerable scope for judgement in selecting the estimates of past trends to be projected into the future. This occasionally leads to a marked change in the projections for a particular series with the addition of only one year's data.

A second projection is produced incorporating demographic changes. Demographic factors have the advantage that reliable projections of the age and sex composition of the general population are available and they demand serious consideration since the rate of imprisonment varies widely between different age and sex groups and the age and sex distribution of the general population will have changed significantly by 1994. However, the number of receptions is very small in relation to the size of the general population about 1 per cent of males ages 17-20 and a lower proportion for other ages, so that a simple proportional relationship is unlikely to represent adequately a complex reality or to remain stable over many years. A study of data for 1961-82 carried out to determine whether past changes in the number of receptions in different age groups were better explained by assuming a non-demographic model that is, that increases or decreases occurred only as a result of time trends or a demographic model that is, that changes occurred both because numbers in the age groups changed and because of time trends) proved inconclusive. Close monitoring of recent receptions data continues and generally does not point to either conclusion. Although the number of 17-20 olds in the general population peaked in 1980, there was little slackening in the increase in the numbers of receptions in

this very important age group in 1984 and 1985. It is only for juveniles (10 to 17 year olds) that some evidence is now emerging that a demographic model may be better: the numbers of juveniles received under sentence started to fall after 1980 when their numbers in the general population peaked. Despite evidence for this group which is a relatively small segment of the prison population, it is still not clear which model generally gives the better performance.

The two sets of projections are produced and can be seen as the range within which the best estimate of the projected population level lies. It is around the end of the decade that the exceptional falls in the general population start to work through to the age groups most likely to be received into prison and demographic factors may have an appreciable effect.

The projections to 1994 are shown in Figure 3 and the 1994 projections are set out in Table 3.

Table 3 Projected average annual population 1994 thousands of persons

Type of prisoner	Non-demographic model 1994	Increase 1984-94	Demographic Model 1994	Increase 1984-94
Remand population	16.1	39	14.4	4[illegible]
Sentenced population	42.8	24	38.3	11
Total Population	58.9	26	52.7	2[illegible]

In addition to the annual projections, the Research and Planning Unit have developed a computer simulation model of the criminal justice system (Morgan, 1985). This model is increasingly being used to explore policy

options. Morgan (op cit) has evaluated the likely consequences for the remand population assuming different court workloads and resources. Subsequent work has compared the effects on the prison population of diverting from custody offenders receiving short sentences and of alternative reductions in the length of sentences awarded by the courts.

Conclusions

This paper has attempted to describe the use of imprisonment, the size of the prison population, some of the principal contributing factors and the policies that have been initiated in England and Wales. Inevitably there are many nuances to this issue and detailed analyses have been omitted. The intention has been to concentrate on general aspects which may be useful in any cross-national comparison. Inevitably, some features are only relevant to the situation in England and Wales. Nevertheless the main conclusion to be drawn from the paper is that there is no one simple explanation for changes in the size of the prison population. Various forces and influences contribute to its size and their relative contribution can vary over time. By the same token there is no one simple solution for all time, rather a range of policies have to be considered. Furthermore, effective solutions may be sought at various parts of the criminal justice system. Most of the recent rise in the prison population in England and Wales, for example, is attributable to the increase in the remand population - which had remained fairly stable until the 1980's. An important influence here is the increase in the length of time defendants spend awaiting trial, so any effective solution must address the difficulties experienced in bringing cases to trial. Other examples are given in this paper which support this conclusion.

Because of the fluctuations and changes in population that can occur at relatively short notice, regular monitoring is required and this can only be achieved by comprehensive and up-to-date information. Steps are in hand to improve the quality of the information available in the United Kingdom and to produce routine management information so that initiatives can be implemented as early as possible.

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FIGURE 1 NUMBER OF PERSONS RECEIVED INTO CUSTODY, 1972-84

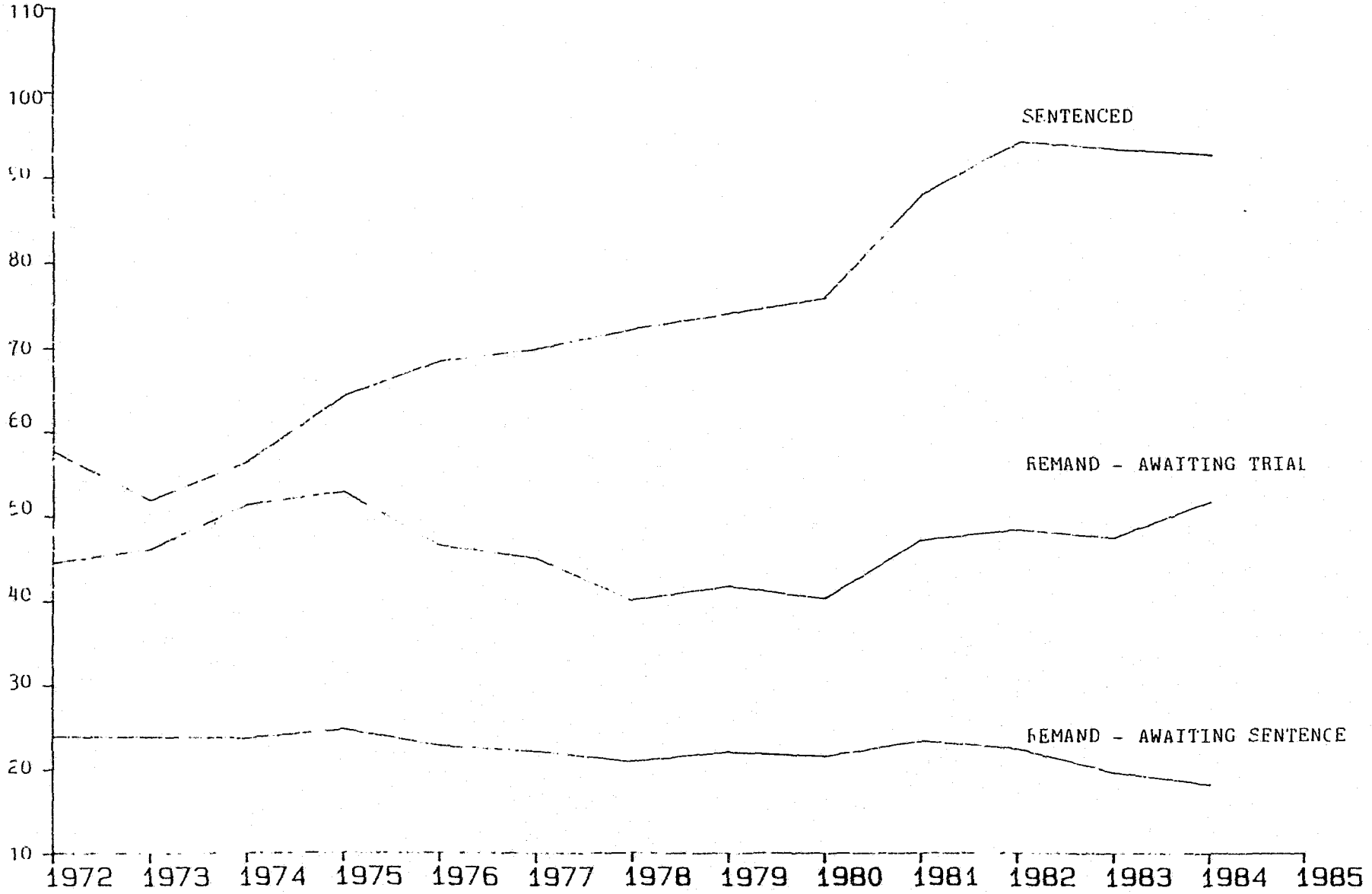


FIGURE 2(i) POPULATION IN CUSTODY, 1972-85 (TOTAL AND SENTENCED POPULATION)

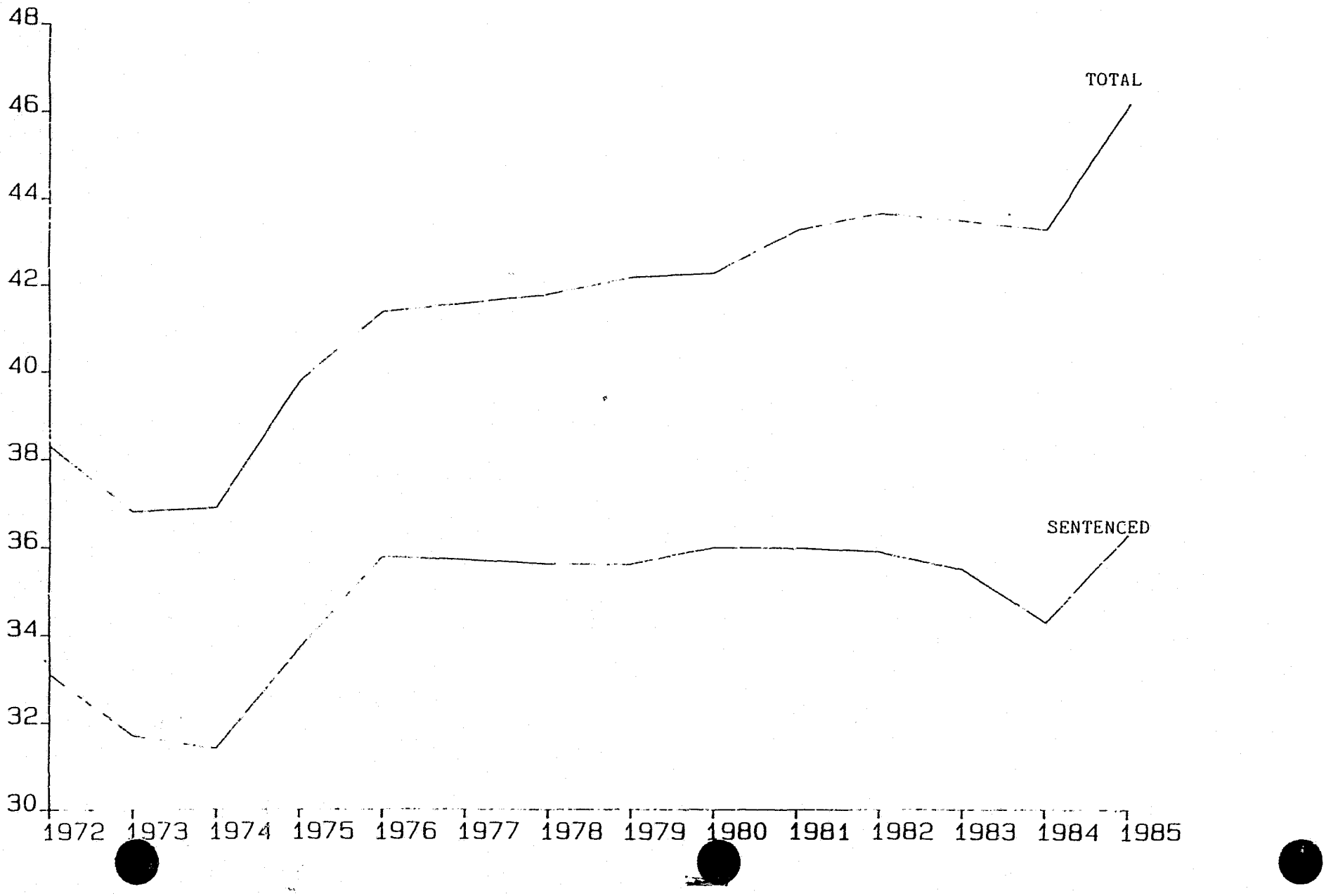


FIGURE 2(ii) POPULATION IN CUSTODY, 1972-85 (REMAND POPULATION)

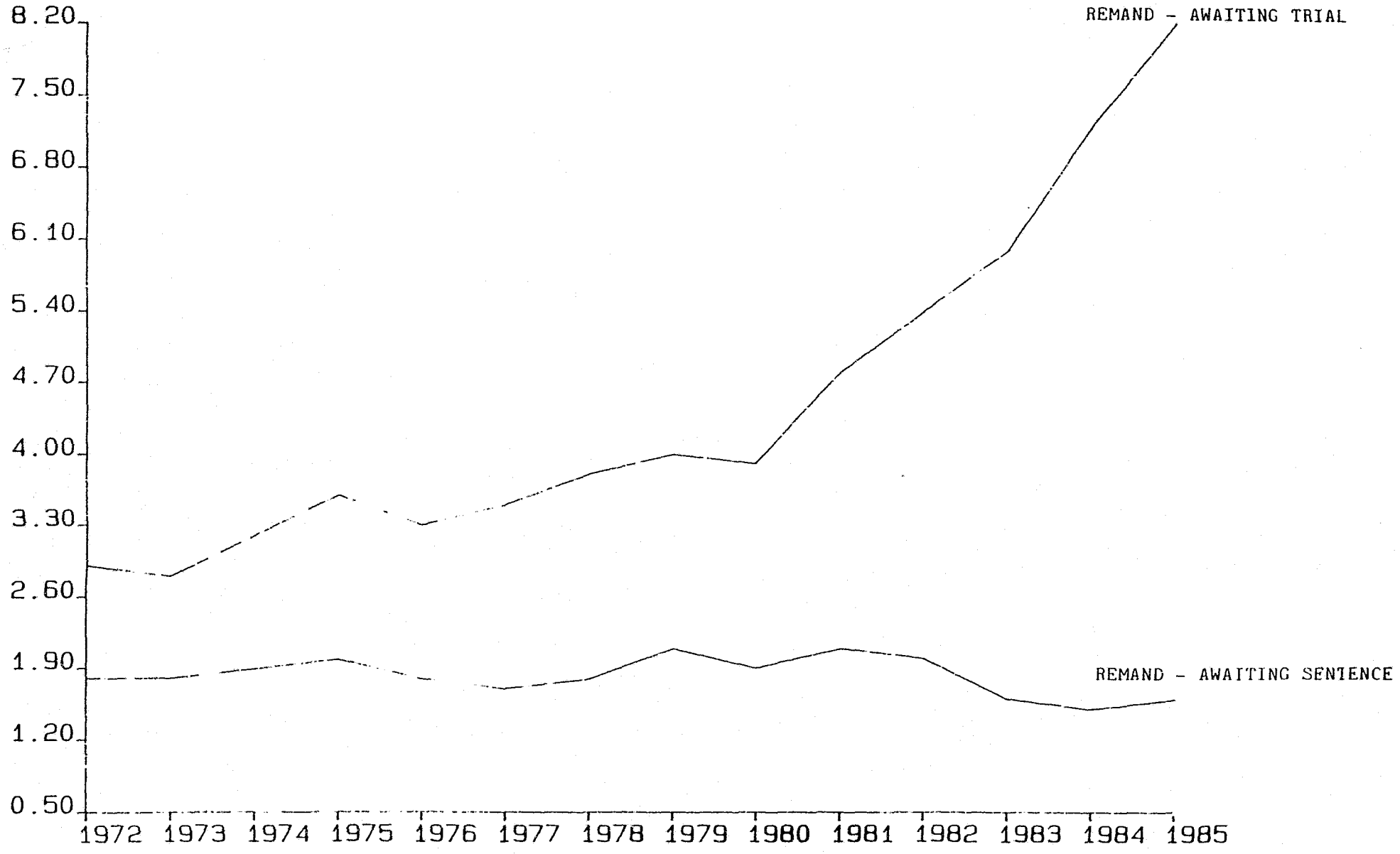
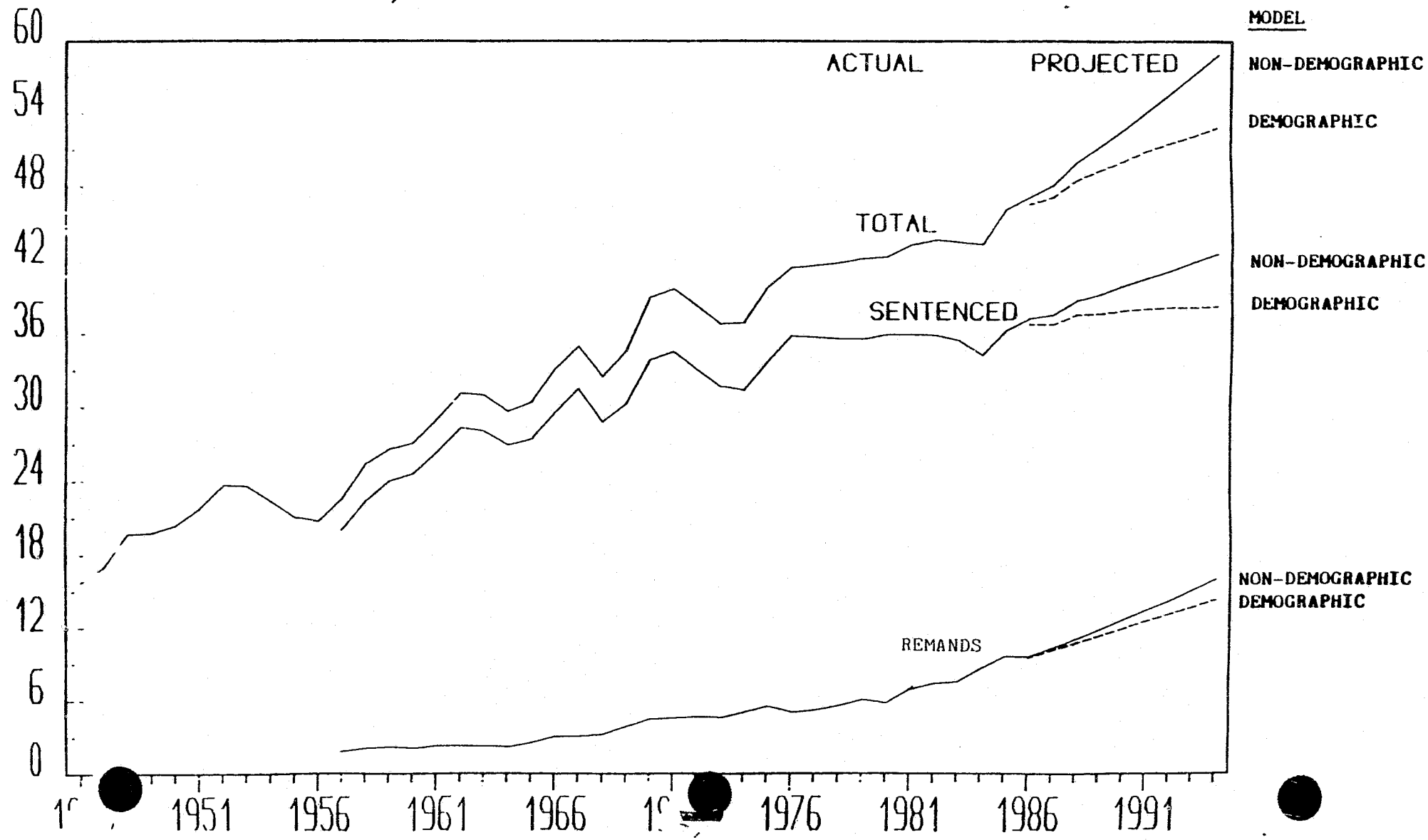


FIGURE 3

AVERAGE POPULATION OF PRISON DEPARTMENT ESTABLISHMENTS, 1946-1994(000'S)



WHAT WE KNOW, THINK WE KNOW AND WOULD LIKE TO KNOW ABOUT THE IMPACT OF COURT ORDERS ON PRISON CONDITIONS AND JAIL CROWDING

Prepared for the Meeting of the
Working Group on Jail and Prison Crowding

Committee on Research on Law Enforcement
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ABSTRACT

In sharp contrast to the past, federal court decisions resulting from prisoner litigation have placed prisons and jails on the national policy making agenda. Prison and jail crowding highlights the complexity of this issue; the policy debate surrounding this topic involves multiple consideration of alternative theories of punishment, the merits and limitations of incarceration, competition for scarce resources, evolving meanings of the Eighth Amendment, and the appropriate spheres of state responsibility and federal court jurisdiction.

The purpose of this paper is to focus on one aspect of these discussions. Specifically, it examines what we know, do not know, and need to know concerning the effects of court orders on prison conditions and jail crowding. Our review of the literature seeks to determine the effects of court orders on the organizational structure, policies, and service delivery of prisons. Although we recognize that current research is exploratory and tentative, four basic themes emerge from the literature. They are:

(1) Litigation has increased centralization in and greater oversight by correctional administration. However, it remains to be seen if the goal of maintaining constitutionally acceptable facilities has been incorporated into the basic correctional mission. In the short term, court orders have been associated with a decline in staff morale and inmate violence.

(2) Court restrictions on crowding have affected correctional policies in a variety of ways ranging from early release tactics to thinking about alternatives to incarceration. The most striking response, however, has been prison and jail construction. Yet, expansion of facilities has not always proven successful because of the increasing rate of incarceration.

(3) Uncertainty exists as to whether the quality of life or the service rendered to prisoners has changed except in the cases involving the most extreme conditions. Reductions in crowding have not been shown to enhance availability and accessibility of services and in some cases state prisoners are worse off when they are transferred to substandard jails that are already filled.

(4) Courts have adapted to the work involved in bringing about changes in prisons and jails. Special masters are used effectively although some observers question whether this strategy undermines the court's

independence and ultimately its authority.

Finally, this paper identifies problems of inference, measurement, and conceptualization which limit what we know about courts and prisons. Hence, we recommend that several complementary approaches be used to refine working hypotheses in order to achieve a more complete and correct understanding.

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EXECUTIVE SUMMARY

The American civil rights movement began as an effort to break down racial barriers blocking equal access to public services and ultimately was extended to other areas including the quest for prison and jail reform. In the correctional context, the movement sought to define and protect the rights of prisoners against conditions that were unduly restrictive, cruel, and threatening to inmate safety and well-being. Beginning in the mid-196Øs, the federal courts became a leading forum for creating and securing prisoners' rights. Through a series of decisions, the U. S. Supreme Court set standards for correctional performance; the lower courts, in turn, determine appropriate remedies for specific institutions on finding violations of prisoner rights.

Normative arguments have been advanced by scholars and policy makers on both sides of the question whether the federal courts should establish correctional standards, design and impose affirmative obligations on state and local officials to change prison and jail conditions, and monitor implementation of desired objectives. Despite the importance of that debate, it is equally important to know what actually may be attributed to court intervention and how the courts have adapted in trying to introduce innovations in complex organizations such as prisons and jails. Knowledge of the impact of court orders can contribute to the debate about the appropriate involvement of federal courts in making social policy.

The objective of this paper is to pull together what has been reported concerning the complexities of federal court involvement in shaping the state and local correctional enterprise. Specifically, we propose to examine existing literature on the effects of court orders at three different levels of analysis: (1) the organizational structure of prisons and jails, (2) the policies of prisons and jails, and (3) the service delivery system or practices of prisons and jails.

We are particularly interested in court orders that seek to influence the population density of prisons and jails. For a variety of reasons, jail and prison crowding has become a focal point of attention among state policy makers, correctional practitioners, attorneys for inmates, and federal judges. Although overcrowding generally refers to an excessive ratio of prisoners to a given unit of available space, it affects the quality of many other conditions of prison life such as the availability of medical, food, and recreational services, the maintenance of

physically secure facilities, and the avoidance of negligent practices. This intricate web of overcrowding with other conditions makes it virtually impossible to isolate the effects of court orders setting population standards from those requiring changes in other conditions. For this reason, our literature review encompasses many studies not exclusively or directly related to conditions of crowding.

Court orders, directed at prisons and jails, first and foremost, have been characterized as affecting the organizational structure of prisons. Recurrent themes are that staff authority is weakened, prison administration is changed, and morale is lowered in the wake of court mandated reforms. The most corroborated finding is that these changes have led to increases in prisoner violence against other prisoners and increases in prisoner hostility toward correctional officers (Engle and Rothman; Haas and Champagne; Jacobs, 1977; Marquart and Crouch; UCLA Law Review). However, this observation is tempered by the reported decrease in brutality by officers (Jacobs, 1977, 1980; Spiller and Harris; Turner; and Yarbrough).

In addition to these specific organizational changes, critics (e.g., Glazer) and proponents (e.g., Fiss) of court involvement have addressed the nature of broad scale institutional changes wrought by court orders. The research literature has not yet responded to this critical issue, in part, because of the short length of time that has elapsed since major court involvement began. However, the field of law enforcement suggests a potential parallel. Court decisions dramatically affected the police as a profession, in addition to modifying specific police practices. The decisions shaped how police officers viewed defendants, constitutional rights, and their own behavior in fundamentally new and enduring ways -- police administrators and officers see the functions of apprehension and prosecution in a manner consistent with social values behind the court decisions affirming certain protections for the criminally accused (Skolnick and Simon). It is important to see if a similar pattern of sweeping changes develops in the corrections field.

At the level of specific policies, the courts have exercised influence in shaping state actions in regard to overcrowding. Early release policies have been tried in several states as a means of coping with institutional limits and in anticipation of court intervention. In some jurisdictions, the possibility of alternatives of incarceration has been discussed and urged as a way of relieving crowding. It remains to be seen if viable alternatives to incarceration can be put in place. If the public is willing to pay for new prisons, the long-term result of prison litigation may be that more prisons, which satisfy constitutional criteria, are built, as long as

alternatives to incarceration are not shown to be suitable forms of punishment.

One of the courts' distinctive modes of adapting to the process of issuing decrees that affect prisons and jails is the appointment of special masters. These individuals are to gather and relay information to the court concerning the intricate aspects of designing and implementing remedial relief. The literature contains several alternative prescriptions for effective mastering. Some say that the tasks of masters should be specific and detailed while others claim that the tasks should be general and open ended. Some advocate a sharp delineation of functions such as fact finding versus monitoring and the use of separate masters to perform each function. Others doubt both the ability and the wisdom of making such divisions of labor. A more open question concerning mastering goes beyond managerial concerns over the appropriate duties and responsibilities of special masters. Brakel raises the issue that the monitoring process itself may undermine the position of the court. In fulfilling the goal of providing information to the court, the master and the court may get so bogged down in details that they eventually become absorbed into the conflict surrounding the case. This absorption may, ultimately, trivialize the court's and master's role and contribute to a deterioration in the prison climate, with unexpected negative consequences.

In summary, research on courts and prisoner litigation has made considerable progress in a short period of time in demonstrating that very serious and complex policy problems are a suitable and fruitful area for systematic inquiry. Our own review indicates that initial studies have raised theoretically important and policy relevant questions at multiple levels of analysis and produced working hypotheses for future research. However, the character of future research must take into account the methodological limitations in the exploratory studies. Problems of inference and measurement exist because the effects of extraneous factors have not been siphoned off, unusual court cases have been the focus of study rather than a representative sample of litigation, and key concepts of success and failure are seldom operationalized. These and other limitations make it difficult to attribute observable changes in correctional organizations, policies, or practices to court orders in a clear, confident and convincing manner.

We offer two basic recommendations in order to resolve uncertainties and conflicting findings concerning the process through which courts make policy concerning prisons and jails and to refine the association between court orders and the short-term and long-term operations of correctional institutions. First, there should be greater attention

given the selection of central research questions that direct the gathering, analysis, and interpretation of information. Many studies frame questions in an quasi-adversarial manner and appear to be looking for only those data that will confirm the observer's preconceptions -- proponents of court involvement find positive results and critics uncover negative side effects or warn against the decreasing legitimacy of the courts. To remedy this situation, we pose several questions that we think take different perspectives in the literature into account and are of interest to a broad audience. Refinements in this list of questions will ensure a more complete and correct research agenda.

Second, several different approaches to answering key questions should be encouraged and supported in order to build a cumulative body of testable propositions. The convergence of different methodologies will overcome the liabilities inherent in relying on a single approach, which necessarily is limited in perspective and time frame. Thus, the paper calls for the continuation of particular institutional studies through participant observation and the development of more controlled natural experiments that seek to screen out contaminating factors by the application of appropriate research designs. Finally, a historical and sociological approach is essential to chart the general trends in the correctional profession that are produced by court decisions. Because court ordered change may alter the basic nature of social institutions, and how the people within those institutions view constitutional values, such potential modifications warrant careful observation.

I. INTRODUCTION

The federal courts are the primary forum where contemporary reformers seek changes in prisons and jails. Court orders have mandated standards of correctional performance across a wide range of areas of institutional life including religious practices, communication, privacy, medical care, physical security, diet and nutrition, discipline, recreation, access to the courts, and inmate population density. Findings of constitutional violations have prompted courts to issue orders that impose affirmative obligations on state and local officials to remedy deleterious conditions.

Because the orders require state and local communities to allocate their resources in specific ways and the implementation of the orders frequently is accompanied by detailed monitoring, federal court involvement takes on the character of policy making and management normally associated with legislative bodies and correctional agencies, respectively. Additionally, it is generally recognized that the creation of prisoner rights, the design of complex relief, and the lengthy monitoring, taken together, constitute a sharp break with traditional court doctrine and action.

One reaction to these legal changes is a lively debate

over whether the courts should act in this matter. Questions that revolve around this proposition involve issues whether such federal court activity violates established principles and values of the separation of powers, federalism, equitable relief, and so forth, (see e.g., Howard, 1980; McDowell, 1982; Nagel, 1978, 1984). Despite the intrinsic importance of this debate, including the fact that aspects of it are reflected in shifting court decisions, it equally is vital to assess what it is that we know and do not know concerning how the courts try to shape the corrections enterprise and the consequences of those efforts on the character of correctional institutions and their prisoners.

What happens to prisons and jails that are subject to court orders? Is their organizational structure affected? To what degree are correctional policies changed? Is the change in policies paralleled by more specific changes in service delivery? And how do courts go about making policy? Does this activity strain the competence of the courts? What role do special masters play in fact finding, implementation, and monitoring? Does this activity threaten the independence of the courts, and ultimately their authoritative status?

The objective of this paper is to review the literature in the field in order to indicate what issues have been addressed, what propositions about consequences have been

put forward, and what questions remain unanswered. Because systematic inquiry into the nature and effects of prisoner litigation is still in the developmental stage, unambiguous conclusions are impossible. However, if partial and tentative studies point to the same conclusions, we can have some confidence in the validity and reliability of their findings. Thus we begin our review by trying to extract such generalizations, if any, and to treat them as working hypotheses to be examined more systematically in more complex and controlled future research. In a later section (V) we return to these generalizations to consider the problems of inference that beset research in this field and to suggest ways to overcome them in future research.

Thus this paper is a stocktaking of what law reviews, social science journals, and other publications have produced on the subject of the impact of court policy making on correctional institutions. Section II is a brief description of the legal and analytical frameworks guiding our review of the literature. Section III examines the effects of court policies on the organizational structure of correctional agencies, prison and jail policies, and correctional services. Section IV explores the process of formulating and implementing court orders. Section V recapitulates the major findings and discusses problems in attributing changes in correctional institutions to court orders. Section VI outlines an agenda for future research,

and Section VII includes the review.

II. LEGAL AND ANALYTICAL FRAMEWORKS

A. Scope of the Review.

In reviewing the literature on the impact of court orders on prisons and jails, we have cast our net broadly. (Throughout the paper we use the term "prison" to refer to both prisons and jails. However, when warranted, we make specific reference to jails.) This is for three reasons. First, the available literature lacks an agreed upon conceptual framework around which central questions are addressed in a unified way. As a result, we sought to be as inclusive as possible, drawing on a wide variety of studies which offer empirical evidence on the issues at hand. Because of the limited and tentative nature of much of this research, we have reviewed individual studies first for substantive relevancy and treated them as more or as equally valid. Because almost all of the students have common problems in making causal inferences In a later section of the paper we assess the field overall for its methodological status. Second, most courts employ a "totality of circumstances" or "conditions" standard when assessing Eighth Amendment claims. Because overcrowding is frequently a separate complaint and is a contributor to the deterioration of other conditions, it is difficult and perhaps unproductive to try to isolate the impact of

crowding orders from other related orders. Hence, we have not restricted our literature search or subsequent discussion strictly to orders dealing with crowding.

Finally, it is important to note that the impact of court orders can be assessed on many different levels, ranging from assessment of the implementation of specific remedial decrees to assessment of court rulings on the character of entire spheres of the public sector. Although here we are inclusive by necessity, as information about the details of particular court orders accumulates, it would be valuable to focus more narrowly on the variability of responses to individual court orders.

B. Proposed Areas of Inquiry.

Because policy initiatives can have consequences on different levels, we have examined the impact of court orders on prisons on three different levels: 1) the impact on organizational structure, to determine if correctional systems and institutions have undergone transformations in their character and in their relationship to the broader governmental process; 2) the impact on state correctional and local jail policies, to determine if court orders have led to general policy changes which are designed to provide a continuing response to the objectives of the court orders; and 3) impact on service delivery, to determine how institutions have complied with the specifics of court

orders.

Although there is no firm line dividing these three sets of concerns from each other, it is nevertheless valuable to focus on each separately. Each points to a different set of activities and entails a different focus, methodology, and perhaps theory of adjudication. Examination of the effects on organizational structure and policy requires a broad inquiry, because impact is likely to be generalized beyond institutions directly affected by court orders, intermingled with other factors, and anticipatory in nature. For instance, there is no question that due process concerns have penetrated deeply into corrections departments in recent years, and that this change has been stimulated by court orders. But it has been fostered by a variety of other sources as well, professional organizations, state legislatures, Congress, and correctional officials themselves. Similarly, in recent years to cope with problems of overcrowding, legislatures have appropriated money for new prisons and enacted statutory schemes for triggering early release of prisoners once populations exceed specified levels. Clearly court orders on crowding have provided an impetus for these policies, but so too have legislatures and the public's changing views of the nature of parole.

C. Alternative Theories of Adjudication.

An assessment of the consequence of court orders is also shaped by the observer's theory of adjudication. For someone holding a "structural reform" view of litigation, court orders are likely to be viewed as efforts to imbue an institution with a new set of operational values, the transformation of an institution's character (e.g. Fiss, 1985). Fiss is a well known spokesperson for the view that the courts' legitimate function is to protect individuals rights against threats by institutions such as prisons and jails. He describes the nature of appropriate remedies to these potential violations in the broadest of terms -- the aim of remedies in institutional reform litigation is primarily if not exclusively, to change the character of institutions. Hence his use of the phrase, "structural reform" litigation. In the case of correctional institutions, the objective is to promote a richer and deeper understanding among correctional officials, for example, of the "fundamental values" inherent in the Eighth Amendment rights of prisoners. For Fiss the intended emphasis of court orders is to infuse the organization with therapeutic relief rather than remedial relief for the immediate grievances of the inmates filing suit. This view implies a sweeping embrace when trying to assess the consequences of court actions.

In contrast someone holding a "dispute resolution" view of litigation would see a court order as a list of specific

objectives, and the research agenda as an assessment of the degree to which these orders are complied with. This perspective, as expressed by Fuller (1978), Horowitz (1977) and others views court ordered relief as a corrective to an otherwise stable and harmonious world. It sees no need for structural reform because disputes themselves arise out of conflicts between individuals. And when policy issues arise, this view advocates judicial deference to other branches or agencies of government. Not surprisingly many plaintiffs tend to take the former view and many defendants the latter, with researchers falling into both camps. Both positions have some considerable claims to acceptance since court orders tend to be focused and specific, thereby giving support to the dispute resolution perspective, but are also frequently amended, thereby suggesting that underlying goals are something more than the sum of the particulars.

These alternative points of view are nicely illustrated by court orders affecting Fourth and Fifth Amendment provisions and the police, an area with a longer history than prison law. Although some researchers report that major Supreme Court decisions broadening the rights of suspects have only limited consequences (e.g. Becker and Feeley, 1973) or produce undesirable side effects (e.g. National Institute of Justice, 1982; Schlesinger, 1975), others have cast wider nets and are more positive in their assessment of the impact of the Court-initiated "due process

revolution" on the police. These observers argue that the impact has been profound, far more widespread and significant than is likely to be captured by simply summing up compliance with the specific decisions of the courts (see e.g. Skolnick and Simon, 1985). Thus in prison litigation, some might argue that even though the courts have been bogged down in lengthy oversight of prisons and jails, their very entry into the area has fundamentally altered the ways prisoners, prison officials, legislatures and the public think about prison conditions. Court orders have placed prison crowding on the agendas of policy makers and administrators in a way that it was not before. This may be the most penetrating and pervasive impact of litigation in this area (Scheingold, 1974). Reports on compliance to individual court orders simply cannot capture this transformation. We emphasize this not to argue for the abandonment of the study of the consequences of individual prison conditions suits, but to point out that in order to appreciate the full impact of the courts on institutional conditions and crowding a broader perspective is required.

III. IMPACT OF COURT ORDERS ON PRISONS AND JAILS

A. Consequences for the Organizational Structure of Corrections.

The organization of correctional departments poses distinctive challenges to administrators, external change

agents, and researchers who attempt to trace the consequences of policy changes on prisons. Formally organized along the lines of an ideal Weberian bureaucracy, quasi-military in command structure and hierarchical in form, the distribution of authority and exercise of discretion, in even the formally centralized systems, is dispersed. Corrections commissioners exercise only limited control over the operations of individual institutions, and in turn prison superintendents have difficulty supervising their staff (Clear and Cole, 1986). Like so many other "street level" bureaucracies (Lipsky, 1980), prison organizations have an inverted pyramid of authority and discretion. Lower level line staff possess vast discretionary powers that are extreme in form (physical coercion), highly contextual and largely invisible to others, and hence extremely resistant to systematic supervision and change.

One of the consistent findings of studies of the organization of prison life is that the norms governing the behavior of prisoners is a consequence of an informal symbiotic relationship among prisoners and between prisoners and staff members (Sykes 1958, Sykes and Messinger, 1960; Jacobs, 1977). The rules governing the society of captives are formulated and enforced in large by the captives themselves. This means that externally generated policies are likely to be aimed at a hierarchical organization, but

in fact received by a decentralized institution in which much power is in the hands of prisoners. Under these circumstances response to innovation from a court or elsewhere is highly problematic. Even the least controversial new policies in prison administration generate ripple effects throughout the prison organization that are not easily anticipated in advance.

Despite these problems that the correctional context pose for policy makers, studies of the impact of court orders tend to be in agreement on how courts have affected certain aspects of organizational life of correctional systems and prisons. For the most part these reports agree that court orders have affected changes in the nature and distribution of authority at all levels, and that these changes have affected substantially the nature of prison administration and staff morale. Many of these findings parallel the observations of those who have examined the impact of courts on social policy generally (e.g. Hanson and Chapper, 1986).

Alterations in Staff Authority. Nathan Glazer (1979) offers the assertion that court-ordered due process requirements on large-scale public institutions weaken the authority of leaders and staff members because they increase the costs of acting decisively. His view is general: in the aftermath of court-ordered changes, police are more

likely to tolerate observed criminal behavior, teachers are more accepting of unruly pupils, and social workers more tolerant of welfare fraud. By extension, he might argue, that because increased constitutional constraints impose new burdens on prison administrators and staff, they are likely to increase inmate-to-inmate violence and inmate-to-staff recalcitrance. Several studies of the effects of prison conditions litigation support this basic proposition. Indeed the claims that court orders have weakened the ability of correctional officials to control violence among prisoners and have increased inmate hostility toward correctional officers are perhaps the most frequently corroborated assertions among reports systematically chronicling the effects of court-ordered changes on prisons and jails. (Engle and Rothman, 1984; Haas and Champagne, 1976; Harris and Spiller, 1977; Marquart and Crouch, 1985; UCLA Law Review, 1973).

However there is disagreement as to why increased violence has occurred. Alpert, Crouch, and Huff (1984) argue that increased violence is a consequence of the general phenomenon of rising and unfulfilled expectations among prisoners. Others (e.g. Engle and Rothman, 1984) argue that increased procedures foisted on the institutions by the courts hamper staff ability to act decisively and makes staff more fearful of inmates (Marquart and Crouch, 1985). As a consequence the staff members' ability to

maintain secure and safe institutions is restricted. Additionally, Marquart and Crouch (1985) contend that in the absence of staff control, inmates become more violent toward one another as a means of self-defense.

Other researchers would temper the evidence on the unanticipated increase in inmate violence by drawing attention to the decline of violence by correctional officers. They note that court orders have caused correction's departments to promulgate written procedures governing decision making at all levels and for specifying standards of acceptable administration. They have made the activities of prison officials more visible to the public and increased the availability of legal access to prisoners. These changes have dramatically altered the formal control structure of prison systems, and this has led to a significant reduction of major and widespread physical abuse of prisoners by correctional staff (Spiller and Harris, 1977; Yarborough, 1981; Jacobs, 1977; Turner, 1979).

Changes in Prison Administration. Nathan Glazer (1979) and others have noted that court intervention affects in substantial ways the distribution of authority within large scale institutions. All things equal, Glazer holds, litigation propels people with "theoretical knowledge" and training into positions of power at the expense of those with "practical experience" and training. He argues that

this involvement takes several forms, which in combination affect in significant ways the character of an institution. During and immediately after a court order, the court is likely to rely extensively on "experts," whose views are inevitably based upon tentative and speculative knowledge ("theoretical knowledge") and who may not have practical experience within the institutions affected by the court order. Similarly, it requires new leadership in these institutions which possesses the ability to deal with these "experts." Thus court orders affect the recruitment of leaders in ways that disrupt existing patterns and give prominence to "theoretical learning," formal educational experience and knowledge.

Available evidence on prison administration, although sketchy on this issue, is consistent with Glazer's hypothesis. When selecting masters, experts and monitors to aid them, courts often have turned to lawyers with limited experience in corrections, and correctional experts who have not had experience within the institution or system which is the focus of the court's order, and whose credentials are likely to include extensive formal training. Similarly in trying to identify factors that would overcome deficiencies in the conditions they observed courts turned to experts who have tried to determine what space requirements were necessary to reduce aggressiveness among prisoners. Glazer generally thinks such expertise is questionable because it

is tentative and based on abstractions or limited experience. As such, he argues it ignores the wealth of contextual and practical experience that only line staff at particular institutions can have. Furthermore, he continues, thrusting these new types of authority into an organization is likely to be viewed as a slap in the face by the very people who will be charged with administering court orders. All this, Glazer claims, has resulted in a decline in the quality of leadership, a preoccupation with procedures, and a shift away from substantive concerns, which in the prison context would be the maintenance of safe and secure facilities. Recent writing by Jan Brakel about the effects of prison litigation on the concerns of inmates and staff members seems to support Glazer's observations (Brakel, 1986a, 1986b).

James Jacobs (1977, 1980) notes similar patterns but is more positive in his assessment. He maintains that the prisoners' rights movement--of which litigation is the centerpiece--has produced a new generation of administrators. He argues that the despotic wardens of the old regimes were neither temperamentally nor administratively suited to operate in the more complex environment fostered by court judgments and that gradually they have been replaced by a new administrative elite, which is better educated and more managerially minded, and presumably better able to administer prisons without

recourse to staff coercion.

Several studies of recruitment support this view. The trend towards professionalization of the leadership of correctional administration was begun long before the rise of the prisoners' rights movement. Criminal justice programs and correctional programs have been in existence for years, but it appears that these programs have accelerated in recent years and that governors and the public generally expect more trained and managerially sensitive administrators to head individual prisons and correctional systems (Alexander, 1978).

Finally, court orders may have widened the gap between correctional leadership and prison staff, since often they have resulted in a appointment of new leadership whose values are more closely attuned to those of the court than traditional line staff who are watching the demise of traditional forms of authority crumble. A survey by Ben Crouch (1985) supports this view, although he--as others--tends to focus on the transformations of prisons in several of the southern states which, until the 1970s, had traditional, almost feudal-like prison conditions. Whether the generalization holds throughout the United States is, we think, problematic and must await more systematic data.

Impact on Morale. Nathan Glazer, James Jacobs and

others have argued that court orders demoralize staff. Glazer (1979: 78) argues generally that "The emphasis on rights means an emphasis on procedures..." and that "the effect of procedural requirements based on suspicion...is undoubtedly to spread the conviction among the recipients of service that the service provider cannot achieve well and should be kept within strict bounds...". The predictable result, he implies, is a decline in staff morale and a decline in the quality of its work.

Although morale has many different dimensions, researchers on prisons and courts generally use this term to refer to the degree of vigor, initiative, and leadership that correctional officers have in doing their job--maintaining safe and secure facilities especially when dealing with violent inmates. The impact of court-ordered change on this aspect of morale is seen as more critical than possible effects on commitment and enthusiasm to the institution or the system. With this notion in mind, it is fair to say that there is considerable evidence to support Glazer's view as it applies to the impact of court orders on prisons. Jacobs (1980) has observed that, "There is some basis to believe that today's correctional officers are more insecure vis-a-vis inmates than were their predecessors." Similarly some have argued that low morale and a feeling of vulnerability among correctional officers prison guards was an important factor in accelerating unionization among

prison staff members. A UCLA project on court ordered changes in California (Baker, 1973) polled prison officials on precisely this issue. It found that prison administrators consistently reported decreases in staff morale occurring in reaction to a variety of court ordered changes. Moreover, these administrators rate these negative morale problems to be more serious than other problems such as prisoner discipline, staff security, cost and the like which were also precipitated by court orders (Baker, 514, 575).

For example Leo Carroll (1974) has observed in relation to his research on Rhode Island's maximum security prison that "By extending legal rights to inmates... the decision makes the officers view the court decisions as placing the law and the courts on the side of the inmate and in opposition to them "(Quoted in Jacobs, 1980: 461). A survey of Tennessee corrections officials by Haas and Champagne (1976) reinforces this view. In a national survey of prison administrators, they reported that an overwhelming majority of wardens attribute an upsurge in disciplinary problems to federal court orders and as well feel that the Supreme Court justices (in their prison conditions rulings) are not "capable of understanding that daily problems faced by prison officials" (286). Since that study was completed, prisoners access has been expanded, and while the effectiveness of law libraries and legal assistance is in

question (Brakel, 1986a), it appears that their very existence contributes to morale problems.

It is useful to place these findings in perspective. One way to do so is to compare them with findings on staff morale of police in the wake of Miranda, Mapp and other Supreme Court decisions restricting the authority of the police and broadening the rights of those suspected of criminal activity. Although the initial indications were that these decisions significantly and negatively affected police morale and increased the cynicism of the police, a generation later researchers are more sanguine about the effects of these rulings (Skolnick and Simon, 1985). Many now report that these decisions are viewed by the police as part of the landscape in which they must operate, and that generally these rulings have fostered recruitment of new and better leaders, encouraged rulemaking within police departments, and contributed to the professionalization of the police in still other ways. In short a broader perspective and time frame on the impact of court orders on police research suggests that court orders implicitly critical of institutional practices and personnel may only temporarily lower morale, and that in the long run professionalization is developed.

Still another perspective is seen when the effects of court-ordered changes are contrasted with changes initiated

from leadership of new corrections commissioners and new wardens. Studies of such "internally" generated changes report similar resistance by staff and disruption of the informal structure of prison life which translates into lowered staff morale and increased security problems (McCleery, 1960). Thus if change is inherently disruptive and produces a variety of continuing side-effects, the question for reformers is, how much more disruptive is court ordered change from change induced from other sources?

One way to try to get a better measure of short-term morale problems of staff members is to examine changes in the rates of staff turnover in prisons. Presumably higher rates of turn-over would reflect a decrease in morale. So far as we know, however, there have been no such studies which would allow us to make such an inference. But even here Michael Lipsky's (1980: 143) work cautions against breathing much significance in turn-over rates. He notes that because of civil service protections and pension benefits, "withdrawal" from work by disillusioned public service employees is more likely to be "psychological" than "actual."

Structural Reform. Perhaps the most profound consequence of "the due process revolution" on prisons and jails has been its impact on the very organizational structure of these institutions. In many states well into

the 1960s the operations of prisons and jails were defined by informal policies established by tradition and maintained by prison administrators themselves. Litigation and the threat of litigation has forced changes in every state. Although court orders precipitated this change, today prisons are governed by a amalgam of statutes, regulations and guidelines. Indeed during the past twenty years the principles of organizational rationality and legality have emerged to structure the governance of the entire operational life of correctional institutions and systems. One consequence of this is that the rule of law has not only penetrated these institutions, it has contributed to the professionalization of the administration of these institutions in much the same way that a decade earlier the expansion of due process requirements on the police fostered dramatic changes in police administration. These changes far exceed the sum of the particulars in any set of court orders.

Professionalization of this area of public administration is amply demonstrated by the proliferation of professional organizations and standards of administration of all sorts. The American Bar Association, the American Medical Association, the American Correctional Association, the National Institute of Corrections and other organizations have promulgated standards for prison and jail administration, and in so doing have supplied the

profession, the courts, and state legislatures criteria for judging both minimally acceptable constitutional practices and higher standards of humane treatment. Although nonbinding in nature and often honored in the breach, these standards nevertheless provide guidelines for assessing acceptable practice, something that was lacking in the past. Yet, structural reform, according to Fiss and others, should not only change the organizational framework of and professionalism in correctional agencies. These changes are designed to redirect the aspirations of correctional administrators--and others--who will see meeting constitutional standards as a major and ongoing mission of the corrections system. Because this perspective is of profound significance, a major objective of future research should be to see if this hypothesized relationship between structural reform and corresponding changes in the routine delivery of basic services to inmates comes about.

B. Impact of Court Orders on Prison and Jail Policies

Court orders have affected correctional policies in two ways. The orders themselves have announced new policies which bind states, and as well they have stimulated state officials to develop new policies of their own.

Court Policies. Despite the number of court orders

affecting prison and jail conditions, few clear-cut policies have emerged from these cases. Once the very worst practices in some of the Southern prisons were successfully attacked, court-based attacks of problems on the newer and more modern and progressive systems became highly problematic. This is due in part to the fact that courts have employed a "totality of circumstances" or "conditions" approach which weighs one condition in light of other factors. Although lower courts have frequently found that conditions in prisons or prison systems violate Eighth Amendment standards, these rulings have not resulted in unambiguous general rules or policy guidelines because conditions vary from institution to institution and their general applicability can always be questioned. A factor that may trigger a finding of unconstitutionality in one place may not do so in another because of other compensating factors. Furthermore, courts have interpreted "totality of circumstances" differently. Some have weighed the aggregate or cumulative effect of several conditions to determine whether the total conditions warrant a finding of unconstitutionality, while others have taken a narrower view, and assessed the "spillover" effects of combinations of conditions, so that two or more conditions may be weighted against each other (see e.g. Smolla, 1984). Thus for instance, double celling would have to be considered in light of the amount of time prisoners spend in their cells. One does not have to agree completely with court critics who

assert that court rulings in this area are a product of "judicial subjectivity," to agree fully that the rulings are not characterized by great clarity.

State Policies Developed in Response to Court Orders on Crowding. Despite the variable meaning that can be given to the "totality of circumstances" standard, it is possible to identify policies that have been embraced as a direct consequence of court orders on prison conditions and crowding. This section highlights five policy reactions, ranging from early release programs to the search for alternatives to incarceration and the development of federally sponsored programs to upgrade prisons and jails.

1. Early Release Policies. A number of states have enacted statutes designed to trigger release or at least transfer of inmates when populations exceed institutional capacity (Bureau of Justice Statistics, 1986). Faced with concern over prison riots and the threat of litigation in 1980 Michigan, Governor William Milliken and and the state legislature appointed a Joint Legislative/Executive Task Force on Prison Crowding to assess problems of prison crowding problems and make recommendations on how to cope with them. The recommendations of the Task Force were enacted into law as the Prison Overcrowding Emergency Powers Act. They provided for a mechanism to reduce the prison population systematically whenever it reached "crisis"

proportions.

To trigger emergency relief, the prison system's population must exceed rated design capacity for thirty consecutive days. This fact must be certified by the State Corrections Commissioner, who must also certify that all administrative remedies have been exhausted. Following these certifications, the governor is required to declare a state of emergency. During this period all prisoners serving minimum prison terms under the state's indeterminate sentencing laws are to be reduced by ninety days, thereby expanding the pool of prisoners eligible for release on parole. This process of sentence reduction may be repeated until prison system populations are reduced to 95% of rated capacity. In addition, the Act attempts to guard against manipulation of capacity standards, by specifying in detail standards to be used for rating capacity and housing.

As of June 1986 the Michigan Emergency Powers Act had been employed successfully to reduce prison populations at least six times (Bureau of Justice Statistics, 1986). Although this emergency measure increases the workload of prison officials and the parole board when it is invoked, its intent does not appear to have been thwarted by shifting state prisoners to local jails or redefining the capacity of prisons (Bureau of Justice Statistics, 3).

Several other states have adopted similar early parole statutes to cope with crowding. Texas experienced a 3% decline in its prison population which the Bureau of Justice Statistics attributed in large to a recently enacted additional good time bill which was adopted in response to the Ruiz decision (Bureau of Justice Statistics, 2). Emergency release measures have been adopted in still other states, although they have been rejected in some, including California which has experienced a marked increase in its prison population because of a variety of "get tough" laws. However in 1980 California legislature did respond to a request by the State's director of corrections to respond to burgeoning the prison population and the likelihood of litigation by increasing "good time" from 33% to 50%, thereby facilitating earlier releases and reducing crowding pressures somewhat. However, it remains unclear what the consequences of austerity on state budgets will be for prison systems such as that of Texas, which has experienced a severe reduction of revenues because of declining oil prices.

A similar early parole policy was embraced in Oklahoma in the aftermath of prison crowding litigation, but reports on that process indicate that few prisoners in overcrowded institutions actually received early parole. Instead they were transferred to even more crowded jail facilities not under court order (Mathias and Steelman, 1982).

In Mississippi the legislature responded to court orders requiring population reductions by enacting two pieces of legislation, an early parole and "supervised release program. Here, too, the response of the state's correctional department was to transfer state prisoners in facilities under court order to local jails which were not, so it is not clear what net impact these new policies have had. (Mullen and Smith, 1980: vol. III, 161). In order to cope with increased crowding in the jails that was prompted by the transfer of state prisoners to these facilities, the Mississippi legislature also appropriated funds for a number of new satellite prison facilities, minimum security facilities which permit residents to work at state surplus property centers, hospitals and in other public jobs, and return to these facilities at night. Concern here however has been expressed that these new facilities will be used to sentence new offenders who previously would have received suspended sentences and probation (Mullen and Smith, 1980: 161).

The state of Pennsylvania responded to litigation challenging crowded conditions in county prisons in still another way. Faced with a state court order to eliminate triple celling in spaces originally intended for one inmate and to comply with both state statutes and the state and U.S. constitutional prohibitions against cruel and unusual

punishment, the Pennsylvania legislature responded by repealing long-standing statutes mandating single celling in a successful effort to thwart the court's order. (Note, Temple Law Quarterly, 1986: 594)

2. Other Alternatives to Incarceration.

Numerous other alternatives to incarceration have been adopted in response to prison crowding litigation, although few of them have demonstrated records of redirecting substantial numbers of offenders away from certain incarceration (Krisberg and Austin, 1980). One such successful effort is a project of the Vera Institute of Justice, which requires otherwise jail-bound offenders to perform seventy hours of public service in a concentrated two-week period (McDonald, 1984). In contrast, many other community service programs allow for "service" to be performed over an extended period, with one result being high administrative drop out rates. Although restitution and community service programs continue to be developed and used with increasing frequency, despite occasional successes it remains to be seen whether they will fulfill their proponents' aspirations as alternatives to incarceration or whether they will continue to be used primarily in lieu of fines and probation.

A handful of jail crowding suits have resulted in

development of new pretrial release programs, release on recognizance programs that facilitate release without the posting of money bail. However, we have not found any study which surveys the frequency with which such programs have been established or assessed their impact if and when they have become operational. The experience of New York City, in the face of a jail reduction order is that expanding pretrial release is an unpopular alternative that state and local officials are reluctant to take unless directly ordered to do so by the court (State of New York Commission on Investigation, June 1985, 38).

3. Impact on Budgetary Policies.

Constitutional confinement is more expensive than unconstitutional confinement, and one clear result of court-ordered improvements in prisons and jails has been to increase costs of incarceration and increase prison and jail budgets. In recent years prison and jail budgets have risen steadily and some portion of these increases must be attributed to court orders or anticipation of such orders.

Indeed in some states the courts themselves played direct roles in securing increased financial resources for the prison systems under their jurisdiction. In James v. Wallace, Judge Frank Johnson ordered improvements which led to a dramatic increase in the state's correctional budget.

Few dispute the estimate that the court was responsible for $35,000,000, or two thirds, of this increase. Similarly Harris and Spiller (1977: 111) indicate that Judge Henley's order in Holt v. Sarver resulted in a six fold increase in the Arkansas correctional budget, and that court orders in other cases they studied revealed that the orders were generally credited with "breaking loose money for prison improvements" (Harris and Spiller, 1977: 25). In New York City Mayor Edward Koch played upon fears of the consequences of still more court ordered inmates released to lobby successfully for increased funds for jail construction at a time when the city was still recovering from its near bankruptcy (Storey, 1985: 31).

Litigation and the threat of litigation has had a general effect on state budgets. So far as we know, the only systematic study on the budgetary effects of crowding orders is reported by Harriman and Straussman (1982), who compared before/after expenditures for corrections' departments in states subject to court orders to reduce crowding, and as well compared correctional expenditures in states subject to such orders with expenditures in a group of states not under orders.

In the before/after court intervention analysis, Harriman and Straussman found a significant increases in expenditures after court orders as measured by capital

expenditures, corrections spending as a percentage of total state budget and in terms of expansion of planned state beds. When comparing expenditures in these same fourteen states to expenditures in a group of seventeen states then not subject to court orders, they found that the level of per prisoner spending in the former group was in general lower than the spending in the latter group of states. They concluded that, "on balance, the courts have forced states that have been defendants in prison conditions cases to spend closer to the level of states that have not experienced legal challenges to their corrections systems" (348).

While Harriman and Straussman wisely do not attempt to specify what portion of budget increases are due directly to court orders, nevertheless their findings are convincing; courts have significantly affected state correctional budgets. Their work represents a good first effort at what should be an important area of inquiry.

4. Litigation as a Stimulus to Create Noncustodial Alternatives.

One of the goals of some of those who support prison conditions litigation is to force states to close down old and outmoded facilities and to search other cheaper and less oppressive alternatives, such as restitution programs and

community service orders (Krisberg and Austin, 1980; Mathias and Steelman, 1982). To the extent that this is a goal of the movement, the Harriman and Straussman study calls its effectiveness into question. They found that litigation causes states with low spending and poor conditions in their prisons to increase spending so that they begin to approach the national average. More generally we know of no evidence to show that litigation has led to the closing of any but a handful of institutions. On the contrary, there is considerable evidence that litigation and the threat of litigation has led to improvements in some old institutions and been used to generate support to build still more. Furthermore while some substantial alternative sentencing programs have been developed in response to court orders on prison crowding, we know of no evidence that shows they are being employed widely (Krisberg and Austin, 1980), or when used being directed at offenders who would otherwise be prison bound. Thus perhaps one of the lasting but unintended (at least to some) legacies of the prison litigation movement will be more and better facilities for incarceration.

5. Federal Policy Responses to Crowding Orders.

The federal government has responded to state prison conditions litigation with at least two major policy responses. Both are designed to improve conditions in

prisons, enhance professional capabilities of correctional administrators, and decrease prisoner-initiated litigation.

The American Correctional Association's efforts to develop and implement a system of accreditation of state prisons has been sponsored in large by the Department of Justice, which with support from the Law Enforcement Assistance Administration (LEAA) in the 197Øs, was a vigorous proponent of developing standards for prisons (see Sechrest and Reimer, 1982; . This effort continues with moral and financial support from the Department of Justice. One of its intended effects is to force states to upgrade institutions according to standards developed by professionals in the field of corrections to obviate the need for judicially developed standards.

The Civil Rights of Institutionalized Persons Act of 198Ø (CRIPA) may prove to have a strong impact on state correctional systems. Although state statutes and regulations create a "liberty interest" for state prisoners as do federal laws for federal prisoners, this congressional legislation permits the U.S. Attorney General to sue state institutions that subject state inmates to "egregious or flagrant conditions which deprive such persons of any rights, privileges, or immunities secured or protected by the Constitution". Additionally, the Department of Justice is given the responsibility of applying certain standards to

state prison inmate grievance procedures. If it finds that a state's procedure satisfies the criteria of timeliness, responsiveness and fairness, these procedures can be certified and used to avert litigation--federal courts may require that inmates exhaust certified procedures before initiating litigation against prison officials. This legislation, formulated in the late 1970s, was finally put into place with accompanying regulations in 1981. Yet, despite its potential, few suits have been brought under it since its establishment, and few states have had their procedures certified.

Interestingly, the accreditation process is confronted with a problem that is pertinent to court-ordered reform. Administrators see the benefits of accreditation in securing outside support, prestige, and funds whereas correctional officers are more likely to see the burden of increased paperwork and regulations (Czajkowski, Nacci, Kramer, Price, and Sechrest, 1985). If this role difference exists in regard to professionally created standards, it suggests that court-ordered standards may even face a more severe discrepancy in the receptivity of administrators and officers to externally imposed standards.

e. Consequences for Service Delivery

The issues of service delivery is the area where we

know the least and yet are apt to think we know the most. We know that court orders affect service delivery because that is what is supposed to happen. However, if the social sciences have anything to offer to the study of the impact of court decisions, it is that orders requiring institutional changes in public services are not likely to be easily affected by court decrees. While problems of implementation pose major problems in the simplest of circumstances where new policies enjoy widespread support (Pressman and Wildavsky, 1973), these problems are exacerbated when they are imposed from outside the organization and are aimed at redirecting the behavior of "street level bureaucrats," (Lipsky, 1980), i.e. those public service officials who deal directly with clients. The reason for problems of compliance to new policies in these situations is that service providers have vast discretionary powers that are not easily amendable to oversight, and as a consequence, new policies can easily be adapted to accommodate the felt needs of those who deal directly with clients. IN the case of prisoners, this means that corrected officers play a key role in implementing court orders which they are likely to regard as jeopardizing their authority and reducing institutional safety and security. For these reasons the issue of how and why court orders affect service delivery should be high on the research agenda.

Service delivery can be categorized according to its degree of effectiveness, efficiency, and quality. Although prior studies have not emphasized these categories in assessing the impact of courts, published and unpublished accounts of court interventions provide illustrative examples of each. Concerning the effectiveness of court orders and crowding, there are two issues, the degree to which the objective of the court was achieved and the problems of displacement effects. After the number of prisoners has been reduced, what exactly are the changes in living space for inmates? As ratios of prisoners to services are improved (e.g. medical care, access to legal services, privacy, exercise, etc.), is increased access achieved? Similarly, do population reductions in one institution lead to a net reduction in prison crowding problems, or are the problems simply transferred with the prisoners to other institutions? For instance, if transfers to jails not under court order are made to comply with orders to reduce prison crowding, how does the nature of crowding in one institution compare to the crowding in the other? Additionally, when old institutions are remodeled or new institutions constructed, what is the change in crowding as measured by various indicators or cell space, opportunity for exercise, privacy and the like?

Answers to such questions are complicated by steady increases in prison populations. Conceivably conditions in

prisons could deteriorate in the aftermath of court decrees but the decrees could still have significant effects in that conditions would have been even worse in the absence of such decrees. The challenge for researchers is to factor out the impact of court orders in the face of numerous other changes that are occurring simultaneously. The dilemma, of course, is that if one tries to isolate the impact of the courts by restricting the frame, only short-term and probably atypical effects can be captured. However, if one pursues a large time frame to avoid these problems, it is difficult if not impossible to distinguish the effects of court orders from other sources of policy initiatives.

Court orders both aim to remove negative circumstances, and mandate new and improved services. The impact orders requiring new services, such as medical or legal services, may be easier to document, although they too raise a number of issues. While increased resources can be identified easily enough, identifying changes in availability of and access to these services is more difficult to determine. For instance, in response to a court order to improve diagnostic assessment of newly sentenced offenders, a scheme may be developed but not put into place. Or if put into place it may be altered in the process of employing it in ways that frustrate the intent of the court. Reports of such practices are common, and are responsible for the fact that much of the litigation in this8s is protracted. These

same difficulties have also led courts to employ extraordinary, such as the appointments of special masters and monitors, in order to overcome widespread resistance to implementation of orders.

Court orders have implication for the efficiency of prison administrations. Consistently correctional administrators report that they spend significant portions of their time dealing with litigation and that this detracts from their basic mission of trying to administer safe and secure facilities. For instance, one survey of California prison administrators found that respondents almost uniformly agree that more staff time and money was being spent responding to litigation or court orders. Similarly Brakel (1986b) concludes that court orders may unwillingly bog down both court's and administrator's main functions. Areas of public service involved in litigation report similar concerns about problems of efficiency and concerns about the loss of concern about the central missions of their institutions (Glazer, 1979).

The quality of service delivery raised, perhaps, the most profound questions about the immediate impact of court orders. Are prisoners in institutions under court order in fact better off in ways anticipated by the court, after the order? If medical services are increased and there are per capita more doctors and nurses, do inmates actually receive

more or better services, and do they perceive that they do? While we can reasonably make inferences that dramatic increases in personnel will improve quality of service delivery (e.g. in the types of extreme situations reported by Harris and Spiller, 1977, they quite reasonably draw inferences that increased service personnel may lead to improved service delivery), but in less extreme situations, such inferences are problematic and it is incumbent on researchers to follow up and trace out the precise effects of the changes. For instance Brakel (1986b) reports that although the Texas prison system responded to the court order to increase access to legal services by installing more and better equipped law libraries in its institutions, his experience as a monitor led him to question whether these additional resources led to actual improvements in the quality of legal services available to inmates. This issue raises a common problem in trying to measure the quality of services in all types of organizations. The difficulty is in the inference that deployment of resources bears an obvious and direct relationship to the quality of service delivery. Numerous students of public administration warn that such is not the case (Lipsky, 1980: 167). Furthermore, they warn that strict insistence on such performance indicators may encourage staff to "work to those indicators" in ways that undercuts quality of service and staff and client morale.

One often made observation is that increases in service delivery may in fact lead to negative consequences. The theory of "rising expectations" advanced by Alpert, Crouch, and Huff (1984) suggests that court orders mandating increased services are associated with increases in dissatisfaction among inmates. They argue that the initial belief in the value of the court orders greatly exceeded that which was actually delivered, and this led to inmate frustration, disillusionment and violence. Without subscribing to this version of the classic frustration-aggression hypothesis, the study by Alpert and his colleagues does point to still another difficulty in trying to identify changes in quality of services. One standards measure employed widely in public service agencies is client satisfaction. But in prisons, for a variety of reasons suggested by the Alpert et al study, this is likely to be an unreliable measure.

Because we have discussed some aspects of service delivery in other sections of this paper and because there are only a handful of studies which systematically trace the process of implementation and impact of court orders on prisons, in this section we have emphasized problems researchers in this area are likely to face. However, the impression from this section is more negative than we intended. This in itself can be used to underscore the difficulties of research in this area. First, most studies

of the implementation and impact of public policies tend to be negative because a common characteristic shared by many such efforts is that they fall far short of the aspirations of those who envision and articulate such policies (Pressman and Wildavsky, 1973; Becker and Feeley, 1973; Feeley and Sarat, 1980; Lowi, 1968; Bardach 1979; LIpsky, 1980). And what is true for public policies in general is especially striking in organizations, such as prisons and jails, whose line staff possess vast discretionary powers (Lipsky, 1980; Sykes, 1958). In light of this, one relevant question for both researchers and policy makers is to assess the relative impact of court orders, i.e. the courts are effective or ineffective relative to what other change agents? Second, we would issue the warning that problems in implementing new policies are much more readily apparent than are their benefits. This is because there is usually a built-in constituency with an interest in pointing out deficiencies. Also it is because shortcomings are more likely to be concentrated and thus more obvious than are benefits which are more diffuse and thus less obvious. Thus the list of problems identified in this section is offered as a set of warnings for researchers and policy makers rather than a set of clear findings of fact.

IV. THE PROCESS OF FORMULATING AND IMPLEMENTING A DECREE: THE ROLE OF MASTERS

There is some truth to the observation that institutional litigation has forced courts to assume many of the characteristics of the very institutions they are trying to change (Horowitz, 1977). Like the institutions they are trying to reshape, courts operate with limited knowledge, resources, and ability. In the process of formulating and implementing these cases, judges become surrogate managers. They acquire staffs and negotiate budgets. They become politicians in order to build public support for their objectives, at times working through the media and at other times working quietly behind the scenes to foster agency and legislative support. And like other public agencies, their problems mount rather than shrink.

A common response by courts to these problems has been to appoint special masters to aid in the formulation of decrees and to monitor compliance to them. Known variously as "special masters, "monitors," "ombudsmen," "human rights committees," "receivers," and "experts," these agents of the court are appointed by federal judges court under their inherent powers of equity and under Rule 53 of the Federal Rules of Civil Procedure, which specifically authorizes the appointment of special masters in "exceptional conditions" (See Kaufman, 1958; Nathan, 1979). Reliance on such judicial adjuncts has grown in recent years, so that the

appointment of a master or monitor is now probably the rule rather than the exception in institutional conditions cases. This development has led one sympathetic observer to characterize policy making in institutional condition suits as the work of "judge and company." Less sympathetic critics maintain that these adaptations signal a major development. They are concerned that by grafting onto the courts a form of organization incompatible with its form and functions the courts are being transformed into the very types of ineffective bureaucracies they are trying to combat (Horowitz, 1977).

Although Rule 53 appears to limit the duties of the special master to fact finding at predecretal stages, masters in prison conditions suits--as in other types of structural reform suits--have served the court in both pre and post decretal stages. In prison conditions cases at the predecretal stage, masters have been appointed to conduct pretrial evidentiary hearings, take additional testimony in the courtroom, and to take testimony at prisons to facilitate preparation of reports to aid the court in formulating a remedial decree. Special masters also fulfill specialized fact finding functions, as for instance, in Costello v. Wainwright, when a special master was used to aid in the evaluation of the quality of medical care in the prison system.

At the post decretal stage, special masters have been appointed to engage in fact finding for the purpose of recommending detailed steps to be taken for implementing the court's general order of relief. Thus for instance in Palmigiano v. Garrahy, the court appointed a master to "advise and assist the defendant department to the fullest extent possible" to develop a plan for complying with the court order, and in Jones v. Wittenberg and Taylor v. Perini, the court appointed a master to "coordinate and approve all steps taken by defendants to effectuate compliance" (Nathan, 1979). In other cases the court has appointed a master, at times known as a monitor, to determine the extent to which compliance with the court's orders is being achieved.

What literature there is on the relationship between courts, masters, and organizations under court order are in near agreement that the effort of fashioning and implementing a remedy taxes (some would say exceeds) the capacity of the courts. Even with the use of special masters, courts are not well equipped to handle these tasks. Reports on the variety of duties of masters indicates that they confront a variety of conflicting challenges, some of which weakens their abilities to pursue any one of them effectively (Breed, 19--; Kirp and Babcock, 1981; Strum, 19--). First, as noted above, many authorities are concerned that masters routinely exceed the powers granted them under

Rule 53 of the Federal Rules of Civil Procedure. Other issues involve the degree to which masters should act on their own motion, communicate ex parte with counsel, and testify before the court or meet informally with the judge, and whether and how they should communicate with the media. Furthermore, if a master is involved with the court in the formulation of an order (at the predecretal stage) or a plan of implementation (at the post decretal stage), some argue this makes it difficult for the same person to monitor compliance (Breed, 1979; Note, Yale Law Journal, 1979; Strum, 1986).

We know of only one study that has attempted a comparative assessment of the effectiveness of masters and monitors in prison conditions suits (Note, Yale Law Journal. 1979). It reviewed the duties of masters in six different prison conditions suits and concluded that they perform a variety of quite different and often incompatible functions. It noted, for example, that the orders of reference of appointment for masters are often vague and open ended, and that this generates confusion and unrealistic expectations among prisoners and prison officials as to what the master can accomplish. It notes that the master is often expected to be a unbiased fact finder and advisor to the court, enforcement-facilitator and arbitrator when working with defendant organizations to design implementation plans, and unbiased monitor to report on compliance to these same

plans. Some of these roles, it argues, are incompatible with each other.

In addition it emphasized that masters' duties usually take place in a highly charged atmosphere in which defendants who have lost the suit are alienated and resentful and plaintiffs who have won often litigate additional issues for "symbolic victories" unrelated to their concrete objectives. Thus the master's work is likely to take place under conditions in which the parties are polarized and in a process which may obscure and intensify conflicts. Indeed it is often the case that named plaintiffs' are unrepresentative of the plaintiff class as a whole. The result is a dearth of reliable information, and the conflicts and ambiguities of the master's roles further that undercut the court's and master's abilities to identify problems, develop effective remedial plans, and monitor compliance to them.

For instance, this study asserts, "if a master takes an activist view of his enforcement role, he will sometime use the position as fact finder and arbitrator to increase the effectiveness of his administrative and enforcement functions. However, this may lead the master to advocate a particular interpretation of the order and take steps to ensure implementation that includes consulting informally with the judge and parties." This study continues, "If the

master actually helped formulate the compliance plan, he will necessarily report to the court on the adequacy of a program that he developed, thus impairing his capacity to act as an impartial hearing officer." (Note, Yale Law Journal, 1979). Finally, "the master's advisory, intermediary and enforcement roles are usually outside the court's visibility and control unless the parties formally challenge their legality." The study's recommendation in light of these findings of overlapping and incongruent roles is for the courts to specify with greater clarity the nature and function of the master and to unambiguously divide the remedy formulation and implementation plan functions from the compliance monitoring functions.

While others tend to agree with this study's assessment of the problems confronting masters, they also question its recommendation for greater clarity of role and formal division of labor. Harris and Spiller (1977), for instance, emphasize that the master's functions evolve in ways that cannot easily be predicted. Kirp and Babcock (1981) have also examined the roles and functions of masters in several school desegregation cases, and found that even when orders defining their functions are similar, the actual roles and tasks of the masters vary widely. Their major conclusion is that one cannot meaningfully talk about the "role" of a master because almost by definition masters are called upon to deal with extraordinarily complex situations, and that

judges who appoint masters have little or no experience in appointing them. Furthermore, they continue, the federal judiciary is so decentralized and judges so isolated from one another, that each judge's appointment of a master is likely to be a new and ad hoc arrangement, the details of which must evolve as both judge and master to define and redefine problems as they confront them and as they settle into a comfortable working relationship.

In each instance they studied, Kirp and Babcock found that formal fact finding and other "legalist approaches" played only a small part of a master's work (1981: 339), and that all masters augment the legalist approaches to fact finding with a wide variety of informal methods. In some instances, they identified a "master as politician" style, in which the master attempted to "sell the [court's] idea" to the public or to work quietly behind the scenes. In this style, they maintain, the master's effectiveness depends upon his skills as a negotiator and mediator. At other times, the master approaches his task as an "expert." Here his effectiveness depends upon others' acceptance of his specialized knowledge.

When trying to account for variation in mastering styles and effectiveness, Kirp and Babcock (1981: 367) could not relate it to the formal structure of the courts' orders of reference or the similarities and differences in the

problems addressed by the courts. Rather, they found that variation was rooted in the personal characteristics of the judges and masters, and especially how judges perceived their role in the case, i.e. what they thought needed to be done, whether they thought the case had a "political dimension", and how they viewed change occurring in complex organizations. With respect to the latter point, Kirp and Babcock drew upon the literature in organization theory and policy implementation, and found that some judges appear to take a "top down" systems management approach to organizational change which emphasizes directives from management to staff, while others appear to have taken a "bottom up" process approach, which emphasizes the need to penetrate the organization and directly affect staff at various levels of responsibilities within it. However they defined their own roles, Kirp and Babcock reported that all the judges and masters saw their task in terms of fostering organizational development.

> Instead of changing education outcomes directly, masters seek to alter substantive decisions by changing how they are made: the educational systems itself would be not merely racially mixed, but an integrated system that takes racial mix as its starting point....What is needed is a change in the commitment of the public education system that will enable it to cover integration into its own end (376).

We see something of this controversy in a recent exchange in the American Civil Liberties Union's National

Prison Project's Journal (Summer 1986). In it Susan Strum argued:

> The master must be able to define and maintain a position of neutrality in order to function effectively. In the past, masters have sometimes carried out their responsibilities in the absence of any clear guidelines as to how to proceed, what to achieve and what to avoid. The absence of a clear mandate can lead to unrealistic expectation and mixed signals among inmates and prison officials alike...."

In response, Gordon Bonnymore (1986) took issue with these assertions. Acknowledging that the order of reference for the appointment of a special master in Tennessee was vague, Bonnymore argued that the ambiguity and open ended specifications of the master's duties were an effective ways of communicating to the state that the master had the court's full confidence and that it should cooperate fully with him.

Our own view is that the factors most likely to explain variation among masters' effectiveness (assuming we can even measure it) are related to what the judge wants to accomplish, how the judge and master seek to handle matters, and how effectively the master exploits whatever "political" skills he or she possesses. In short, after reviewing the sparse literature on masters in prison and jail condition suits and the much larger literature on their duties in school desegregation cases, we conclude that the process of appointment is ad hoc, that the factors distinguishing an

effective monitor or master from an ineffective master have more to do with a variety of contextual and personality factors than to the formal tasks assigned to the master or to specifics in the orders of reference of appointment. Hence, we suspect, that for the same reasons that Kirp and Babcock give, more systematic research is likely to show that role conflicts are likely to be inherent in the job of mastering and monitoring, and that efforts to specify in the orders of reference the tasks of the masters will not meet with much success.

Finally, the act of mastering raises a serious question for the court even when judges and company work harmoniously. Both critics (e.g., Horowitz, 1977) and proponents (e.g., Fiss, 1985) of structural reform litigation hypothesize that the work necessary to implement a decree unavoidably requires judge and master to engage in negotiations, bargaining, and compromises. That work ultimately detracts from a unique characteristic of courts -- their independence -- which is critical in establishing courts as an authoritative institution in the American political system. Stated another way, the ostensible goal of using special masters is to gain detailed and continuing information about institutional conditions. But this same attention to detail can also bog the court--and master--down in minutia that can trivialize and hence undercut the court's enterprise. Jan Brakel, a research attorney who

served as a compliance monitor in the Ruiz case, has reflected on his experience, and warns that the courts are in danger of trivializing the importance of the suit and undercutting their own powers when they get involved in the administrative details of prison life (Brakel: 1986b, 7). This attention to detail, he asserts, encourages prisoners to use monitors for their own instrumental concerns and in so doing siphon off the limited resources and mire the monitor in an avalanche of petty charges and counter charges which are without merit and which can lead to a "deterioration in the prison 'climate'" (Brakel, 1986a, 69).

An important consideration for future research is to pursue Brakel's assertion and determine whether his experience is borne out elsewhere and by others. Obviously, the issues of the court's independence and authoritative status in the context of particular suits are difficult to observe, but the implications of the hypothesis, if true, warrant making the effort to gather more systematic data.

V. ASSESSING WHAT IS KNOWN CONCERNING THE CONSEQUENCES OF COURT ORDERS

A prominent belief among legal scholars (e.g. Chayes, 1976; Cox, 1976; Perry, 1981) is that judicial involvement in institutional conditions is justified because courts are

equipped to solve these sorts of problems, and that the courts are, in fact, relatively successful in doing so. However, the literature on the impact courts have on prison conditions calls these beliefs into some question.

A. Summary of What We Know

Four themes emerge from our review of the literature. First, the organizational structure of prisons, jails, and correctional systems have been affected in significant ways by the litigation. Litigation has led to the restructuring of authority in correctional systems and individual institutions, such as increased centralization. It remains to be seen, however, whether these changes have led officials to alter institutional priorities such that they now have a greater and continuing desire to maintain constitutionally acceptable institutions. Court litigation has also affected inmate and staff morale, prompting most observers who have addressed the issue to conclude that staff morale has been significantly lowered as a result of court orders and inmate expectations to increase, in ways that lead to increased inmate violence.

Second, courts have stimulated states to develop more policies to deal with prison conditions and overcrowding. Budgets have increased, statewide correctional administration policies have been formulated, some states

have adopted "overflow" devices to facilitate population management of crowded institutions, and in general it appears that state central staffs in state correctional departments have developed greater capacities to monitor institutions under their authority. There is much less information about the policy consequences of jail litigation, but from what there is, it does not appear that jail litigation has led to any widespread and significant policies designed to deal systematically with jail crowding.

Perhaps the most clear cut policy response to jail and prison crowding litigation has been an increase in the rate of expenditures for jail and prison remodeling and construction. Although not the intention of many prison reformers who support a litigation as a strategy fostering less reliance on incarceration, it appears that one of the most significant effects of prison and jail litigation has been to expand the capacity to incarcerate. However it is not clear that even this policy has led to a reduction in crowding in all but a handful of the most notoriously crowded institutions since increases in capacity and staff appear to be quickly off set by the consequences of a policy of increased severity at sentencing, i.e., more convicted offenders do time than they once did.

Third, apart from reported improvements in several Southern prison systems, there is little evidence to support

the assertion that court orders have led to improvements in the quality and type of services provided to prisoners. While some prisons have released inmates or increased service support in response to court-ordered caps it is not clear that even these seemingly clear-cut changes have led to their anticipated results. Marginal reductions in populations do not automatically translate into more benefits for the remaining inmates. More doctors or nurses or law libraries do not guarantee increased access to medical or legal services, and there is some evidence suggesting that they do not (Brakel, 1986b). Similarly several studies report that many court-ordered reductions in populations lead to transfers of prisoners to local jails where problems of crowding and conditions are more acute than in the state prisons. A serious omission in the literature on institutional conditions litigation is that few studies embrace a long enough time frame to allow researchers to determine how the details of specific court orders actually affect service delivery.

A fourth theme deals with the capacity of the courts to affect meaningful change in prisons and jails. When courts are asked to formulate detailed orders affecting the daily affairs of officials and prisoners in large scale organizations, some argue they exceed their capacities and that their independence is threatened. Alternatively others argue that although courts face unprecedented problems in

such suits, nevertheless, they possess the resources and flexibility to handle them effectively. In particular, observers have pointed to the increasing use of special masters in such cases and the flexibility in encouraging party-authored consent decrees.

B. Limitations in What We Know

As we noted at the outset of this paper, much of the literature from which these findings are drawn is flawed. While we can have some considerable confidence in the cumulative findings of such studies, an understanding of the deficiencies in the current research will permit future researchers to be more systematic and encourage them to overcome many of the more easily corrected deficiencies. Below we examine these issues.

Five limitations in the knowledge base on which much of the research rests deserve mention. First, most of the studies lack clearly stated questions to guide inquiry into the consequences of judicial decisions (See e.g. Clune, 1983). Clear definitions of key phrases (e.g., "successful" and "unsuccessful" intervention) are lacking. Even those studies that attempt to adopt a systematic empirical approach are ambiguous as to what analyses of specific court decisions are intended to reveal. What are we looking for? How do we know when the organizing questions are answered?

Second, the studies generally fail to establish a causal chain between court decisions and the alleged consequences of those decisions. Characteristically, the studies fail to try to siphon off the effects of extraneous factors likely to be present at the same time as the federal court involvement. For example, problems of authority and control can arise in prisons for reasons other than the creation of new rights. If the theory of rising expectations, as applied by Alpert, Crouch, and Huff (1984) is true, then one would expect noncourt efforts to reform institutions also to trigger a gap between expectations and achievement resulting in problems of physical violence by inmates against correctional officers and other inmates. Because some evidence points to the connection between nonjudicially inspired reform and disturbances (Engle and Stanley Rothman, 1984), it is necessary to isolate the effects of court orders from other factors in order to attribute observable outcomes to the former, i.e., riots occur after conditions improve prison expectations. For instance, many long-time observers of prisons report that riots often occur after a period where conditions in prisons have improved as a result of changes in administrative practices. While this supports the "rising expectations" hypothesis, it also suggests that safety and security problems may emanate from a number of change agents besides the courts. The requirement of trying to isolate causal

factors is generally not satisfied in the literature because comparisons are rarely made between jurisdictions where federal court involvement has occurred and other jurisdictions where it has not.

The importance of considering alternative sources of the reported outcomes is heightened because the studies tend to focus on only one court decision. When the range and number of observed decisions are limited, a deviant case may become magnified out of proportion and the general pattern obscured. Indeed, as we have seen, many of the best and most systematic studies of the impact of court orders on prisons have focused on institutions in the south which were at the time of the orders quite distinct from prison systems in most of the rest of the United States. While the studies are valuable in recounting the impact of court orders on these prison systems, the generalizations about subsequent violence and compliance they inspire may not be warranted. Just as the history of school desegregation litigation has been different in the South than in the North and West, so too the story of the impact of prison litigation may be different. We need more and more varied studies from all sections of the country. We should note, however, that this limitation of generalizing from single or selected case studies is not restricted to the critics of the courts; it arises as well in studies that claim that the courts perform their tasks effectively (see e.g., Rothman and Rothman,

1984).

Third, the measurement and conceptualization of cost appears to be narrowly restricted to the direct budgetary consequences of court-ordered relief on a given agency. In measuring cost, the scope of activities should extend beyond the resources consumed by a given agency in complying with a specific court order. Costs may be incurred by multiple agencies and multiple levels of government.

States incur the costs of defending themselves as reflected in the time spent by state attorneys general and correctional officials in preparing answers, motions, and responses to interrogatories; attending hearings; and transporting inmates to hearings. Costs are also incurred by the federal courts in the time spent by magistrates in handling pretrial proceedings and the time spent by judges in conducting trials and in hearing appeals. Because these social costs may exceed $100 million annually (Hanson, 1986), which is a substantial proportion of the $950 million budget for the entire federal judiciary, the discussion of costs should not be restricted to the budgetary impact of remedial decrees on a single institution.

From a conceptual point of view, budgetary costs fit very nicely into a large body of literature on budgeting. This literature guides the choice of units, levels, and

methods of analysis used to estimate the budgetary consequences of court orders (e.g., Harriman and Straussman, 1983). However, budgeting is best viewed as a highly visible activity of the much more general process of governmental decision making. It is important, therefore, to begin by asking questions about how court orders affect the general structure and process of state correctional policy making. Do judicial orders affect the arena in which key state decisions are made? Do they affect the size and composition of decision-making bodies? Does judicial involvement affect the planning and forecasting normally associated with state decision making? Viewed in this context, the effects of court orders on budgets become indicators of more fundamental changes in the process of government (Frug, 1978; Straussman, 1985).

Fourth, the representation process and the interests represented are not sufficiently addressed in the analysis of prisoner litigation. Although "multipolarity" long has been identified as a characteristic of and problem in such litigation (Chayes, 1976), insufficient attention has been paid to the divergent interests represented by various plaintiffs (but see Bell, 1976; Diver, 1979; Olson 1984; Yeazell, 1977). An issue almost wholly overlooked in studies of prison crowding suits has been the process and quality of the representation of plaintiffs' and defendants' interests. In many instances the lawyers representing

defendants have incentives quite different from the state institutional officials whose actions are being contested (Bershad, 1979). In addition, the uneven quality of representation has been cited as a reason why states fail to prevail in litigation (O'Connor, 1983).

Fifth, there is limited knowledge on how the courts have gone about exercising their capacities. The absence of systematic comparative court studies means there are limited data on both process and outcomes, and that our knowledge of both process and effects of the various methods and techniques by the courts is extremely limited. Because there are different styles of mastering and monitoring (Kalodner and Fishman, 1978; Kirp and Babcock, 1981; Note, Yale Law Journal, 1984), an effort should be made to try to match different styles with outcomes to determine if some ways of mastering and monitoring are more effective than others.

VI. A PLAN FOR FUTURE POLICY RESEARCH

Research on courts and prisoner litigation has made considerable progress in a short period of time in raising and exploring key issues. However, future research must take into account the methodological and theoretical limitations in these initial studies if we are to attribute

observable changes in correctional organizations, policies, or practices to court orders in a clear and convincing manner.

For this reason, we offer two basic recommendations in order to resolve uncertainties concerning the process through which courts make policy. First, there should be greater attention given the selection of central research questions that direct the gathering, analysis, and interpretation of information. Many studies approach the topic in an adversarial manner and appear to be looking for only those data that will confirm the observer's preconceptions -- proponents of court involvement find positive results and critics uncover negative side effects. To remedy this situation, we pose several questions that we think take different perspectives in the literature into account and are of interest to a broad audience.

Second, several different approaches to answering key questions should be encouraged and supported in order to build a cumulative body of testable propositions. The convergence of different methodologies will overcome the liabilities inherent in relying on a single approach, which necessarily is limited in perspective and time frame.

Concerning organizing questions for future inquiry, we believe there should be analyses of the history and process

of prisoner litigation as well as its benefits and unintended consequences. The questions include the following:

1. What legal and policy arguments are presented by the various parties? Are there standard arguments or do they vary from case to case or depend on who is lead counsel (e.g., a local versus national group of litigators)? What is the relationship between defendants and defense counsel? How and why are some suits "friendly" and some "highly contested"?

2. What justifications do the courts offer for their decisions in both the finding of constitutional violations and the fashioning of remedies? How are conditions measured? What purposes are served by the court's inspection of facilities? What emphasis does the court place on prior efforts to reform the institutions? What emphasis is placed on past evaluations, if any, of the institutions' degree of crowding? How much time do the courts give to institutions either to design or implement remedies?

3. By what process do the federal courts seek to assign and implement relief? What role do adjunct officials such as masters play? What role do masters play in fact finding? In monitoring? Does this extrajudicial

effort encourage or discourage successful implementation? Is more judge time consumed as masters become involved? How does the judge retain independence and simultaneously negotiate implementation plans?

4. What are the consequences of court-imposed standards on the authority of state officials? Exactly what areas of administrative authority are questioned or altered by court orders? Does the judicial constraint on administrative authority create an undesirable gap between administrators and correctional officers? Do court mandated changes increase centralization of correction's management?

5. How do court orders affect morale? Are officers more or less enthusiastic in doing their jobs? Are reported changes long or short term?

6. What changes in the process of correctional policy making occur in light of court orders? Is the process more open or even less visible? Do the participants change? Do court orders alter legislative concern with corrections? What budgetary changes are associated with executing court orders? What is the lag between orders and observable increases in total spending or observable redistribution of monies? Why do states and

local communities pursue different combinations of alternative ways of remedying the problem (e.g., early policies, greater reliance on nonincarcerative punishment, refurnishing old facilities, or construction of more institutions)?

7. Are the ostensible objectives of court intervention achieved? To what degree? Do the objectives change over time? What benefits to inmates are associated with these objectives? Does it improve the work environment for correctional officers? In what other ways do officers benefit?

8. How satisfied are inmates? Lawyers for the parties? Correctional officials and officers? Other state and local policy makers with the "eventual results" of a court's involvement? In what way does the process of intervention affect their satisfaction?

9. Does judicial intervention affect the confidence that citizens have in state and local correctional agencies? How aware are citizens of policies to relieve overcrowding? Do they prefer the "solutions" to the problem?

10. What are the unintended consequences of court intervention? Threats to society's security? Higher

levels of inmate initiated violence? Lower staff morale? More difficulties in maintaining discipline? What is the relative importance of each possible result to the various participants?

There is no single methodology that is most appropriate in pursuing these questions because, as stated at the outset, these issues are likely to be approached with different levels of analysis and influenced by one's view of adjudication. However, some broad comments can be made about alternative research strategies. First, valuable information on the dynamics of the court's policy making process can be gained by close observation of particular institutions where the breadth and depth of court intervention varies. Detailed examination of the process by which court findings of liability are translated into plans and institutional changes will have the greatest payoff in such situations. To some extent such an effort has been made in the Texas prison conditions litigations (Alpert, Crouch, and Huff, 1984; Crouch, 1980; Marquart and Crouch, 1984; and Marquart and Crouch, 1985) and the Harris County Jail (Ostrowski, 1983, 1986). However, for this inquiry to be complete, resources must be made available to support participant observation over the entire life of the litigation and not terminate at some point in the remedy stage. (While the Harris and Spiller studies present invaluable information on the litigation and remedy

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formulation process, time constraints did not permit them to examine in detail the consequences of many of the court orders--more resources and broader time frame would have been required.)

Another approach is to focus on quantitative indicators of specific court objectives and unintended consequences through controlled research. The framework for this type of study is the quasi-experimental design (Campbell and Stanley, 1963). A court's decision and subsequent involvement in state affairs constitute the "treatment." States experiencing such treatment are the experimental group, and states or communities within states that have not received the treatment are the comparison group. Such a study could document the longitudinal changes in indicators of relevant positive and negative consequences in jurisdictions where judicial involvement has occurred and the cross-sectional differences between the experimental and the comparison groups. If the effects of extraneous factors can be screened out from both the jurisdictions where judicial involvement has occurred and has not occurred, the observed consequences can then be attributed to the courts. Hence, such a study offers a test of the independent effects of judicial decisions on the states as well as offering insight on how court intervention interacts with other factors. While we recognize that all the requirements of such a controlled study are unlikely to be met, there is

still value in thinking of research in these terms.

A third approach is to view court intervention and its consequence within historical perspective and adopt a broad sociological orientation toward institutional change. This framework is a hybrid of past studies of the due process revolution in the police field (e.g. Skolnick and Simon, 1985) and the studies of individual institutions (e.g. Jacobs, 1977). It is an attempt to see what happens to the field of corrections as the result of court mandated change. This research strategy is likely to imply moderate commitments of researcher time and resources for an extended period. A model for this type of effort is David and Sheila Rothman's study Willowbrook Wars (1984). The Rothmans were part-time participant observers in the unfolding of this litigation for several years, facilitated by location (they lived in the community in which the suit took place) and a modest research budget for an extended period.

Finally, the approaches of long-term participant observation of particular institutions, comparative and controlled assessments of court orders in specific cases, and a broad sociological view of court orders' effects on the field of corrections, all presuppose that the much needed descriptive work of cataloguing court decisions and charting consequences will continue. That is, the precious little work that is available on different aspects of

prisoner litigation such as the nature of the litigation and its various stages (e.g., Chilton, 1986; Cooper, 1984; Yarbrough, 1981), masters and monitors (e.g., Nathan, 1979; Breed, 1979; Brakel, 1986a, 1986b) must be expanded. Accumulation of descriptive information across a number of sites is essential in order to ground more advanced work.

VII. CONCLUSION

In conclusion, a variety of scholars and participants in the legal process. Studies have cast light on the effects that the courts have on the structure, policies, and practices of correctional institutions. Understandably, more information has been gathered concerning specific consequences in particular cases rather than broader considerations of the structural change in corrections brought about by court decisions. More is also known about the interaction between judges and special masters in implementing court orders than the effects that the monitoring process itself has on the courts as an institution. It is imperative to build on these first efforts and employ a combination of research strategies in order to understand more fully how the courts have altered the ways in which prisons and jails perform essential functions. A more complete picture of court policy making in this area will help clarify where we are headed if

present trends continue and what advantages and disadvantages lay along that path.

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The Use of Early Release and Sentencing Guidelines To Ease Prison Crowding:

The Shifting Sands of Reform

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Abstract

As the nation's prison population continues to exceed historic levels of imprisonment, states are increasingly finding themselves operating severely crowded facilities. Despite record levels of prison construction and other forms of capacity expansion, prison crowding is likely to continue for many states unless sentencing and release policies are moderated.

Two frequently cited options available to states to curb prison population growth are (1) early release and (2) sentencing guidelines. The former typically is used only in emergency situations which require immediate but only temporary population reductions. This is achieved by shortening the inmate's length of stay by advancing parole dates or awarding supplemental amounts of goodtime credits. Sentencing guidelines are not necessarily tied to prison crowding issues, but can serve as a more permanent solution. In addition to reducing sentencing disparity, the guidelines can be structured to ensure that crowding does not occur.

This paper strives to evaluate the success of both strategies in terms not only of population control, but also associated consequences on sentencing disparity, public safety, and the character of the residual prison population. Sentencing guideline states reviewed are Minnesota, Washington, and Pennsylvania, while the early release states examined are Illinois, Michigan, and Tennessee.

With respect to solving prison crowding, early release programs clearly have demonstrated the most immediate and direct impact on population control. However, these programs are short-lived and frequently fall out of favor with policymakers due to their controversial nature. Sentencing guidelines have produced a more lasting effect although they are not immune to the same political pressures which discourage the use of early release and underpin the present trend toward historic levels of imprisonment. Nevertheless, sentencing guidelines, and, in particular the sentencing commissions which accompany guideline structures, do provide on-going vehicles for monitoring sentencing practices and their impact on prison crowding.

Neither strategy has proven, thus far, to positively or negatively impact public safety largely because they have not incorporated risk factors to guide sentencing and early release decisions. As long as policies of "collective" or "just deserts" incapacitation continue, the effects of sentencing and release practices will have minimal consequences on crime rates. This finding also raises fundamental questions on the utility of current imprisonment practices.

THE SHIFTING SANDS OF REFORM

I. INTRODUCTION

As state prison systems become increasingly over-crowded the search for effective methods to control population growth also has escalated. By 1984, all but 11 states held prison populations exceeding their highest capacity rating (BJS, 1985) and six of the 11 "uncrowded" prison systems had prison populations within 95 percent of the state's rated bed capacities. The severity of the crowding crisis was reflected in a 1984 survey of criminal justice practitioners who indicated that the most important issue facing them was prison and jail crowding (NIJ, 1984).

In response to the crisis a wide array of technocratic "solutions" have been being promoted including rapid capital construction programs to expand prison capacity, various sentencing reforms to restrict intake, emergency early release, and even house arrest with electronic surveillance. Mathias and Steelman (1983) catalogued 14 strategies other than expansion of prison capacity that states have or are now attempting to implement for purposes of eliminating prison crowding. In general these reforms were separated into two broadly defined categories:

1. Front Door Options: Efforts deigned to restrict the number of offenders committed to prison and their expected length of stay (LOS). Such options include the use of sentencing guidelines which modify existing laws regarding sentencing criteria, sentencing length and goodtime

calculations) and diversion of convicted cases into jail or specialized community programs.

2. Back Door Options: Efforts designed to accelerate the release of inmates already committed to prison. This strategy often involves a number of programs which reduce the inmate's expected prison term. Such programs include; early parole, emergency release, and expanded use of work furloughs and house arrest.

The intent of this paper is to evaluate the extent to which some of these remedies have succeeded in curbing a state's prison crowding problem. Analysis will also focus on the indirect consequences of these reforms on sentencing disparity, characteristics of the prison population, and the extent to which these reforms provided a lasting or only temporary solution to prison crowding.

The paper also addresses the impact of these reforms on crime rates. This is especially relevant given the competing claims now being debated on the effects of incapacitation on crime (NAS, 1986). Efforts to restrict or at least slow the growth of prison populations necessarily means that either fewer offenders will be imprisoned and/or they will have shorter periods of imprisonment compared to current sentencing policies.

Opponents of alternatives to incarceration argue that reductions in prison population growth will lead to more crime and are on that basis alone unacceptable. Supporters of these policies counter that there are substantial numbers of inmates who could be diverted from prison or have their prison terms shortened without adversely effecting public safety. Clearly at issue is the extent to which criteria for sentencing and release

decisions in general are guided by criteria related to risk of re-offending.

The review is purposely limited to only those states which (1) have tried for a substantial period of time a reform which was specifically directed toward controlling prison crowding and (2) which have published sufficient data to evaluate the effects of their efforts thus far. Programs aimed at reducing pretrial and sentenced jail populations have been excluded since the focus of this review is prison crowding.

The Sources of Prison Crowding

Simply stated prison crowding is "caused" by an insufficient number of beds to house the average daily or "stock" inmate population. The stock prison population is simply the product of two fundamental forces: (1) number of admissions and (2) length of stay (LOS). To illustrate, a state that receives 5,000 inmates per year with an average length of stay of 2 years will have a 10,000 inmate population to house. If the state has only 9,000 beds the prison system will be over-crowded. This elementary example underscores that states are limited to only three options to "solve" prison crowding:

1. Increase the state's prison bed capacity by renovation of existing facilities or construction of new facilities;

2. Reduce the number of new admissions by reforming state sentencing laws and/or court policies and practices (i.e., filing, conviction and sentencing decisions);

3. Reduce the length of stay by altering parole release policies and practices, and/or by modifying correctional good-time credit allocations and release policies and practices.

Returning to the hypothetical state with 10,000 inmates and 9,000 beds, prison crowding could be avoided either by (1) constructing 1,000 more beds,(2) reducing the number of admissions to 4,500 but keeping the LOS at 2 years, (3) keeping the 5,000 admissions but reducing the average LOS to 1.8 years or (4) some unlimited combination of options 1,2, or 3. The "simple" example becomes enormously complex when one takes into account the ongoing demographic forces operating within a state which affect crimes rates and the number of criminal justice agencies which are directly involved in those decisions affecting prison admissions and LOS.

The point is that the mathematical solutions to prison crowding are quite straightforward since the population is wholly determined by admission and LOS rates. However, the three "solutions" to prison crowding are also the "causes" of crowding which reflect policies adopted by key decision-makers. As Knapp (1983) points out the "etiology of prison populations" (and hence the etiology of prison crowding) is the net result of purposeful policy decisions adopted by the state and local officials. Prison crowding does not happen by accident or by events that could not have been anticipated. Consequently, the solutions often demand purposeful action by the same decision-makers whose policies created an overcrowded prison system.

The Escalating Use of Imprisonment In the United State

Societies may choose to adopt any number of control mechanisms or sanctions in response to crime and other forms of deviant behavior. With respect to the United States two trends in the use of imprisonment are noteworthy. First, the U.S. incarceration rate has traditionally ranked higher than most western countries (see Table 1). Whether this is in response to our equally high level of crime or purposeful social policy is a subject of heated debate among criminologists and politicians and will not be repeated here. Suffice it to note that the U.S. does rely heavily on imprisonment compared to other countries. However, a more interesting trend is historical in nature. Since 1880 when incarceration figures were first collected, the U.S. jail and prison incarceration rate has steadily risen (Figure 1). More specifically, the country has gone through three escalating plateaus of imprisonment: 1880-1925, 1925-1975, and 1976 to the present. Actually the post 1975 trend has not yet stabilized and is not expected to moderate for some time (Austin and Krisberg, 1986; Rich and Barnett, 1985). Significantly, the primary cause of these increases is extended LOS and not increasing admissions. Although many states are experiencing increases in both areas, recent legislation designed to "get tough" with criminals has resulted in far lengthier prison terms.

TABLE 1

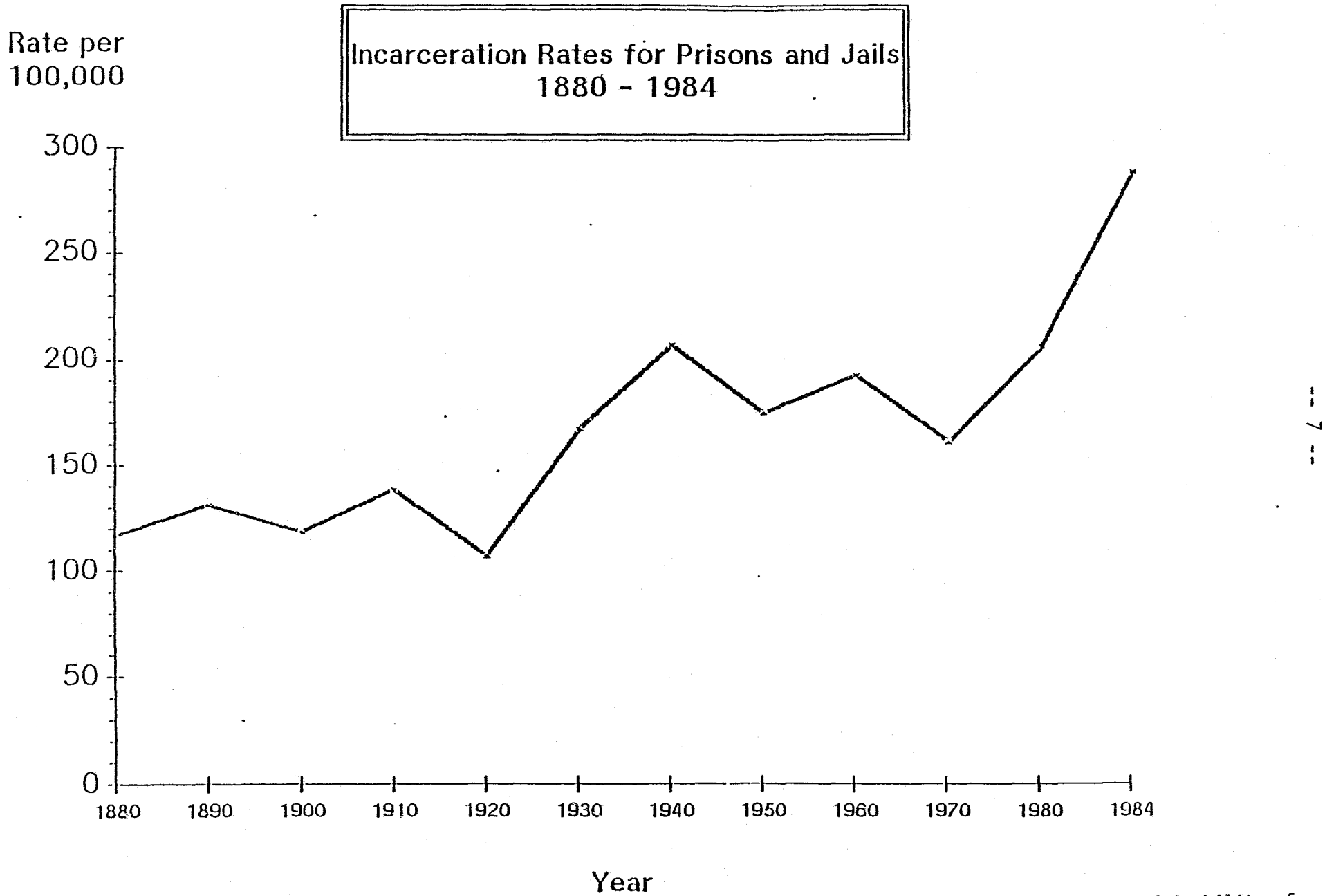
AVERAGE ONE DAY COUNTS FOR ADULT AND JUVENILE PRISON AND JAIL POPULATIONS FOR 1980

Country	Incarcerated Population	Rate Per 100,000 Total Population	Sentenced Per 100,000 Population
U.S.	520,122	241.2*	202.2*
Belgium	5,797	58.8	43.5
Czechoslovakia	...	...	232.1
Denmark	3,439	67.1	48.3
Finland	5,032	105.3	93.7
France	45,655	85.0	55.2
FRG	85,053	94.3	70.7
Greece	3.135	32.7	25.8
Ireland	1,214	36.7	33.8
Italy	31,765	56.6	19.2
Netherlands	3,873	27.4	17.3
Norway	1,797	44.0	34.3
Poland	95,696	269.0	226.0
Spain	18,263	48.8	22.0
Sweden	4,795	57.7	49.0
United Kingdom	49,451	88.4	79.6
Yugoslavia	...	...	74.2

Sources: Main international information from the Second United Nations Survey on Criminal Justice Systems in Europe as compiled by the Helsinki Institute for Crime Prevention and Control, publication series No. 5.

* U.S. data taken from the Source Book of Criminal Justice Statistics - 1982, U.S. Dept. of Justice. U.S. juvenile data from 1979 one day count, U.S. jail data from 1978 one day count.

FIGURE 1



SOURCE: Margaret Cahalan, "Exploration of Stability of Institutionalization Hypothesis: 18[illegible] 1980" (Paper delivered at the Law and So[illegible] Meeting June 1984, Boston, MA).

Why are these trends relevant to this paper? Since the U.S. values imprisonment as a primary social control sanction, most legislative responses to crime frequently entail utilizing the imprisonment sanction more frequently and more severely. Efforts to curtail the use of imprisonment will thus represent a position with minimal public support. And, solving prison crowding by lowering the prison population while crime rates continue to rise will be a difficult position to sustain over time.

II. EARLY RELEASE

The most dramatic and most direct solution to the prison crowding crisis has been the use of early release. Early release is a "back-end" solution which reduces an inmate's expected period of imprisonment. If applied to a substantial number of inmates it will accelerate the rate of prison releases and reduce the daily inmate population. It can also include emergency efforts to divert corrected felons to local jails for purposes of slowing admissions.

Early release is, of course, the most controversial approach to curbing prison crowding. Although the prison system directly benefits by reducing crowding, the public perceives it is being exposed to a larger number of released inmates. While it is true that most inmates are released within two or three years, public safety is threatened if two conditions are met; (1) those released early are still highly active in their rate of offending

(i.e., career criminals) and (2) the prison term is substantially reduced as a result of early release.

One can also question how a well publicized early release program might adversely affect general and specific deterrence. If it becomes common knowledge that the state is reducing prison terms, marginal offenders might be more inclined to engage in criminal activities. More importantly, the public may become further disenchanted with what it perceives as an ineffective criminal justice system. And, if inmates spend less time incarcerated the pain of imprisonment may be significantly reduced.

The structure or method for early release has varied substantially from state to state depending on each jurisdiction's sentencing structure. For example, states using indeterminate sentencing tend to use an accelerated parole board hearing method which allows inmates to appear before the parole board faster than would have happened normally. If a state has a determinate sentencing law, existing good-time provisions are used to move up a predetermined inmate release date. Although the extent of early release is relatively unknown, the BJS reported that 18,617 inmates were formally released early in 1985 from 18 states. States with the current largest number of early releases in 1984 were Georgia (7,665), Florida (2,501) and Tennessee (2,276). These figures dramatically underestimate the actual amount of early release, since several states are known to be awarding a substantial amount of good-time credits largely in response t

overcrowding conditions but do not officially designate these policies as early release.

Early or a Return to Normal Release Practices?

The expanded use of early release is ironic, given the recent trends in sentencing reform. Most of the states now using early release had passed major sentencing legislation reforms designed to restrict or abolish parole discretion and to increase prison terms for certain offenders. Without a parole release system to increase prison exists, these states soon found themselves with overcrowded prisons and with insufficient funds or time to expand capacity. Consequently, they were faced with the difficult dilemma of either attempting to pass emergency legislation to increase prison release rates or have the courts intervene in the operations of the prison system by mandating early release. In either situation, the original intention of sentencing legislation which was designed to extend prison terms was frequently circumvented by early release policies. Length of incarceration became more dependent upon: (1) a federal court order, or (2) the extent of the prison crowding, rather than the crime committed by the offender. As Jacobs (1982) and Parisi and Zillo (1983) have observed, prison officials have seized upon the use of good-time credits to manage their burgeoning prison populations. At the same time, they have introduced an added level of disparity into the sentencing process which, in part, may circumvent the original purposes of sentencing reform.

In the following pages separate reviews are made of three well-known early release programs: the Illinois Forced Release program, the Michigan Emergency Powers Act, and Tennessee's current early efforts. The Illinois program operated under existing administrative power within the confines of a determinate sentencing system. Michigan's program was authorized by the legislature and functioned within an indeterminate system. Significantly both programs are now officially defunct although the Illinois program continues to function albeit at a lower level. Tennesse is still on-going and likely to continue for several years.

Much of the debate surrounding early release centers around the presumed effects of shortening prison terms for already imprisoned inmates (i.e., incapacitation effects). Unlike sentencing guidelines, a significant body of research has been compiled on previous early release programs attempted since 1960. These studies are reviewed below to provide context to the Illinois, Michigan, and Tennessee findings.

Previous Research on Early Release

The Florida Division of Corrections attempted to measure the impact of the U.S. Supreme Court decision in Gideon vs. Wainwright on selected crimes in Florida from April, 1963 to August, 1965 (Eichman, 1966). The Gideon group had served less time than controls on their current sentence but had a higher proportion of both prior felony convictions and prior arrests

compared to the controls. Conversely a higher proportion of the control releases (71.9% vs. 64.8%) were classified for maximum security custody at intake. After approximately a 30-month follow-up period, the recidivism rate for Gideon releases was 13.6 percent compared to 24.4 percent for the controls.

In 1971, a Federal court ordered the release of 586 criminally insane patients from the Bridgewater maximum security mental health unit. (Dixon vs. the Attorney General of the Commonwealth of Pennsylvania.) The patients were released for re-evaluation by state officials to civil mental hospitals nearest their homes. Eventually, 65 percent of these patients were released to the community, while the remaining 35 percent were retained in custody and transferred to other state hospitals. Thornberry and Jacoby (1979) conducted a 48-month follow-up of the released patients and compared their adjustment with that of the in-community adjustment of typical ex-patients from other state mental hospitals. There were few differences between the Bridgewater releasees and the "typical" or "normal" mental health releases group. Although the Bridgewater patients were allegedly more dangerous and violent than other mental patients, the follow-up analysis found that they were neither more disruptive in the hospitals where they were confined, nor were they more violent after release.

An Israeli study has reported on the results of an Amnesty Law passed by the Israeli Knesset in 1967 which released inmates ahead of their scheduled exit dates (Sebba, 1979). In all, 501

prisoners were released, 15,376 criminal investigations were closed, and thousands of prosecution files were closed. A group of 476 prisoners who received amnesty was compared with a control group drawn from a sample of releasees between January, 1965 and April, 1967. The control sample was weighted in favor of long-termers to reduce the natural bias towards the presence of short-termers in release cohorts. After three years, the amnestied group had a reconviction rate of 57.1 percent compared with the reconviction rate of 57.4 percent for the controls. About one-third (35.3 percent) of the amnestied offenders and 28.4 percent of the controls were returned to prison during the follow-up period.

Two recently published studies of early release were completed by Malak (1984) on inmates discharged from the Colorado prison system in 1983, and another by Sims and O'Donnel on Washington's early parole program (1985). A Colorado Supreme Court decision in February, 1983 held that inmates sentenced to the Department of Corrections must be credited for time served in county jails while awaiting trial (People vs. Chavez). This decision immediately shortened the prison terms of some 150 state prison inmates affected by the ruling by approximately 56 days. The research consisted of comparing the re-arrest rates, for eight months after release, of 126 early releasees with 131 inmates who served their full terms. Results showed that the Chavez cases had similar rearrest rates (39.7 percent vs. 35.9 percent) but that the Chavez cases were less likely to commit

violent crimes after release (15.4 percent vs. 24.3 percent). Moreover, the Chavez cases contained higher proportions of Blacks and older inmates charged with more violent crimes. The author concluded:

> The results of this study lend support to the concept of an emergency powers act and other types of early release programs as alternatives to be considered in relieving prison overcrowding. They also raise questions about the need for recent legislation which has increased sentence lengths for certain types of offenses, thus further aggravating the prison overcrowding situation. (Malak, 1984:11)

The Washington early parole program evaluation covered a far more ambitious program. From 1979 to 1984, over 1,600 inmates were paroled early during six separate periods of early release. The researchers used a pre-1979 release cohort of 1,867 inmates to determine the relative effectiveness of the program in terms of recidivism rates. In general, the early releasees were slightly older, white, more likely to have been convicted of property offenses, and have more prior prison admissions. The average amount of prison time reduced compared to the comparison group was 1.5 months. Overall, the recidivism rates of the early release groups were slightly lower or equal to the comparison groups using one, two, and three year follow-up return to prison (i.e., parole supervision failure) rates. However, the researchers also analyzed each of the six early release cohorts and found varying recidivism rates for each cohort. One cohort, in particular, had an excessive recidivism rate which led the authors to conclude that unless care is made in selecting who is released early, the risk to public safety can become excessive.

No differences were found in the types of crimes committed by early releasees compared to the comparison group. The researchers concluded that early release can provide only temporary relief to prison crowding but that the risk to public safety can be managed if low risk inmates are selected for early release.

THE ILLINOIS FORCED RELEASE PROGRAM

The Illinois program represents the application of early release within a determinate sentencing structure. Determinate sentencing places some important limitations on how early release can be accomplished. Since prison terms are fixed by the court with no means for discretionary release by a parole board, the only means for adjusting LOS is via the awarding of various types of goodtime credits which was the case in Illinois.

In terms of sheer numbers, the Illinois program represents a most ambitious early release effort. From 1980 to 1983, over 21,000 inmates, making up approximately sixty percent of all prison releases, were released early by prison officials. Early release was accomplished by selectively awarding inmates with satisfactory conduct additional good-time credits which were deducted from their determinate sentence. An average of 105 days were deducted from the early release sentences by the Director of Corrections (see Table 2). This amounted to a twelve percent reduction in the prisoner's expected length of imprisonment.

TABLE 2

Estimated Number of Early Releases
and Amount of MGT Credits Awarded to Early Releases
Calendar Years 1980 - 1983

Calendar Year	All Exits	% Early Released	Early Releases	X MGT
1980	6,969	32.0	2,230	75 days
1981	8,444	59.6	5,066	88 days
1982	10,466	80.0	8,373	123 days
1983	9,480	60.0	5,688	90 days
TOTAL	35,359	60.4	21,357	105 days

The Rise and Fall of Early Release in Illinois

Prison crowding did not become an issue in Illinois until the mid 1970s. Like the rest of the nation, the prison population began to escalate substantially under an indeterminate sentencing structure. Most of this increase was attributed to substantial increases in prison admissions which were being fueled by a more aggressive law enforcement and sentencing practice.

Beginning in 1974, Illinois experienced a staggering growth in its prison population. The state almost doubled its prison population with a population of 6,100 in 1974 to nearly 11,000 by 1980. Close analysis of Illinois' rapid population growth shows that it was fueled not so much by escalating crime rates or net population growth but by large increases in felony convictions (Table 3). From 1974 to 1980, the number of court dispositions and convictions produced from felony arrests increased by 60 and 90 percent respectively.

A second but increasingly important factor affecting population growth was the abolition of the state's indeterminate sentencing law in 1978 and adoption of a determinate sentencing structure. Although this sentencing reform was not the primary cause of prison population growth, it aggravated in several ways the trend which began in 1975. First, the legislation created six major classes of offenses for which convicted felons could be sentenced to prison: Class M (murder), Class X (robbery, assault, rape, kidnapping), Class 1 (attempted robbery, rape

TABLE 3

Illinois Criminal Justice Trends

1974 - 1980

	1974	1980	% Change
State Risk Population* Age 15-39	4,215,571	4,698,670	11.4 %
Reported Index Crimes	564,568	592,989	5.0 %
Index Arrests	119,653	133,473	11.5 %
Felony Dispositions/Convictions			
Total Dispositions	30,661	49,176	60.3 %
Convictions	13,571	25,714	89.4 %
Conviction Rate	(44.3%)	(52.2%)	17.8 %
Sentences of Felony Convictions			
Prison	4,937	9,814	98.7 %
Probation	7,219	11,397	57.8 %
Probation & Jail	1,161	4,238	265.0 %
Jail	244	220	(0.4)%
Other	10	45	-
Prison Commitment Rate	(36.3%)	(38.1%)	5.7 %

Sources: * Illinois Bureau of the Budget, Population Tables (Raw Data)

Human Services Data Report: Part I, 1981-1983, Volume III
Illinois Department of Corrections.

and drug sale), and Classes 2,3, and 4 which represent property (burglary, theft, fraud, etc.), drug offenses (possession and sale), and simple robbery. Class X was the most significant sentencing category as it mandated that judges sentence offenders convicted of these crimes to prison with a range of six to thirty years with possible enhancements of 30-60 years. Offenders sentenced for these offenses began serving longer terms under the new law despite the fact that inmates were also being awarded an increased rate of statutory good-time (day for day statutory good-time as opposed to the previous 1/3 statutory good-time system). This, in turn, created a "stacking" effect in the prison population which did not begin to take effect until several years after the legislation was adopted.

Of equal significance was the law's provision to abolish discretionary parole release. Under determinate sentencing, inmates can only have their prison terms reduced by receiving their statutory good-time credits (day for day) and other forms of meritorious good-time (MGT) credits which could be awarded at the discretion of the Director of Corrections. In effect, the abolition of discretionary release to parole greatly restricted the state's ability to moderate prison population growth by monitoring parole board release rates and resulted in a continuing decline in prison exits.

Trends of reduced prison exits and increasing prison admissions worsened after 1978 as shown in Table 4. Admissions had more than doubled after 1974 as the courts sentenced more

TABLE 4

Prison Admissions, Releases, and Daily Population
Calendar Years 1970 - 1984

	Prison Admissions	Prison Releases	Daily Population	Rated Capacity
Indeterminate Sentencing				
1970	4,927	6,300	8,100 *	N/A
1971	4,437	5,065	7,000 *	N/A
1972	4,375	4,656	6,200 *	N/A
1973	3,839	4,143	6,100 *	N/A
1974	4,544	4,461	6,100 *	N/A
1975	6,032	4,676	8,110	8,382
1976	6,457	4,797	10,026	11,371
1977	6,922	6,062	10,915	11,316
1978	7,423	7,778	10,654	11,742
Determinate Sentencing Begins				
1979	8,478	7,589	11,683	11,940
Early Release Begins				
1980	9,240	6,969	12,500	12,763
1981	9,858	8,444	13,994	14,470
1982	10,467	10,466	13,895	13,943
Early Release Restricted				
1983	11,084	9,480	15,437	15,318
1984	9,799	8,331	17,250	17,390

Source: Human Services Data Report: Part I, 1983-1985, Volume III. Illinois Department of Corrections.

offenders to prison for felony arrests and were continuing to increase. However, prison exits did not keep pace with prison admissions after 1978 indicating that length of stay was steadily increasing with no parole board to regulate release rates.

Although many observers expressed fear that determinate sentencing would greatly expand the prison population, Illinois was not well prepared to provide the necessary resources for the rapidly growing prison system. This does not mean that no effort was made. In fact, Illinois greatly expanded its prison capacity by almost 4,000 beds from 1975 to 1980 representing a 50 percent increase. However, the capacity expansion program was simply insufficient to keep pace with a more efficient court system and a tougher sentencing law.

With parole abolished, the only administrative means for the IDOC to effectively control population was to expand the use of awarding of MGT days (or credits) which would reduce prison terms and thus increase prison releases. It was hoped that a short-term policy of early release would buy the state sufficient time (3-4 years) to continue its prison capacity expansion program and thus meet the long-term projected growth in the prison population.

Who Was Early Released?

Although the selection process was not random, it was not based on any empirically derived risk criteria. At first, inmates were selected based on the type of crime they had committed and institutional conduct record. Those inmates convicted of the

less serious property offenses and short prison sentences were initially given priority consideration by the Director. However, since these inmates had minimal impact on population growth, the population eligible for MGT credit had to be greatly expanded. At the height of the program in 1982, almost all inmates who had satisfactory conduct records were granted MGT credits. This meant that 80 percent of all prison exits were having their prison terms reduced by 4 months (see Table 2).

Opposition to Early Release

As the IDOC began to expand its use of the Director's authority to award unlimited amounts of MGT credits, previous supporters of sentencing reforms began publicly to criticize the Director's actions. Despite the passage of determinate sentencing, inmates were beginning to be released in greater numbers after serving shorter prison terms. Table 5 shows that after early release began, the number of prison releases increased by almost 2,500 in 1981 and 2,000 in 1982. Similarly, the amount of time served in prison dropped from 2.1 years in 1978 to 1.4 years by 1983. As these data became available to state officials who had supported determinate sentencing, the level of criticism increased dramatically.

Among the harshest critics of early release were the prosecutors, especially Richard M. Daley, State Attorney of Cook County. From his perspective, early release was undermining his recently successful efforts to convict more offenders and sentence them to prison.

TABLE 5

Prison Releases and Average Length of Time Served

1977 - 1983

	Prison Releases	Time Served	
		Total Stay*	Prison Stay**
1977	6,062	— Not Available —	
1978	7,778	2.6 yrs.	2.1 yrs.
1979	7,589	2.7 yrs.	2.2 yrs.
1980	6,969	2.3 yrs.	1.8 yrs.
1981	8,444	2.2 yrs.	1.8 yrs.
1982	10,466	2.3 yrs.	1.8 yrs.
1983	9,480	1.9 yrs.	1.4 yrs.

* Includes time served in jail prior to transfer to state prison.

** Represents time served in prison facilities only.

Source: Statistical Presentation 1983
Planning and Budget Unit
Illinois Department of Corrections

> Important progress has been made through the increased effectiveness of police and prosecutors, the expansion of the criminal court system in the early 1970s to meet rising levels of crime, the adoption of determinate sentencing and mandatory imprisonment in 1977, and the greater cooperation of victims, witnesses, and communities with law enforcement agencies.
>
> Our current prison problem is very much the result of our real success in fighting crime. To try to solve that problem by punishing criminals less undermines our accomplishments and amounts to a surrender to the problem. The only responsible action is to provide the capacity necessary to house those who rightly belong in prison for their offenses against persons and property (Richard M. Daley, October 17, 1983).

As law enforcement and prosecutors became increasingly vocal in their objections, the state's major newspapers began to run major feature stories in 1982 and 1983 with most editorials opposing early release. Political opposition reached its peak in the spring of 1983 when five state attorneys filed suits in their respective counties charging Director Lane had abused his authority. Specifically, these suits charged that IDOC could grant no more than 90 days of MGT for any inmate during the entire period of incarceration. Prior to 1983, there was little need to exceed the 90-day limit, but thereafter the Director had been forced to increasingly award multiple 90-day grants to keep the population stable.

To dramatize the increased use of early release, Richard Daley's office released specific examples of how much time was being granted to long-term offenders.

> Those who argue that the Department of Corrections' early release program was not turning loose violent criminals early would have to explain the following examples of some of the felons early released to Cook

County in a single randomly selected week in May of this year:

1) an armed robber, twice before incarcerated for felonies, who served only two years and five months of a six-year sentence;

2) a rapist, twice before convicted of rape and once of armed robbery, who served only five years of a 12-year sentence;

3) an offender with a prior felony conviction who served only four years of a 10-year sentence for attempting to murder a police officer;

4) an offender with two prior felony incarcerations who served 13 and one-half months of a four-year sentence for aggravated battery in which he wounded two individuals with a sawed-off shotgun;

5) an offender who served under 10 months of a three-year sentence for burglarizing a drug store and robbing a victim on the street, crimes which he committed while on probation for another robbery; and

6) an offender with four prior felony convictions and two incarcerations who served only three years and eight months of a nine-year sentence for five counts of armed robbery and an attempted murder of a police officer. (Richard Daley, October 13, 1983).

By the summer of 1983, the outcry against early release became so intense that the Governor requested, by filing a writ of mandamus, that the Illinois Supreme Court immediately hear the five pending county suits. On July 12, 1983, the Court ordered a halt to the practice of awarding more than 90 days over the course of an inmate's incarceration. Importantly, the Court did not terminate the practice but only restricted its use. It also ruled that overcrowding, short of a violation of the Eighth Amendment of the United States Constitution, was insufficient grounds for exceeding the 90-day limit.

Evaluation of the Illinois Program

While the early release program was operational, a request was made by the IDOC to the National Institute of Justice (NIJ) to conduct a comprehensive evaluation of the early release program. Given the rise of criticism against the program, the IDOC and Governor Thompson felt that an independent evaluation was needed to assess the effects of early release. The evaluation was conducted by the National Council on Crime and Delinquency (NCCD) and was designed to measure the impact of early release on prison crowding, crime rates, and costs.

The results of the NCCD study were primarily based on a 1,552 case random sample of all inmates released from IDOC from July 1, 1979 through December 31, 1982. This sampling frame was designed to include inmates released one year before the introduction of the early release program and for 30 months thereafter. Since early release did not begin until June, 1980, cases sampled prior to that date (N=355) were inmates who served their full prison terms. These can be used to evaluate the impact of early release on aggregate inmate recidivism rates over time.

The remaining sampled cases (N=1,202) were inmates released while the early release policy was operational. However, not all inmates released after June, 1980 qualified nor were selected for early release. Consequently, comparisons within this sub-sample can also be made of early released inmates versus those who served their full prison term.

Data were collected on the inmate's prior criminal history, institutional conduct, time served, method of prison release, social and personal characteristics, and criminal behavior after release from prison. A detailed inmate arrest history file was created, making it possible to precisely estimate the number of arrests that could be attributed to the early release program. If an inmate was released 45 days ahead of his or her original release date period, it was possible to determine how many arrests occurred during that 45 day "risk" period. Arrests occurring during the "risk" window represent those crimes which would theoretically have been averted had early release not existed. This analysis was required in order to measure the amount of crime attributable to early release and the amount of harm suffered by the public as a result of the early release policy. Cost data were also assembled from a variety of studies and sources to estimate the relative cost-effectiveness of the program.

Impact on Prison Crowding

It was estimated that over 5,900 prison man years were averted via the Illinois early release program between 1980 and 1983. Had the program not existed, the prison population figures would have been ten percent higher than were actually experienced (see Table 6).

Additional actions were also taken to reduce prison admission or increase prison capacity including prohibiting the

Table 6

Number of Beds Saved Through Early Release

1980-1983

Calendar Year	Early Releases	$\bar{X}$ MGT	Estimated Averted Prison Years
1980	2,230	75 days	458
1981	5,066	88 days	1,221
1982	8,373	123 days	2,822
1983	5,688	90 days	1,403
TOTAL	21,357		5,904

commitment of misdemeanant offenders to state prison and implementing an intensive probation supervision program.

Despite these "front-end" remedies, the most powerful force was the rapid expansion of bed capacity. Since 1980, Illinois had appropriated over $786 million in capital development funds which have provided approximately 5,000 additional beds to the prison system. Many of these new beds were in medium security facilities constructed and opened within a two-year period from initial conception.

This three-pronged strategy of regulating prison admission, selectively accelerating prison releases, and expanding prison capacity resulted in Illinois avoiding becoming crowded and experiencing the attendant costly consequences of operating an overcrowded prison system. However, the problem has not been permanently solved: current Department of Corrections projections show an additional 5,000 beds will be needed over the next ten years as the effects of longer determinate prison terms continue to be felt in that state (IDOC 1985).

Impact of Early Release On Crime

Prisoners who were early released did not have higher probability of being rearrested or returned to prison. In fact, prisoners selected for early release actually had a lower one-year re-arrest rate (42 percent) than did prisoners serving their full prison terms (49 percent). However, this difference was not attributable to early release but to differences among the

inmates selected for early release. Measures of institutional conduct, severity of current offense, prior criminal history and age at release were the more powerful predictors of recidivism.

The study also explored the extent to which early release aggravated the Illinois crime problem in general. Assuming that released inmates have a certain probability of committing new crime, accelerating the number of releases increased the amount of crime beyond the levels one would have experienced had early release not existed. Using this method, it was estimated that less than one percent (4,500 arrests) of all similarly recorded arrests for all of Illinois were attributed to early release from 1980 through 1983.

Estimation techniques were also used to gauge the amount of crime which did not result in an arrest but which could be attributed to the re-arrested early releases. These estimates suggest that the actual amount of crime committed by early releases during their "risk window" was less than two percent of the total number of reported index crimes recorded in Illinois during the same time period.

The Monetary Costs of Early Release

The NCCD researchers also attempted to measure the cost savings of early release. Although their approach is subject to debate, it does represent an effort to incorporate the costs of crimes attributable to early release.

Prison operating costs amounting to $49 million were averted by early release according to the NCCD study. These significant gains were offset by criminal justice costs associated with the crimes committed by the early releases during their "risk window". Local criminal justice costs for investigating, arresting, detaining, prosecuting, defending, and sentencing the 4,500 arrests attributed to early release were estimated at $3.3 million. The second and most significant source of incurred costs was economic losses to victims stemming from arrests, reported crimes, and unreported crimes. These represented the unrecovered value of property loss and medical services as estimated on National Crime Survey reports. Cumulatively, they added up to as much as $13.6 million in estimated economic losses.

Taking into account all of the above costs, early release, as implemented in Illinois, proved to be cost-effective. NCCD estimated that the net savings was as much as $1,480 per early release.

MICHIGAN'S EMERGENCY POWERS ACT

Michigan's method for triggering early release was very different from that of Illinois. First, the Michigan program was enacted by the legislature on January 26, 1981 as opposed to the Illinois administratively operated program. Second, the program operated within the context of the an indeterminate sentencing structure. Parole eligible inmates received additional good-time credits which allows their cases to be heard sooner by the Board

then would otherwise happen. The Board was not obligated to release these inmates, but the assumption was that they would maintain its historic parole grant rates. Like Illinois, the EPA was strictly viewed as a method of last resort only to be used if all other alternatives had failed and only for a short period requiring emergency actions.

> A Prison Overcrowding Emergency Powers Act (EPA) should be viewed as means of last resort by which prison crowding can be addressed. It should function only when already available legal remedies, such as community placement, furlough, and work programs, have been exhausted... An EPA must be conceived, developed, and used just as the name implies -- as an emergency measure. Otherwise, the Act, like other available remedies, may not be used frequently during non-emergency periods, both of which will damage the Act's credibility and possibly subject it to appeal (Boyd and Padden,1984:1-2).

Michigan's prison population did not begin to escalate significantly until 1974. Prior to that year, there had been no prison crowding problem in Michigan. In fact the inmate population was often several thousand prisoners below the state's rated capacity of 9,000 cells. Why the population began to increase after 1974 has not been documented in the literature. However, the increases were substantial. Between 1974 and 1980 the population had increased from 8,630 to 15,124 (BJS, 1974-1980 U.S. Prisoner Annual Report).

During the same period the state attempted to solve the impending crowding problem by adding an additional 4,000 beds and 2,000 pre-parole community placement beds. But by 1980 the population continued to crest above the rated capacity of the state prisons. Along with the rapid population increases was the deter-

ioration of the state's economy. Additional capital construction was not economically feasible, according to state officials. The state had already spent $52 million to construct the additional 4,000 beds and the Department of Correction's operating budget had increased from 34.6 million in 1971 to 216 million in 1981. To keep pace with the rising population, the then-Governor Milliken proposed a $404 million construction program which was quickly attacked by the legislature as too expensive given Michigan's economic plight.

In 1980 a Task Force on Prison Overcrowding was created and charged with pursuing alternative strategies to control population growth. Eventually the Task Force formally recommended the EPA after a considerable period of internal debate. According to published reports, the EPA was politically acceptable for three reasons: (1) it would only be used under emergency conditions, (2) it would only result in the release of inmates screened by the Parole Board and placed on parole supervision a few months earlier then would otherwise occur and (3) it had minimal direct costs to the state.

Description of the EPA

The EPA could only be triggered when the population exceeded 95 percent of the rated capacity for 30 consecutive days. The Corrections Commission must so notify the Governor that a crowding situation exists and to declare a state of emergency. The Governor must then declare a state of emergency within 15 days

unless he/she finds that the Commission acted in error. Once the emergency has been formally declared, inmates who are presently housed in the population who are not serving flat sentences and who have not already appeared before the Board will have their minimum sentences (i.e., parole eligibility dates) moved up by 90 days. The Board may then choose to release this additional pool of parole candidates.

Since 1980 the EPA was triggered a total of nine times through September 1984. Although crowding has continued beyond that date current - Governor James Blanchard has declined to use the EPA's provisions although they remain. Other related events include the defeat of a one-tenth of one percent income tax increase for prison construction and no action on a proposal to enact sentencing guidelines and to expand diversion programs. Thus at this time Michigan still faces overcrowding but no clear means for reducing its population via EPA or other sentencing alternatives.

Impact of the EPA on Prison Populations

Much less is known about the effects of the EPA as compared to Illinois. The only published account was prepared by Boyd and Padden in 1982. And their analysis provides only sketchy details on the first three EPA declarations. The first release action took place on May 20, 1981 when the population was 13,111 and capacity equaled 12,874. During the emergency period the popu-

lation was decreased by 700 and capacity increased to 13,285 after a new prison was opened.

The second EPA took place 12 months later on May 14, 1982 when the population was 13,426 and capacity now equalled 13,251. Two 90 day sentence reductions were triggered to bring the population down by approximately 900 by September 7, 1982 and below the 95 percent ceiling.

The third EPA occurred only three months later on December 17, 1982 when the population was 13,212 and capacity was 13,047. After two sentence reductions the population was reduced only to 12,781 which was 390 higher than the level needed to reach 95 percent capacity. Consequently this EPA was never formally rescinded. The Attorney General noted that additional EPT declarations could be ordered even though the objectives of former declarations were not realized.

Although six additional EPA declarations were made, no information is available on how successful they were in population control. However, it is apparent from the above information that the EPA was being used with increasing frequency and with less effect.

Impact on Crime

An early study of the EPA by the Department of Corrections was completed to assess the amount of arrests committed by EPA releases during their period of early release (DOC, undated) Like the Illinois study they found that less than one percent

(0.2%) of all index arrests statewide were committed by the EPAs. No calculations were attempted to assess the extent of unreported crimes, associated costs, or comparative recidivism rates of inmates who were not released early.

THE CURRENT SAGA OF TENNESSEE

Tennessee represents an indeterminate sentencing state which is using both restrictions at intake and accelerated releases to achieve massive decreases in its prison population. Although little research has been conducted on the Tennessee experience, it serves as an important example of how populations can actually be reduced by restricting admissions and LOS on a temporary basis.

Overcrowding has plagued the Tennessee Department of Corrections (TDOC) system since 1979. At that time a class action suit was filed by inmates complaining about the conditions of confinement (Grubbs, v. Pellegrin). As a result of the suit, Judge L. Clure Morton declared in August 1982 that parts of the Prison system were unconstitutional and that prison crowding needed to be eliminated. The legislature at the same time passed an Emergency Powers Acts (EPA) fashioned after Michigan's EPA which allowed early parole when the population exceeds 95 percent of the rated capacity. Unlike the Michigan EPA, the emergency crowding condition had to be declared by the Commissioner of Corrections. And, since the Board of Parole was an independent body, it could act independent of the TDOC in terms of granting

early parole. Finally, the legislature also passed the Criminal Sentencing Act of 1982 which lengthened prison terms for many offenders. Thus the inmate population continued to grow and by October of 1983 the TDOC population had reached a record high of over 8,289 inmates.

By this time, a new judge (Judge Thomas Higgins) had replaced Judge Morton and issued a more rigid order to reduce the population. Specifically, he required TDOC to reduce its population by over 1,200 inmates to 7,019 by releasing 50 more inmates than were admitted each month until the 1,200 reduction was achieved. TDOC and the Parole Board complied with the order and began releasing inmates faster by accelerating parole hearing dates in increments of 1, 2, 3, and 6 months. Some inmates with longer terms could be released 12 months early. However, inmates convicted of murder, sex offenses, armed robbery, or vehicular homicide were excluded from the early release eligibility pool. No risk factors other than those used by the Parole Board members were applied to the decision-making process.

By June of 1984, the population was reduced to 7,535. In total, approximately 1,922 inmates were granted early parole but because TDOC had quickly exhausted the small pool of eligible inmates and population began to increase once again.

In the summer of 1985, four major prison riots ocurred which aggravated the situation and paced additional political pressure on state officials to reduce the population. On October 23, 1985 Judge Higgins, concerned with the recent legacy of riots and that

the state was still not making sufficient progress toward ending prison crowding, further ordered that no offenders would be allowed into the prison system unless a vacant bed was available. This order forced the Department to make arrangements with county jails to retain inmates at the local level. As of July 1986 the number of state prisoners in local jails has grown to over 1,200.

The legislature also conducted a special session on corrections in November of 1985 which resulted in the passage of the Comprehensive Correction Improvement Act. The CCI Act replaces the state's previous EPA. The Governor may (and has) declare a state of emergency which permits the Parole Board to advance all inmate's parole release dates by a percentage necessary to maintain an uncrowded prison system. Currently the dates are being advanced by 20- 25 percent.

It should also be noted that the CCI Act significantly increased the rate for calculating when an inmate would appear before the Board for release consideration. Most inmates must serve approximately 30 percent of their sentences before they are eligible for parole. Furthermore, the CCI Act allows inmates to earn as much as 16 days per month served which is also applied to their parole release eligibility dates. In sum, inmates are appearing quite quickly before the Board.

The Parole Board itself has cooperated by greatly accelerating the rate of parole grants at an inmate's first hearing. According to recent data from the DOC, 65-75 percent of inmates

appearing at their accelerated parole hearing dates are paroled. Almost no inmates are denied at the subsequent hearings.

The net result of these drastic actions has been a significant decline in the 1983 8,200 inmate population. Since June 30, 1984 through May 1, 1986 approximately 7,100 releases have been labelled as early releases (Table 7). And another 1,200 are being housed at local jails as a result of the intake restriction. These drastic actions have kept the population at or below the court ordered level of 7,019.

Current projections for the state indicate that these forms of emergency actions will need to be sustained for at least two more years at which time additional beds will become available and the effects of the new good-time laws as described above take hold. A sentencing Commission has also been created to overhaul the state's criminal code and reset prison terms. It is the hope of state legislators that this commission, along with a massive building construction program, will result in a long-term solution to crowding in Tennessee.

III. SENTENCING GUIDELINE REFORMS

A less direct method for regulating prison admissions and LOS, has been the adoption of sentencing guidelines. In general, sentencing guidelines represent a more explicit and restrictive criteria for determining imprisonment versus probation and the length of imprisonment. States that adopt such guidelines are desirous of replacing their indeterminate sentencing structures

Table 7

Prison Population and Early Releases

Tennessee

FY 1981-1986

	1981	1982	1983	1984	1985	1986*
June 30 Population	7,215	7,711	8,274	7,626	7,205	7,019*
Early Releases	0	0	0	1,922	4,563	1,539*

* Reflect data as of May, 1986.

which utilize discretionary parole release to govern LOS. Decisions to imprison and the accompanying sentence length are predetermined by a set of explicit criteria which judges are expected to follow in most cases. Although any criteria can be used, the early sentencing guideline models have relied on two dimensional grids reflecting severity of the current offense and extent of criminal history. Sentence terms are narrowly defined within the various cells of these grids.

The primary goal of guidelines is to reduce disparity in sentencing decisions which many thought to be excessive under indeterminate sentencing. With greater certainty in sentencing decisions, it would also be easier to regulate prison admissions and LOS and hence, monitor prison populations.

Although sentencing guidelines have received favorable reviews, only a minority of states have adopted them to date. And most of the research to date has focused on the experiences of only three states: Minnesota, Washington, and Pennsylvania (NAS,1983; NIJ,1985).

Sentencing guidelines can reduce prison populations (or population growth) to the extent that they alter current imprisonment and LOS rates. Criteria can be imposed which would reduce admissions and/or the inmate's expected LOS from current practices. However, not all states design their criteria taking population growth into consideration. Consequently, guidelines can either improve or worsen a state's crowding problem depending upon the criteria adopted by policy makers.

Two states (Minnesota and Washington) which purposely designed their guideline criteria to reduce the potential for prison crowding are examined at first. A third (Pennsylvania and Florida) which did not explicitly take into consideration the impact of guidelines on prison crowding is also reviewed.

MINNESOTA SENTENCING GUIDELINES

Introduction and Overview

Minnesota is generally recognized as the first state to adopt presumptive guidelines for sentencing convicted felons. Adopted on May 1, 1980, the guidelines replaced an indeterminate sentencing system. Discretionary parole release was abolished and explicit criteria were developed for the courts to be used in determining commitment to prison and sentence length. Sentencing decisions were to be guided by a two-dimensional grid (see Figure 2) which measured the offender's prior criminal history and severity of the convicted offense. The dispositional line shown on the grid reflects the intent of the Minnesota Sentencing Guidelines Commission (MSGC) which sets the guideline criteria, to increase the probability and severity of imprisonment for persons convicted of violent crimes and/or with lengthy criminal histories. Those convicted of property crimes and with less severe criminal histories were expected to receive non-prison sanctions.

Figure 2

SENTENCING GUIDELINES GRID

Presumptive Sentence Lengths in Months

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure.

Offenders with nonimprisonment felony sentences are subject to jail time according to law.

SEVERITY LEVELS OF CONVICTION OFFENSE		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
Unauthorized Use of Motor Vehicle *Possession of Marijuana*	I	12*	12*	12*	13	15	17	19 *18-20*
Theft Related Crimes (S250-S2500) *Aggravated Forgery (S250-S2500)*	II	12*	12*	13	15	17	19	21 *20-22*
Theft Crimes (S250-S2500)	III	12*	13	15	17	19 *18-20*	22 *21-23*	25 *24-26*
Nonresidential Burglary *Theft Crimes (over S2500)*	IV	12*	15	18	21	25 *24-26*	32 *30-34*	41 *37-45*
Residential Burglary *Simple Robbery*	V	18	23	27	30 *29-31*	38 *36-40*	46 *43-49*	54 *50-58*
Criminal Sexual Conduct, 2nd Degree (a) & (b) *Intrafamilial Sexual Abuse, 2nd Degree subd. 1(1)*	VI	21	26	30	34 *33-35*	44 *42-46*	54 *50-58*	65 *60-70*
Aggravated Robbery	VII	24 *23-25*	32 *30-34*	41 *38-44*	49 *45-53*	65 *60-70*	81 *75-87*	97 *90-104*
Criminal Sexual Conduct 1st Degree *Assault, 1st Degree*	VIII	43 *41-45*	54 *50-58*	65 *60-70*	76 *71-81*	95 *89-101*	113 *106-120*	132 *124-140*
Murder, 3rd Degree *Murder, 2nd Degree (felony murder)*	IX	105 *102-108*	119 *116-122*	127 *124-130*	149 *143-155*	176 *168-184*	205 *195-215*	230 *218-242*
Murder, 2nd Degree (with intent)	X	120 *116-124*	140 *133-147*	162 *153-171*	203 *192-214*	243 *231-255*	284 *270-298*	324 *309-339*

1st Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence.

☐ At the discretion of the judge, up to a year in jail and/or other non-jail sanctions can be imposed as conditions of probation.

☐ Presumptive commitment to state imprisonment.

*one year and one day

(Rev. Eff. 8/1/81; 11/1/83; 8/1/84)

Development of the guidelines also took into consideration the limited capacities of local and state correctional facilities. Although capacity was not the sole or most important influence on structuring guideline criteria, it was a significant factor.

> The third factor that was important to the political acceptance of the guidelines was the consistent linking of sentencing policies with correctional resources via impact analysis throughout the development of Sentencing Guidelines. The level of prison population was not the Commission's sale, or even primary concern in developing the Sentencing Guidelines....Impact of sentencing policies on prison population, however, was also considered in the development to Sentencing Guidelines (MSGC, 1984:15-16).

It should be underscored that the adopted criteria for the guidelines purposely excluded other factors believed to be associated with risk (i.e., age at first arrest, drug history, etc.). Commission staff argued that a "just deserts" philosophy which emphasized retribution or punishment for the offense should be the sole basis for determining the extent and length of imprisonment as opposed to a utilitarian perspective which sought other purposes such as rehabilitation, deterrence, and incapacitation. However, it should also be added that the guidelines do, to a minimal extent, incorporate factors associated with risk by virtue of the criminal history scale.

> While none of the utilitarian sentencing goals was affirmatively incorporated into the Sentencing Guidelines, utilitarian sentencing goals were retained somewhat amorphously, and with reduced importance, with the inclusion of criminal history as one component... (MSG,1984:13).

Establishing guidelines that would not trigger a prison crowding problem represented a complex task for three reasons: (1) the guidelines fundamentally altered traditional sentencing practices on who goes to prison and for how long: (2) indeterminate sentencing and discretionary Parole Board release which could be used as a safety valve for prison crowding was eliminated and (3) the state's prison population had been steadily increasing at an increasing rate since 1974 due to more conservative criminal justice policies. Consequently, the Commission conducted a number of population simulations to estimate the probable impact of each sentencing option as proposed by the Commission members. As suggested later on, this planning process proved to be quite successful in ensuring that the initial guideline criteria did not create a prison crowding problem.

It should also be noted that Minnesota was not experiencing a serious prison crowding problem at the time the Guidelines were developed and adopted. Prior to the implementation of guidelines, Minnesota's prison population had never exceeded its bed capacity and has traditionally reported one of the nation's lowest state incarceration rates. Due to a surplus of beds, the state has been housing several hundred inmates from Wisconsin and the Federal Bureau of Prisons in their facilities since 1980. A new 400 bed maximum security facility (Oak Park Heights) was brought on line in 1983 which further added capacity to the state prison system. Thus, in many ways, the inclusion of prison capacity as a

basis for setting guideline criteria may have reflected a long standing Minnesota tradition to not overcrowd its prisons regardless of sentencing structure.

Impact on Sentencing Practices

A considerable amount of research has been conducted on the effects of Minnesota's guidelines. The most comprehensive report was completed by the MSGC in 1984. It utilizes a 1978 pre-guideline sample and several post-implementation samples (1981-1983) to assess the impact on sentencing practices and prison population.

Initially, the Guidelines proved to be quite successful with respect to reforming sentencing practices in general and sentencing disparity in particular (MSGC,1984). The proportion of convictions resulting in a prison term initially dropped after the Guidelines were enacted in 1980, increased thereafter, but never exceeding the 1978 baseline rate (Table 8). Furthermore, a greater proportion of offenders convicted of the more serious crimes (Levels 1-4) were being committed to prison which in turn was partially offset by declines in the less serious offenses (Levels 7-10) as intended. And with the commitment rates there was a slight but steady reversal of these early trends by 1983. One also notes a steady increase in the use of jail after guidelines were adopted. Although jail populations are not readily available, it has been noted by others that the Guidelines and Community Corrections Act have not been successful in minimizing

TABLE 8

Minnesota Sentencing Patterns

	1978 (N=4369)	1981 (N=5500)	1982 (N=6066)	1983 (N=5562)
Imprisonment Rates				
Total	20.4%	15.0%	18.6%	20.5%
Severity Levels 1-4	15.2%	8.1%	11.5%	14.6%
Severity Levels 7-10	61.1%	85.9%	87.8%	76.5%
Prison Dispositional Uniformity				
Total	.1041	.0499	.0586	.0647
Jail Imprisonment Rates	35.4%	46.2%	44.5%	50.0%
Jail Dispositional Uniformity	.2146	.2149	.2091	.2028
Departure Rates				
Total	N/A	6.2%	7.0%	8.9%
Upward	N/A	3.1%	3.4%	4.5%
Downward	N/A	3.1%	3.6%	4.6%

Source: Minnesota Sentencing Guideline Commission, 1984

the use of jail or the disparity in jail sentencing (Austin and Krisberg, 1982; Minnesota Department of Corrections, 1981).

The guidelines did show promising initial results in reducing sentencing disparity tempered by a slight but steady deterioration thereafter. Using a measure of "grid variance" the MSGC found that greater uniformity was achieved by the Guidelines compared to the previous indeterminate system. Part of the success attributable to the improvement in uniformity was the low level of departures from the prescribed guideline-based dispositions. Initially only 6.2 percent of the cases departed from the guideline and in no singular direction. However, once again rates indicate a slight but steady increase in departure rates over time (Table 8).

Why The Slippage in Sentencing Practices?

In spite of the guidelines accomplishments, the Commission was concerned about the apparent "slippage" in Guideline practices which began in 1982 and has continued to date. The first sign of "slippage" occurred in 1981 during which the legislature, like many other states, increased the length of sentences for weapon usage during crime and certain sex offenses. The legislature also redefined the severity classification for felony murder as a Level 10 offense which also increased the expected length of stay for these offenders.

At the same time, the Sentencing Commission itself adjusted the grid for purposes of increasing the probability of imprison-

ment. The effects of this change above was immediately felt as noted in Table 8 where the imprisonment rate for severity levels 1-4 increases from 15.0 percent to 18.6 percent. Overall all of the above changes resulted in a harsher guideline grid which increased both commitment rates and LOS. In 1982 the expected LOS was 27.3 months compared to the 1981 LOS figure of 25.5 months.

Redefinition of how an offender's severity of criminal history was scored also increased the harshness of the original grid. In State v. Hernandez, Minnesota's Supreme Court ruled that multiple convictions associated with the instant arrest could be incorporated into the criminal history score. The impact of the court's decision surfaced in 1983 when the levels of prior criminal history increased across all levels of sentenced offenders. The net result of these changes in the grid and grid scoring has been a gradual return toward pre-guideline sentencing patterns.

Impact on Prison Crowding

As noted above, Minnesota had never experienced an on-going prison crowding problem. While it is true that before the Guidelines were implemented in 1981, the state's prison population had been steadily increasing, it had not reached a crowding level. Consequently, a major objective of the Guidelines was not to solve prison crowding but to ensure that it would not occur.

As can be seen in Table 9, the initial effect of the Guideline was to decrease commitments during 1980 only to be followed by substantial increases thereafter. Sentence lengths also increased initially but have since declined slightly. These fluctuations reflect the flurry of policy shifts described above. Prison populations continued to creep upward, but within the state's capacity, due to increasing commitments stemming from the policies adopted in 1981.

Currently the population is still below its rated capacity. As of June 1986 the population was 2,328 (males and females) with a total bed capacity of 2,457. Current projections estimate that the population will continue to grow resulting from the newly enacted changes in sentencing laws already discussed. By 1990, the prison population will approach the 2,400 level and continue to escalate thereafter.* However, as will be shown in the conclusion section, Minnesota's prison population growth is well below that of the nation's other state prison systems. And as of 1985, Minnesota's incarceration rate was 56 per 100,000 population which compares to the 201 per 100,000 national rate (BJS, 1986).

WASHINGTON SENTENCING GUIDELINES

Washington's Sentencing Reform Act (SRA) of 1981 also resulted in a significant re-orientation of the state's approach

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* Conversation with Gerald Strathman, Director of Research, Minnesota Department of Corrections.

TABLE 9

Minnesota's Sentence Lengths, LOS and Admissions

1978-1983

	1978	1980	1981	1982	1983	1984
Monthly Commitments	87	69	83	100	105	105
Sentence Length	N/A	N/A	38.3 mos.	41.0 mos.	36.5 mos.	N/A
LOS	19.9 mos.	N/A	25.6 mos.	27.3 mos.	24.3 mos.	N/A
Ave. Pop.	1,837	1,884	1,946	2,015	2,122	2,082
Capacity	N/A	N/A	2,072	2,072	2,335	N/A

Sources: Minnesota Sentencing Guideline Commission, 1984

to sentencing. Similar to Minnesota, indeterminate sentencing was abolished and replaced with a "just deserts" guideline grid reflecting the two dimensions of offense severity and criminal history. The guideline matrix adopted was quite similar to Minnesota's guidelines and was intended to ensure long-term imprisonment for violent offenders, community sanctions for property offenders and greater equity in the sentencing process (see Figure 3). No effort was made to incorporate a risk-based sentencing criteria. Moreover, the guidelines were intended to halt a prison crowding problem for at least the immediate future.

Unlike Minnesota, Washington had been experiencing an escalating prison crowding problem since 1977 which had reached new levels by 1983 (see Figure 3). This problem was very much on the minds of state officials as they prepared to set criteria for the guideline grid. As in Minnesota, a number of projections were done for each criteria proposal using a sample of convicted felons sentenced under indeterminate sentencing in 1982.

Although passed during the 1981 Legislative session, the provisions of the Act did not take effect until July 1, 1984. Offenders committing felonies prior to that date, or offenders already confined to prison prior to that date were not subject to the terms of the SRA. The Act authorized the creation of a Sentencing Guidelines Commission, whose role it is to develop the recommended sentencing standards for adult felony offenses and to ensure that the guidelines would not cause prison populations to exceed the state's prison capacity.

SENTENCING GRID

SERIOUSNESS LEVEL	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XIV	Life Sentence without Parole/Death Penalty									
XIII	23y 4m 240 - 320	24y 4m 250 - 333	25y 4m 261 - 347	26y 4m 271 - 361	27y 4m 281 - 374	28y 4m 291 - 388	30y 4m 312 - 416	32y 10m 338 - 450	36y 370 - 493	40y 411 - 548
XII	12y 123 - 164	13y 134 - 178	14y 144 - 192	15y 154 - 205	16y 163 - 219	17y 173 - 233	19y 193 - 260	21y 216 - 288	25y 257 - 342	29y 298 - 397
XI	6y 62 - 82	6y 9m 69 - 92	7y 6m 77 - 102	8y 3m 85 - 113	9y 93 - 123	9y 9m 100 - 133	12y 6m 129 - 171	13y 6m 139 - 185	15y 6m 159 - 212	17y 6m 180 - 240
X	5y 51 - 68	5y 6m 57 - 73	6y 62 - 82	6y 6m 67 - 89	7y 72 - 96	7y 6m 77 - 102	9y 6m 98 - 130	10y 6m 108 - 144	12y 6m 129 - 171	14y 6m 149 - 198
IX	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	4y 6m 46 - 61	5y 51 - 68	5y 6m 57 - 75	7y 6m 77 - 102	8y 6m 87 - 116	10y 6m 108 - 144	12y 6m 129 - 171
VIII	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	4y 6m 46 - 61	6y 6m 67 - 89	7y 6m 77 - 102	8y 6m 87 - 116	10y 6m 108 - 144
VII	18m 15 - 20	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	5y 6m 57 - 75	6y 6m 67 - 89	7y 6m 77 - 102	8y 6m 87 - 116
VI	13m 12+ - 14	18m 15 - 20	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 6m 46 - 61	5y 6m 57 - 75	6y 6m 67 - 89	7y 6m 77 - 102
V	9m 6 - 12	13m 12+ - 14	15m 13 - 17	18m 15 - 20	2y 2m 22 - 29	3y 2m 33 - 43	4y 41 - 54	5y 51 - 68	6y 62 - 82	7y 72 - 96
IV	6m 3 - 9	9m 6 - 12	13m 12+ - 14	15m 13 - 17	18m 15 - 20	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57	5y 2m 53 - 70	6y 2m 63 - 84
III	2m 1 - 3	5m 3 - 8	8m 9 - 12	11m 9 - 12	14m 12+ - 16	20m 17 - 22	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57	5y 51 - 68
II	0 - 90 Days	4m 2 - 6	6m 3 - 9	8m 9 - 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57
I	0 - 60 Days	0 - 90 Days	3m 2 - 3	4m 2 - 6	5m 3 - 8	8m 9 - 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29

NOTE: Bold type presents presumptive sentence ranges in months. Midpoints are included as a reference point (y = years, m = months). 12+ equals one year and one day. For a few crimes, the presumptive sentences in the high offender score columns exceed the statutory maximums. In these cases, the statutory maximum applies.

Additional time added to the presumptive sentence if the offender or an accomplice was armed with a deadly weapon

24 months (Rape 1, Robbery 1, Kidnapping 1)
18 months (Burglary 1)
12 months (Assault 2, Escape 1, Kidnapping 2, Burglary 2 of a building other than a dwelling, Delivery or Possession of a controlled substance with intent to deliver)

FIGURE 3

There are two allowable exceptions to sentencing guidelines which can be seen as attempts to allow sentencing to be partially dependent on risk and treatment need. First, there are those "exceptional cases" where judges can weigh extenuating or mitigating facts in order to augment or lessen standard sentences. In such cases, the court has the latitude to consider the purpose of the Act and adjust sentences accordingly based on information provided in the presentence investigation or brought to the attention of the court by the prosecutor or the defense. All exceptional sentence judgments are subject to an appeal.

In addition, the SRA provides for "treatment oriented sentencing" in cases where the offender has committed his/her first felony. First time offenders are eligible for the "first-offender waiver", which allows the court to waive the imposition of a sentence within the sentence range. Significantly, in these special cases the court may require participation in specific treatment services (e.g., counselling, in-patient drug rehabilitation, etc.) beyond the "normal" levels of supervision provided by DOC community corrections officers.

Unlike the standard form of community supervision which cannot exceed 12 months, first-time offenders sentenced under this provision can remain under DOC supervision for up to 24 months. In general, these "first-time offender" provisions reflect how traditional probation services were delivered prior to SRA. Only in these cases can community corrections staff (previously known probation officers) maintain wide discretion on

the conditions of supervision. However, such discretion no longer exists for the majority of cases now sentenced to terms of less than one year under SRA.

Instead, offenders sentenced to under one year may receive sanctions involving the following alternatives to prison, each one of which represents one of the five criminal sanctions defined by the SRA: (1) total confinement in jail, (2) partial confinement in jail, (3) community supervision, (4) community service, and (5) fines. Willful violation of the terms of these community sanctions can result in no more than sixty days jail confinement for each violation. These violations have no effect on the original sentence, nor on the judicial decision to waive the original sentence in favor of community supervision. This represents a significant departure from traditional probation where failure to comply with the conditions of supervision could trigger a commitment to state prison.

Impact on Sentencing Practices

Since Washington's guidelines did not take effect until 1984, the amount of published comparative data is limited to only the first six months of implementation in 1985. Like Minnesota, Washington's Sentencing Guidelines Commission (SGC) is responsible for monitoring all SRA sentencing decisions and establishing a data base to record and evaluate each SRA case. Prior to implementation, the Commission had created a 3,215 case stratified sample of 1982 felony court dispositions to

(1) simulate the impact of proposed guideline criteria and (2) to later on evaluate the impact of SRA on sentencing practices. Like Minnesota, these simulations were instrumental in ensuring that the guideline did not worsen the state's crowding problem.

Comparisons between the 1982 pre SRA cases and 1985 SRA cases are summarized in Table 10. As expected, the SRA has initially increased the proportion of offenders committed to prison for violent crimes and decreased the proportion committed for property crimes. However, the proportion of all felony convictions resulting in a prison term dropped from 20.2 percent to 17.4 percent. The Sentencing Commission explains this unexpected decline by noting that the proportion of all felony cases for violent crimes declined from 1982 to 1985 (19.5 percent in 1982 to 13.9 percent in 1985).

Why this happened is open to speculation. Some observers have indicated that SRA itself may be causing the decline in the proportion of violent felony crimes. They claim that since SRA was passed, an incentive was created for offenders to plead guilty to felony charges instead of misdemeanor charges. The latter are immune from SRA sentencing provisions and can entail up to 36 months of county probation supervision. Persons convicted of misdemeanors may well spend more time in jail (up to 12 months) and more time on misdemeanor probation (up to 36 months) compared to felons.

Using the same standard of grid variance developed by Minnesota shows that disparity has been reduced under the guide

TABLE 10

1982 and 1985 Sentencing Practices

Washington State

	1982 (N = 3,000)	1985* (N = 3,439)
Imprisonment Rate		
Total Imprisonment Rate	20.2%	17.4%
Proportion Violent	48.8%	65.1%
Proportion Property	13.3%	9.6%
Dispositional Variance	.107	.035
Departure Rates		
Total	N/A	3.4%
Upward	N/A	1.5%
Downward	N/A	1.9%
Expected Prison LOS	36.8% mos.	26.8-40.2 mos
Expected Jail LOS	1.7 mos	1.7-2.6 mos

* First six months of 1985 only.

Source: SGC, 1986

lines (Table 10). Departures from the guidelines have also beenkept to a minimum and in no singular direction (3.4 percent departure rates).

The impact of SRA on sentence length (or LOS) is more difficult to assess since the old indeterminate system set only maximum sentence lengths which had little connection with actual time served. SRA sentences are of course fixed and thereby shorter than the 1982 maximum sentences. The more telling statistics would be comparative LOS for both samples. The mean 1982 LOS of 36.8 mos. is based on expected terms served using historical data on good-time credits and Public Safety Score reduction as estimated by the SGC. The 1985 range of 26.8-40.2 mos. illustrates the uncertainty surrounding how much time prisoners will actually serve in prison. Inmates can have as much as one third of the sentence reduced. The 26.8 months assumes a full one-third reduction for all inmates whereas the 40.2 months assumes no reductions. A check of the first set of releases under SRA found that 87 percent had received the full one third reduction suggesting that the LOS under SRA will be considerably lower than those sentenced under indeterminate sentencing.

A more detailed comparison of pre SRA and expected SRA LOS was conducted by the Office of Financial Management which is responsible for making population estimates. Table 11 shows the expected LOS differences between indeterminate and SRA sentences. Only with the exception of robbery offenses is there expected an

TABLE 11

Forecasted Median Lengths of Stay (Months)

Old and New Sentencing Practices

	1982 (N = 3,000)	1985* (N = 3,439)
Imprisonment Rate		
Total Imprisonment Rate	20.2%	17.4%
Proportion Violent	48.8%	65.1%
Proportion Property	13.3%	9.6%
Dispositional Variance	.107	.035
Departure Rates		
Total	N/A	3.4%
Upward	N/A	1.5%
Downward	N/A	1.9%
Expected Prison LOS	36.8% mos.	26.8-40.2 mos
Expected Jail LOS	1.7 mos	1.7-2.6 mos

* First six months of 1985 only.

Source: SGC, 1986

increase in LOS. All other offense specific LOS will decline substantially.

Similar analyses were done for jail sentences with opposite results. Here it appears that jail sentences will be longer under SRA compared to the indeterminate sentences. This analysis does not take into consideration inmates who may violate the terms of their non-prison sentences and receive up to 60 days in jail (but not be returned to prison) thus furthering the fear of local jails that their facilities may become crowded.

The Early Signs Of Guideline Slippage

Almost immediately after the passage of SRA, changes were proposed by the legislature to alter the enacted guidelines. In total, 13 revisions were approved by the Legislature and took effect July 1, 1986. These changes, as summarized in Figure 4, have the net effect of making the guidelines more severe. The most significant change was a clarification on how to calculate the prison criminal history score. This interpretation permits the inclusion of some juvenile offenses and multiple counting for arrests involving multiple counts. Other changes placed certain manslaughter and drug crimes in more severe offense categories, and counted attempted offenses the same as completed offenses. These changes collectively serve to make the guidelines more severe as originally designed.

Offsetting the severity of these guideline changes was a state court ruling which allows prisoners sentenced under

indeterminacy to be considered eligible for release using the guideline criteria. Since the SRA criteria is lenient, especially with respect to LOS, the net effect has been to accelerate releases for the existing stock population. However, this recent spurt in releases will quickly run its course as the pool of inmates affects declines.

FIGURE 4

REVISIONS TO THE WASHINGTON SENTENCING REFORM ACT

SUBSTANTIVE CHANGES

- For offenders whose current and prior offense(s) were committed after July 1, 1986, include all adult priors in the offender score.

- Provide that juvenile adjudications committed on or after the age of 15 bar an offender from the first-time offender waiver;

- Require any prisoner with a sentence greater than a year who escapes or any parolee who is revoked to serve all subsequent confinement sentences in state facilities;

- Always count Juvenile Class A adjudications in the offender score;

- Categorize Vehicular Assault as a violent offense;

- Count attempted offenses the same as completed offenses when calculating the offender score, and when enhancing the sentence for a deadly weapon finding;

- Expand drug crimes which can receive deadly weapon penalty; eliminate aggravating factor of firearm in a drug offense (to avoid double-counting);

- Make same offender score rules for Vehicular Homicide, Vehicular Assault, and Hit-and Run;

- Reverse the consecutive/concurrent rule for "contemporaneous" felonies (those committed in separate counties) so the presumption is for concurrent sentencing; and

- Clarify that a prior conviction for use in an offender score includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

Source: Washington Sentencing Commission

Impact on Prison Populations

The short-term effect of the guidelines has been a temporary stabilization of prison population growth (see Figure 5). Since 1984 the population has remained fairly constant at the 7,000 level. Thereafter the population is expected to escalate quite rapidly to 9,950 by 1999.

Much of this anticipate trend can be attributed to SRA which sends a greater proportion of violent offenders to prison even though most, with the exception of robbery, will serve a shorter LOS then those sentenced under indeterminate law. Since the average SRA admission had a shorter LOS per offense category, there was an initial period of accelerated releases as property offenders with very short sentence lengths were processed. This period of "stabilization" was further enhanced by several recent State Supreme Court decisions which affected sentence credit calculations (State v. Phelan, 1981; State v. Knapp, 1984) and the retroactive application of SRA to certain inmates sentence pre SRA (State v. Obert, Myers), (OFM, 1986). A current case before the court may result in all inmates now incarcerated being re-sentenced according to the sentencing guideline criteria which would further ease the crowding problem.

However, in the near future the effects of sentencing a greater proportion of violent offenders to prison will take its toll. These offenders will increasingly "stack up" in the stock population and accelerate population growth. This trend will be further accelerated by marginal but steady increases in new

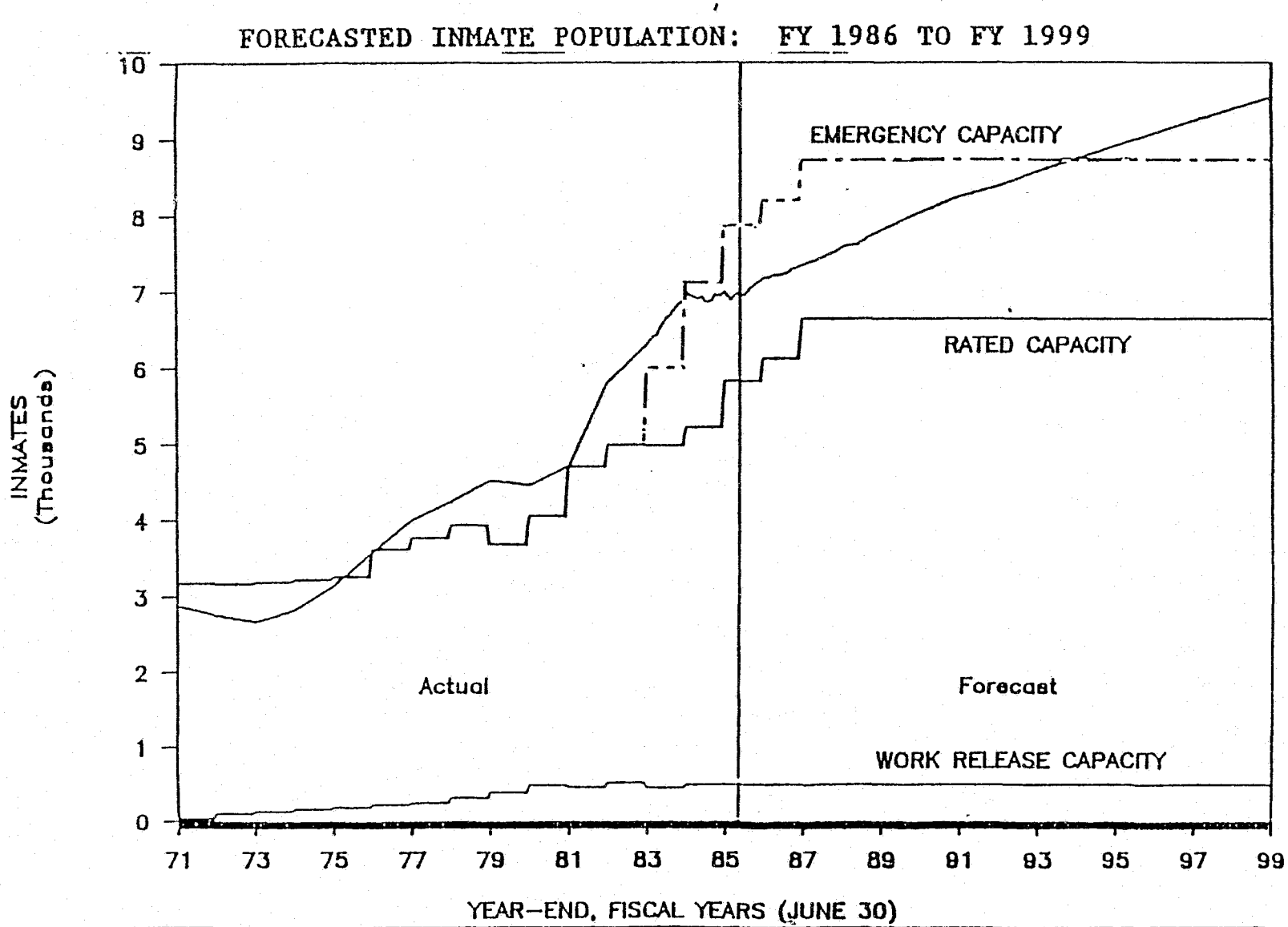

FORECASTED INMATE POPULATION: FY 1986 TO FY 1999
INMATES (Thousands)
10
9
8
7
6
5
4
3
2
1
0
EMERGENCY CAPACITY
RATED CAPACITY
WORK RELEASE CAPACITY
Actual
Forecast
71
73
75
77
79
81
83
85
87
89
91
93
95
97
99
YEAR-END, FISCAL YEARS (JUNE 30)

Figure 5

admissions fueled by increases in violent crimes reported, arrested and convicted. This is especially true for inmates convicted of sex crimes which experienced over a 300 percent increase in conviction rates from 1974-1985 (OFM, 1986:3).

This also means that the character of the stock prison population will change over time. Specifically, the population will be older and serving crimes of violence or sex. In 1984, 68 percent of the population was convicted of violent crimes. That subgroup is expected to escalate to 77 percent of the total population by 1991 (see Figure 6) which may have profound but unknown consequences for prison management and costs.

Despite these long-term forecasts it is true that SRA helped avoid the more immediate crowding problem the state was facing in 1982. Figure 7 (OFM, 1984) illustrates early estimates of SRA's impact with current trends. Here, one can clearly see that Washington's prison population was increasing dramatically due to higher imprisonment rates and lengthier LOS (OFM, 1984). Had SRA not been adopted, the prison crowding problem would have been more severe.

In summary, Washington's Guidelines have contributed to a short-term stabilization in prison population growth which temporarily alleviated the state's historic prison crowding problem. However, the guidelines have actually served a two-edged purpose with regard to prison crowding's initial declines by ultimately placing the state back its course toward prison crowding. Unless changes are made in the guidelines or capacity expanded

DISTRIBUTION OF THE INMATE POPULATION
VIOLENT AND NONVIOLENT CRIME TYPES

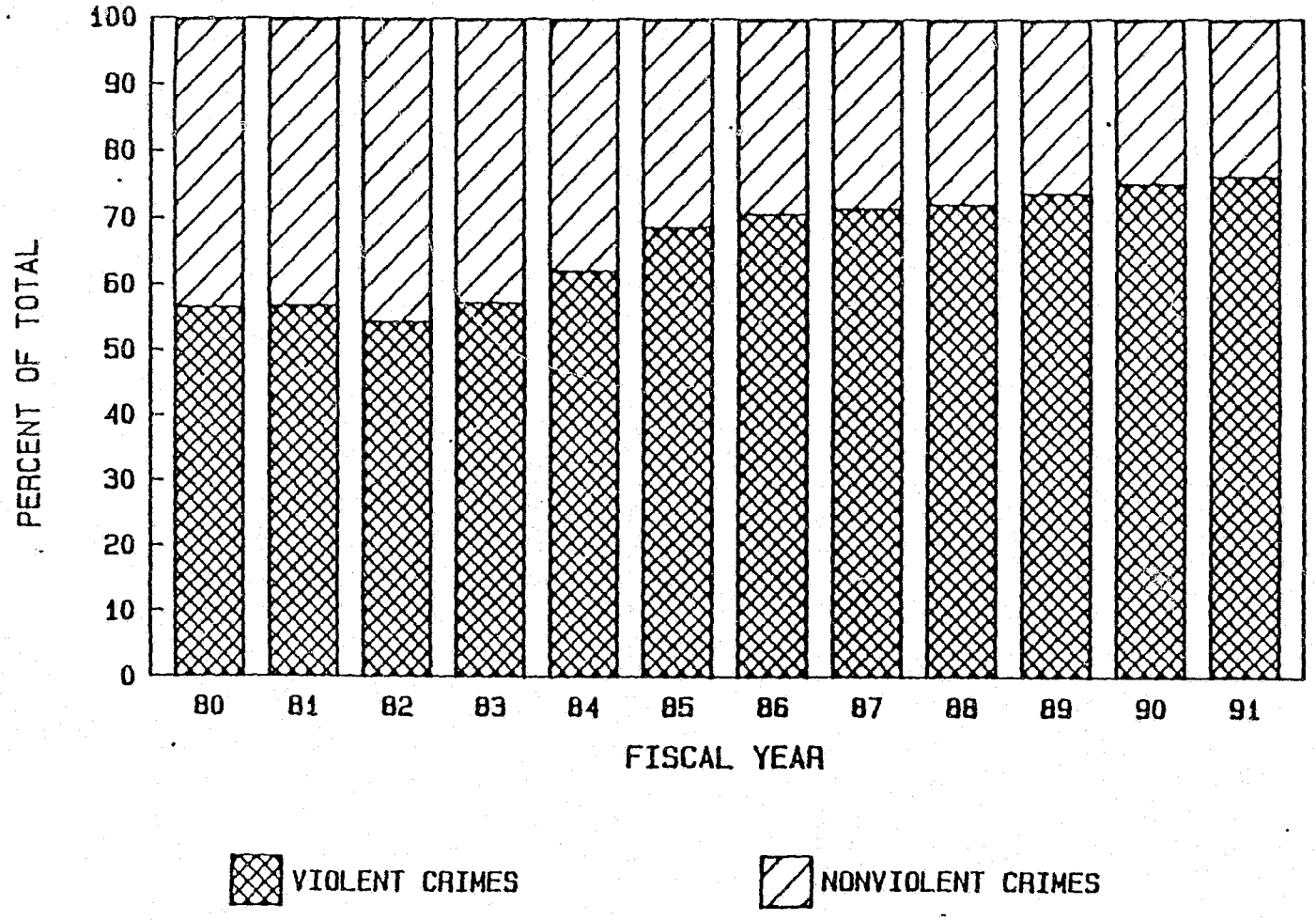


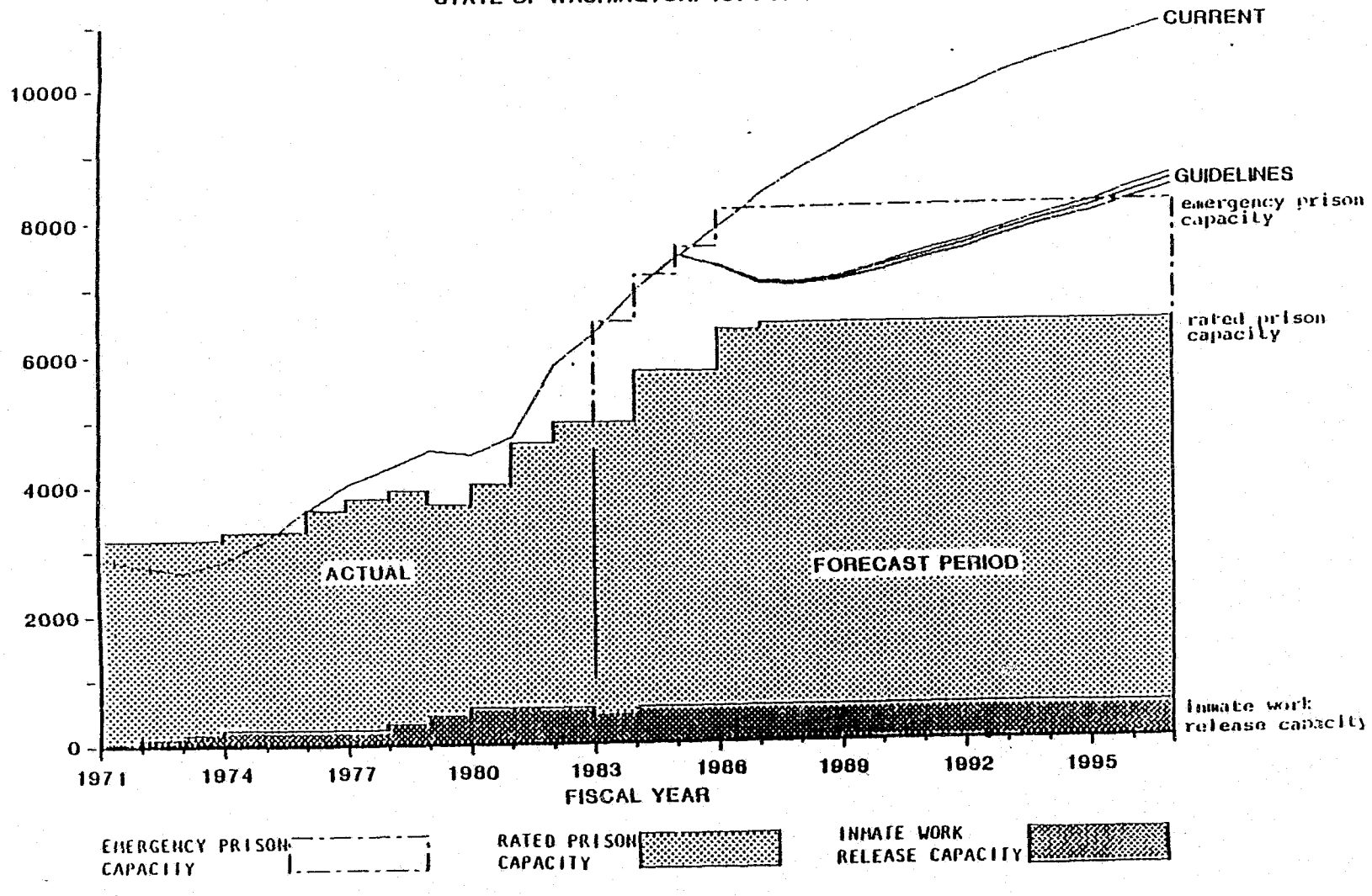
Figure 6

Figure 7

INMATE[1] POPULATION AND CAPACITY

EMERGENCY, RATED AND WORK RELEASE CAPACITIES

STATE OF WASHINGTON: 1971 to 1997



[1] Includes prison and inmate work release population.

Source: OFM, 1984.

guidelines in their present form, they will not provide a permanent solution to Washington's crowding problem.

PENNSYLVANIA

Overview and Introduction

Sentencing guidelines need not be designed to reduce prison crowding. As has been the case in Pennsylvania, guidelines can easily produce an opposite effect if they serve to increase admission or LOS. In 1978, the Pennsylvania General Assembly created a Sentencing Commission. However, it was not until 1982 that the new guideline structure was actually enacted. Most significantly, this Commission was expected to develop guidelines which would enhance the use of imprisonment (Kramer and Lubitz, 1984).

Pennsylvania's guidelines are essentially identical to Minnesota and Washington in its structure (Martin, 1981; Kramer et al., 1982). A two-dimensional grid is used to score each case conviction with respect to offense severity and prior criminal history. However, the range of minimum sentence lengths from which judges can choose are much wider than those of Minnesota and Washington (Figure 8). Discretionary release via parole has been retained with parole board decisions being guided by a risk guidelines model.

The four year delay between creation of the Commission and enactment of the guidelines reflected a stormy period of legislative debate over the criteria for the guidelines. Unlike

Figure 8

Offense Gravity Score	Prior Record Score	Standard Range*	Aggravated Range*	Mitigated Range*
10	0	48-120	Statutory Limit ***	36-48
	1	54-120	Statutory Limit ***	40-54
	2	60-120	Statutory Limit ***	45-60
Third Degree Murder**	3	72-120	Statutory Limit ***	54-72
	4	84-120	Statutory Limit ***	63-84
	5	96-120	Statutory Limit ***	72-96
	6	102-120	Statutory Limit ***	76-102
9	0	36-60	60-75	27-36
	1	42-66	66-82	31-42
	2	48-72	72-90	36-48
For example: Rape; Robbery inflicting serious bodily injury**	3	54-78	78-97	40-54
	4	66-84	84-105	49-66
	5	72-90	90-112	54-72
	6	78-102	102-120	58-78
8	0	24-48	48-60	18-24
	1	30-54	54-68	22-30
	2	36-60	60-75	27-36
For example: Kidnapping; Arson (Felony I); Voluntary Manslaughter**	3	42-66	66-82	32-42
	4	54-72	72-90	40-54
	5	60-78	78-98	45-60
	6	66-90	90-112	50-66
7	0	8-12	12-18	4-8
	1	12-29	29-36	9-12
	2	17-34	34-42	12-17
For example: Aggravated Assault causing serious bodily injury; Robbery threatening serious bodily injury**	3	22-39	39-49	16-22
	4	33-49	49-61	25-33
	5	38-54	54-68	28-38
	6	43-64	64-80	32-43
6	0	4-12	12-18	2-4
	1	6-12	12-18	3-6
	2	8-12	12-18	4-8
For example: Robbery inflicting bodily injury; Theft by extortion (Felony III)**	3	12-29	29-36	9-12
	4	23-34	34-42	17-23
	5	28-44	44-55	21-28
	6	33-49	49-61	25-33

*WEAPON ENHANCEMENT: At least 12 months and up to 24 months confinement must be added to the above lengths when a deadly weapon was used in the crime

**These offenses are listed here for illustrative purposes only. Offense scores are given in §303.7.

***Statutory limit is defined as the longest minimum sentence permitted by law.

Figure 8 (Cont'd.)

Offense Gravity Score	Prior Record Score	Standard Range*	Aggravated Range*	Mitigated Range*
5 For example: Criminal Mischief (Felony III); Theft by Unlawful Taking (Felony III); Theft by Receiving Stolen Property (Felony III); Bribery**	0	0-12	12-18	non-confinement
	1	3-12	12-18	14-3
	2	5-12	12-18	24-5
	3	8-12	12-18	4-8
	4	18-27	27-34	14-18
	5	21-30	30-38	16-21
	6	24-36	36-45	18-24
4 For example: Theft by receiving stolen property, less than $2000, by force or threat of force, or in breach of fiduciary obligation**	0	0-12	12-18	non-confinement
	1	0-12	12-18	non-confinement
	2	0-12	12-18	non-confinement
	3	5-12	12-18	24-5
	4	8-12	12-18	4-8
	5	18-27	27-34	14-18
	6	21-30	30-38	16-21
3 Most Misdemeanor I's**	0	0-12	12-18	non-confinement
	1	0-12	12-18	non-confinement
	2	0-12	12-18	non-confinement
	3	0-12	12-18	non-confinement
	4	3-12	12-18	14-3
	5	5-12	12-18	24-5
	6	8-12	12-18	4-8
2 Most Misdemeanor II's**	0	0-12	Statutory Limit ***	non-confinement
	1	0-12	Statutory Limit ***	non-confinement
	2	0-12	Statutory Limit ***	non-confinement
	3	0-12	Statutory Limit ***	non-confinement
	4	0-12	Statutory Limit ***	non-confinement
	5	2-12	Statutory Limit ***	14-2
	6	5-12	Statutory Limit ***	24-5
1 Most Misdemeanor III's**	0	0-6	Statutory Limit ***	non-confinement
	1	0-6	Statutory Limit ***	non-confinement
	2	0-6	Statutory Limit ***	non-confinement
	3	0-6	Statutory Limit ***	non-confinement
	4	0-6	Statutory Limit ***	non-confinement
	5	0-6	Statutory Limit ***	non-confinement
	6	0-6	Statutory Limit ***	non-confinement

*WEAPON ENHANCEMENT: At least 12 months and up to 24 months confinement must be added to the above lengths when a deadly weapon was used in the crime

**These offenses are listed here for illustrative purposes only. Offense scores are given in §303.7.

***Statutory limit is defined as the longest minimum sentence permitted by law.

Minnesota and Washington, the Pennsylvania guidelines as first proposed in October 1980, were not expected to reduce crowding. Indeed these guidelines were projected to increase both admissions and LOS (Kramer et al., 1982). Despite the initial estimate of guidelines increasing overall imprisonment rates, the proposed 1980 guidelines were severely criticized by powerful state officials as being too lenient (Kramer et al., 1982). Guideline criteria were subsequently revised for purposes of increasing sentence length ranges and elevating the severity ranking of certain offenses. Increases in imprisonment by the guidelines was justified by the Commissions in lieu of Pennsylvania, historic rates of "leniency".

> The sentence lengths of the current guidelines compare favorably with any other state, even though they call for an incarceration rate that is higher than past practice. This is in large measure due to Pennsylvania's traditionally low incarceration rate and relatively short sentence lengths (Kramer et al., 1982: 72).

Impact on Sentencing Practices

Pennsylvania's guidelines have fundamentally altered sentencing practices but not for the betterment of prison crowding. Kramer and Lubitz (1984) compared the dispositions of cases sentenced under the guidelines between 1982 and 1983 with a sample of 1980 dispositions. The samples were limited to only cases processed in 23 of Pennsylvania's 67 counties which are assumed to be representative of the total state. Moreover, comparisons are only made for cases involving the four crimes of

aggravated assault, burglary, rape, and robbery which constitute the majority of felony cases.

Their analysis show that since guidelines have been enacted the proportion of these offenses receiving a prison disposition have increased significantly as have the minimum sentence lengths (see Table 12). With regard to race, non-whites are also receiving higher rates of prison sentences and longer minimum sentences (Table 13).

The authors proceed to conduct a controlled statistical analysis of sentencing by race and conclude that the differences in race are explained by race specific differences in prior record and offense severity. Nevertheless, the long-term implication is a growing black inmate population.

The study also shows that judges are conforming to the guidelines in the vast majority of cases although less so for the more serious offenses. Where departures exist, the most frequent direction is to set sentences <u>below</u> the prescribed guideline (Table 14). This is noteworthy given the explicit desire of the guidelines was to increase the use of imprisonment. A subsequent study of the reasons for sentence mitigation show that "plea agreements", and "cooperation with authorities" are the leading reasons for guideline departures. (Pennsylvania Commission on Sentencing, 1985:19). Apparently, the judges and courts were less willing to break with Pennsylvania's "tradition of leniency" than those empowered to set guideline criterias.

TABLE 12

Change in Incarceration Rates and Mean Minimum Incarceration Length by Offense

Offense	Pre-Guidelines (1980) N	% In	Min	Post Guidelines (1983) N	% In	Min
Aggravated Assault	1,054	44%	8.5 Mos.	424	64%	13.6 Mos
Burglary	2,215	47%	10.3 Mos.	1,707	69%	15.1 Mos
Rape	134	74%	41.5 Mos.	56	86%	51.9 Mos
Robbery	1,499	67%	21.1 Mos.	864	74%	21.6 Mos

TABLE 13

Incarceration Rates and Average Minimum Incarceration Lengths by Race for Offense Gravity Scores 4 and Above

	Actual White	Actual Non-White	Expected* Non-White
Number Sentenced	3,889	2,576	2,576
Number Incarcerated	2,511	1,789	1,752
Percent Incarcerated	64.5%	69.4%	68.0%
Average Minimum Length*	14.3 Mos.	15.1 Mos.	15.3 Mos.

* The expected values for non-whites if non-whites were sentenced the same as whites in each guideline cell.

** If incarcerated.

TABLE 14

Conformity to Guideline Sentences Imposed in 1983 for Selected Offenses

Offense	N	Conformity	Above	Below
Aggravated Assault	574	70%	0%	30%
Arson	95	64%	1%	35%
Burglary	2538	77%	3%	20%
Criminal Trespass	451	93%	0%	7%
Drug Felonies	872	80%	2%	18%
Drug Misdemeanors	646	100%	0	0
Escape	99	40%	0	60%
Forgery	450	85%	0	15%
Involuntary Deviate Sexual Intercourse	69	68%	0	32%
Rape	75	76%	4%	20%
Retail Theft	611	84%	1%	15%
Robbery	1020	83%	5%	12%
Terroristic Threats	130	92%	0	8%
Theft-Felony	906	89%	1%	10%
Weapons	454	81%	1%	18%

Impact on Prison Crowding

With increased imprisonment rates and minimum sentence lengths, the predictable result was an acceleration of prison population growth. However, it is not true that guidelines were solely responsible for the population increases shown in Table 16 which predate the enactment of guidelines. Other forces were obviously at work which have not been clearly identified by research to date. It is known that mandatory minimum sentencing legislation was also enacted in 1982 for selected offenses but that does not explain the 1979-1982 increase of almost 3,000 inmates. One possibility is that Pennsylvania like the rest of the country was participating in the general trend toward greater use of imprisonment independent of sentencing reforms as has been postulated by others (see Blumstein et al., 1983).

Current projections provided by the state show the population will continue to increase until 1989 at which time it will lend off at approximately 16,000 inmates. As shown in Figure 9 these populations will continue to exceed the state's prison bed capacity by several thousand despite current efforts to construct an additional 2,8000 cells over the next three years (PCCA, 1985). A recent task force on prison and jail crowding has recommended instituting a system of granting good-time credits to reduce minimum sentence lengths and to implement an intensive parole supervision program to increase parole grant rates. Both reforms would essentially reduce LOS and unravel one of the original intents of the guidelines increase LOS. Whether

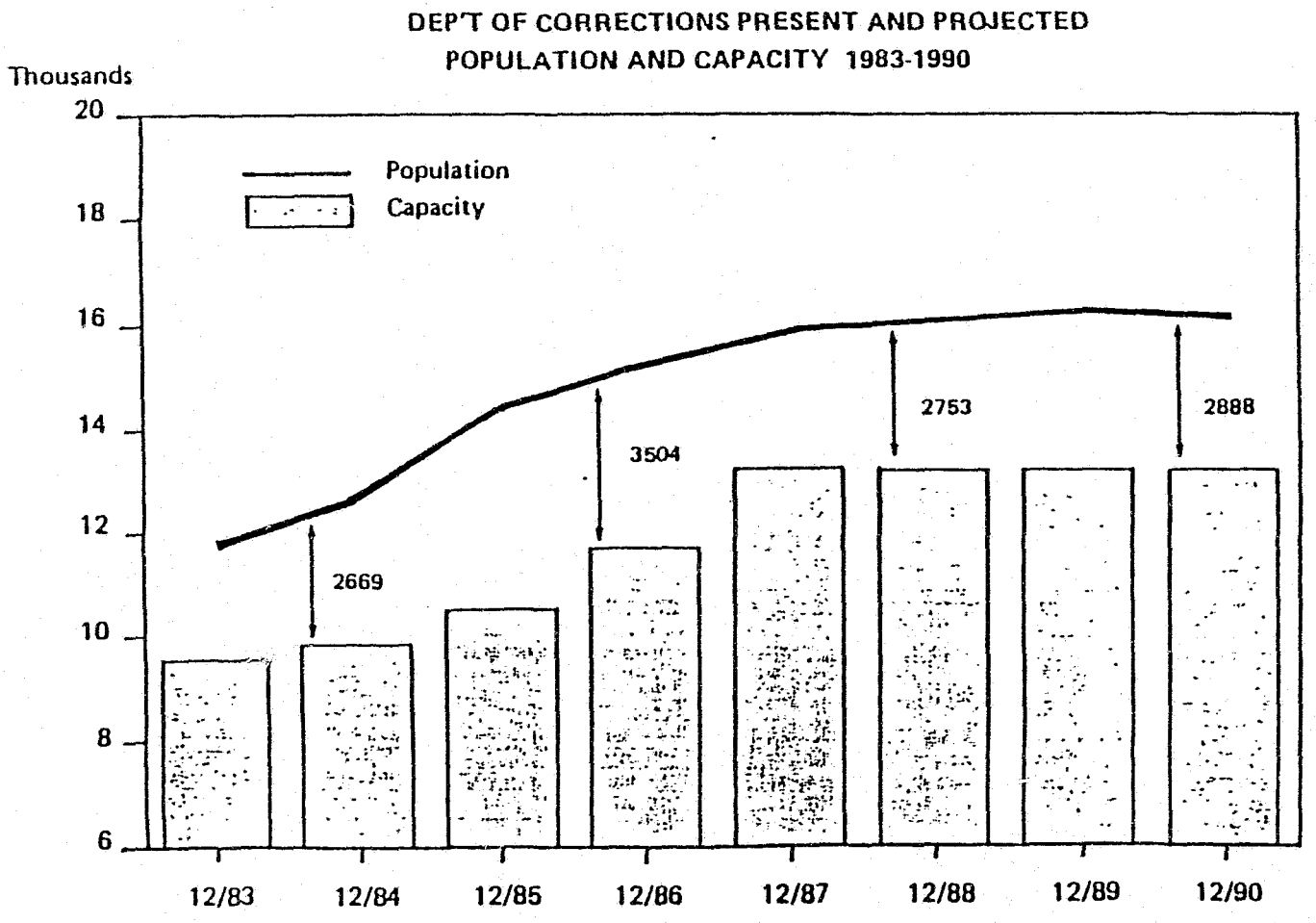

DEP'T OF CORRECTIONS PRESENT AND PROJECTED
POPULATION AND CAPACITY 1983-1990
Thousands
20
18
16
14
12
10
8
6
Population
Capacity
2669
3504
2753
2888
12/83
12/84
12/85
12/86
12/87
12/88
12/89
12/90

Figure 9

or not these counteracting reforms are now implemented remains to be seen.

III. CONCLUSIONS AND POLICY IMPLICATIONS

Solving Prison Crowding

Can sentencing guidelines and early release be used to successfully solve a state's prison crowding problem? This review suggests that on a short-term basis, they can, but, are unlikely to provide a long-term solution by themselves. Table 15 summarizes the prison populations for the six states reviewed here and compares their trends with national trends. The data show that the early release states and two of the guideline states experienced population growth well below that of the nation for comparable time periods. And it would appear that the early release states demonstrated a clear superiority in terms of achieving immediate and dramatic population reductions. However, it is also clear that the accomplishments of early release are extremely short-lived and will not provide a long-termed solution. Although such reforms have had substantial effects on prison population growth, it is also clear that such reductions technically could have been accomplished via traditional indeterminate sentencing and parole structures. In some ways, these reforms are symbolic statements by state officials that something must be done to restrict a state's increasing reliance upon the imprisonment sanction within its fiscal limitations. But unless the public's endorsement of imprisonment is curbed, one cannot

Table 15

State Prison Populations

1976 - 1985

	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	% Change*	
											+86.3%	
U.S. States	243,863	258,643	269,765	281,233	295,819	333,251	375,603	394,953	417,682	463,378	State	U.S.
Guideline States												
Minnesota	1,624	1,755	1,837	1,984	1,884	1,909	2,197	2,235	2,331	2,343	+18.1%	+64.8%
Washington	3,783	4,282	4,528	4,466	4,342	5,294	5,861	6,198	6,342	6,909	+11.5%	+17.3%
Pennsylvania	7,590	7,095	7,463	7,442	8,243	9,426	10,572	11,798	13,126	14,227	+34.6%	+28.4%
Early Release States												
Illinois	10,053	11,163	10,587	11,245	11,497	13,994	13,895	15,437	16,912	18,634	+24.5%	+33.6%
Michigan	12,465	13,824	14,944	15,092	15,124	15,157	14,913	14,510	14,604	17,799	- 3.4%	+41.2%
Tennessee	4,837	5,501	5,850	6,652	6,851	7,681	7,683	7,876	7,227	6,943	-11.9%	+17.3%

* These percentages reflect change due to policy changes for the states compared with same time periods for the U.S.

Source: BJS, Prisoners Series, 1976 - 1985

expect sentencing and release policies to run counter to that sentiment for a substantial period of time.

For early release, this is not surprising. The programs reviewed here were never intended to be more than a temporary solution to the crisis. But, early release has been successful in accomplishing their immediate goal of slowing population growth. These "back end" approaches are the most direct and therefore most powerful reforms a state can institute for immediate relief. And, the research continues to show that prison terms can be shortened without aggravating public safety and at substantial savings to the state.

Sentencing guidelines are not necessarily intended to address prison crowding. They are more directly concerned with reducing sentencing disparity and making sentencing criteria more explicit. And it appears they have been successful in accomplishing these reforms in sentencing practices.

But the impact of guidelines on prison crowding is less clear. Both Washington and especially Minnesota anticipated that guidelines would represent a long-term solution to crowding. And, initially, they have met this objective. However, as the same political pressures that initially led to the crowding problem increased, gradual structural changes reflecting these pressures are occurring which may erode the original purposes of the guidelines.

Furthermore, guidelines can be designed purposefully increase population as was the case in Pennsylvania. Guidelines

(and more severe sentencing practices, in general) are also impacting the character of the residual prison population itself. Longer and more frequent prison terms for violent crimes or repeat offenders is producing an older and increasingly Black and Hispanic prison population. With respect to age, this may translate into a less violent prison environment assuming the prisons of the future are not overcrowded. Age is one of the strong predictors of institutional violence (Flanagan, 1981) and as the population ages, one can anticipate a less violent population to manage. However, the increasing growth in Black and Hispanic inmate population remains a troubling reality. Petersillia, et al. (1984) noted that both sentencing and parole release guideline models tend to exacerbate the extent of racial disparities in sentencing and release decisions. Because the "just deserts" variables of offense severity and criminal history are associated with race the growing incarceration rate of minority males will continue for the foreseeable future.

Sentencing guidelines do offer the promise of a more permanent solution to crowding than early release even though they are not immune to the changing winds of politics. They also set in place, via the Sentencing Commission, a capability for states to monitor sentencing practices and anticipate the potential for crowding in the future. This monitoring capability by itself is an important achievement. The major "cause" of prison crowding has been the collective failure of policy-makers to recognize or respond to the crowding consequences of proposed policy.

TABLE 16

Index Crimes
1976 - 1985

Rate Per 100,000

	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	% Change*	
U.S. States	5,266	5,055	5,109	5,522	5,900	5,800	5,553	5,175	5,031	5,206	-1.1%	
Guideline States											State	U.S.
Minnesota	4,331	4,231	4,144	4,393	4,809	4,737	4,485	4,034	3,843	4,134	-5.9%	-5.7%
Washington	5,794	5,728	6,116	6,530	6,915	6,742	6,282	6,078	6,102	6,529	+7.4%	+0.6%
Pennsylvania	3,340	3,118	3,185	3,495	3,736	3,683	3,453	3,196	3,060	3,037	-12.0%	-6.2%
Early Release States												
Illinois	5,055	4,894	5,018	5,169	5,278	4,950	4,817	5,541	5,304	5,300	-6.8%	+0.6%
Michigan	6,478	5,812	5,594	6,147	6,676	6,854	6,785	6,478	6,566	6,366	-1.6%	-14.7%
Tennessee	4,258	3,740	3,690	4,013	4,498	4,311	4,414	4,012	3,890	4,167	+3.9%	+0.6%

* These percentages reflect change due to policy changes for the states compared with same time periods for the U.S.

Source: BJS, Prisoners Series, 1976 - 1985

Significant improvements in our ability to forecast the consequences of sentencing policy no longer allow policymakers to plead ignorance. States who find themselves overcrowded have done so purposely.

Public Safety and Prison Population Size

Sentencing guidelines and early release to date have had no systematic effect on crime rates (see Table 16). Research has consistently shown that moderate reductions in an inmate's prison term does not increase the offender's probability of re-offending. And, changes in the criteria for determining prison versus probation also seem to have no minimal impact on crime rates.

Why this is so can be readily traced to the inherent limits of incapacitation and especially a policy of collective incapacitation. None of the states reviewed here have incorporated risk factors in their sentencing and early release criteria. As such, they both represent a "just deserts" approach to decision-making which makes no claims on crime control effects.

Furthermore, several studies suggest that our prison population contains large numbers of offenders who are low rate offenders or who have terminated their careers entirely. For example, the oft quoted Greenwood and Abrahamse (1982) study found that a large proportion of their sample contains offenders reporting low rates of offending. Follow-up studies of released offenders show that substantial proportions of inmates are never

re-arrested and even greater numbers are not returned to prison. And, in particular, the early release research consistently documents that months of incarceration can be decreased (or increased) without associated fluctuations in crime rates.

This is not to say that incapacitation has no effects whatsoever. Clearly, incapacitation does restrict those incarcerated offenders from committing crimes. But incapacitation is considerably weakened if the criteria used is not sensitive to risk.

This is especially relevant to today's prison crowding crisis which is increasingly being driven by dramatic increases in the LOS. Given the strong relationship between age and criminality, we increasingly run the risk of extending periods of imprisonment beyond the utilitarian goals associated with incapacitation. In other words, we may soon find ourselves saddled with an aging and considerably lower risk prison population then currently exists today.

And the application of risk models to a policy of "selective deinstitutionalization" would only further enhance our ability to moderate population growth (Gottfredson and Gottfredson, 1985).

If this is so, then we should carefully scrutinize our current sentencing policies to ensure that we are utilizing prison space in the most cost-effective manner without placing undue stress on the prison system. Too often, policymakers and the public think only in terms of the basic sentencing options: prison versus probation. If the sentence is prison, then the

term is calibrated in years and not months, weeks, or days. Instead of focusing exclusively on the front-end decisions of who should be incarcerated, considerable progress also can be gained by refining the question of "for how long?"

If substantial numbers of inmates can be identified for whom moderate reductions in admission rates and prison terms produce similar crime control effects, then associated problems of prison crowding are solvable. Put differently, minimizing the use of criminal justice sanctions can also mean that persons with "low propensities to commit future crimes should be punished as inexpensively as possible" (Zedlewski, NIJ, 1985). Yet, we must also ensure that persons posing obvious threats to public safety serve their full terms as prescribed by law or be released with some level of supervision to protect public safety. Utilitarian concerns of expensive and ineffective incarceration versus excessive risk to public safety must be evaluated in the context of due process, equal protection, and the proportionality of punishment.

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THE DIMENSIONS OF PUNISHMENT: CONCEPTS FOR THE EVALUATION OF ALTERNATIVE SOLUTIONS TO THE PRISON CROWDING PROBLEM

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ABSTRACT

The purpose of this paper is to provide concepts useful in the discussion of alternative responses to prison crowding. The aim is to assist discussion about various ways punishments can be evaluated, rather than to summarize existing knowledge about the relative effectiveness of alternative punishments. The central role that the deprivation of liberty plays in the contemporary criminal justice system is described. The classical aims of punishment are then summarized and some of the implications of each are explored. A set of "properties of punishments" are proposed, including punitive, social and political, and pragmatic dimensions. Then, some of the characteristics of offenders and offending are explored in conjunction with punishment aims and specific sanctions. Finally, the question of the proper locus for decsionmaking about punishment alternatives is posed.

CONTENTS

Introduction

Policymakers and the public are today confronted with a vast array of alternatives in the crisis of prison crowding. These alternatives include such policies as prison expansion, the more selective use of incarceration, expanded and improved community supervision programs, greater use of fines and other financial penalties, the use of electronic monitoring devices, and doing nothing. The selection of which policy to follow (or which policies to follow) is a complicated question, involving considerations of finances, values, evidence, and politics. The purpose of this paper is to provide a framework, or a set of concepts, useful in the evaluation of these difficult policy questions.

A. The deprivation of liberty

The deprivation of liberty by incarceration in the congregate prison has become the hallmark of the American response to crime. As is well known, the rate of imprisonment has grown recently, whether one uses as a base measure the number of people in the population or the crime rate for serious offenses. This growth in incarceration has not come at the expense of other forms of punishments, however. Although capital punishment has declined dramatically over time (despite clear evidence of growth in the most recent years) the use of other sanctions have also increased. Thus, both the probation and parole

populations have also greatly increased, especially recently.[1]

It is necessary, therefore, to speak not of increases in the use of prison when discussing punishment alternatives, but rather of increases in the rate and number of persons punished by the criminal justice system.

Notwithstanding the growth of the parole and probation populations, it is the case that the modern criminal justice system is organized around the concept and practice of the deprivation of liberty. Incarceration as the vehicle for punishment dominates the expectations of the system and serves as the point of departure. That we speak of "alternatives to incarceration" and "probation in lieu of prison" are only obvious examples of the central role of the deprivation of liberty in modern society. But, it was not always this way. As Jackson Toby writes (1986):

> Prisons were devised only 200 years ago as a substitute for harsher punishments. True, dungeons existed for at least 1,000 years to incarcerate persons whom ruling monarchs perceived as troublesome. However, dungeons were not prisons, and jails aren't prisons either. Accused people were detained in jails to ensure their presence at trials, as were debtors to make them pay up. But the idea of deprivation of freedom as punishment for violators of serious rules did not attract support until Benjamin Franklin's time.

The idea of deprivation of liberty as the modal punishment for serious crime came about through the efforts of reformers seeking to mitigate some of the harshness of corporal punishments. Although some doubt that the use of the prison has resulted in more humane and fairer punishments than whippings, brandings, and dismemberments there can be little doubt that we now organize our system for the punishment of offenders around the deprivation of liberty.

In the public's mind, too, the identity of the criminal process with the deprivation of liberty seems to be the case. Supervision in the community, with the attendant restriction of rights and loss of privacy, is not regarded as punishment but as leniency. The public continues to believe that the courts do not deal with convicted criminals harshly enough and nearly three out of five adults said in 1982 that their state needed more prisons (Gallup, 1982).

But the ambivalence of the public about punishment issues appears whenever they are asked about the purpose of prison. Americans want their prisons to perform all functions (with rehabilitation still the leading choice) and given an idea about how to fight crime, Americans tend to regard it as a good one. People don't want to pay for any more criminal justice (49% in 1982 were unwilling to pay more taxes to build needed prisons; Gallup, 1982), they simply want it to be better. It is not unreasonable

to want to save souls, save innocents and save money, particularly when nobody said you couldn't do all three at the same time. In fact, it is a safe bet that nearly everyone wants to do good with the criminal justice system and no one wants to waste money. The problem is that there are many "goods" to be done when we talk about crime--reduction of crime and fear, the protection of liberties, the humane and just treatment of wrongdoers, the preservation of democratic values in the face of state intervention, the preservation of public funds for other social goods and so on. Unlike the opinion poll respondent, those charged with the task of making and carrying out public policy in this area do need to confront the entire bundle of goods at the same time. When the goods conflict, some choices must be made.

The purposes of the sections to follow are to help make these choices as explicit as possible by providing some concepts and tools by which the evaluation of these choices may be made. The first task is to define some concepts about punishment as they will be used in this discussion. We will then be in position to apply these concepts to the evaluation of various alternative means of punishment.

II. Some Properties of Punishment

A. The Aims of Punishment

Two broad classes of punishment purposes are usually distinguished--those that seek to affect the probability of crime occurrence, usually referred to as "utilitarian" or "preventive" aims of punishment, and those that seek to provide for retribution, reprobation, or re-balance without a crime reduction purpose, usually referred to as the "desert" aims of punishment.

Prevention can mean quite different things in different contexts. It implies some action that is taken in order to reduce the number of criminal acts for an individual or for groups. Table 1 presents a classification of the various types of prevention. The various methods of prevention may be cross-classified according to whether the focus is on the individual offender versus the general population (society or social groups) and according to whether the aim of the punishment is to seek prevention by changing proclivities to offend, by creating fear of punishment, or by reducing opportunities to offend. Those purposes in the first column of Table 1 seem to have received the most attention in discussions about choices of alternatives in the prison crowding debate. (An important fact that we will return to later in this paper).

When the aim of a sanction or intervention is to alter an offender's proclivity to offend again through

TABLE I

TYPES OF PREVENTION

AIM	FOCUS ON: OFFENDER	FOCUS ON: GENERAL POPULATION
CHANGE PROCLIVITIES	REHABILITATION	SOCIAL ORGANIZATION
CREATE FEAR OF PUNISHMENT	SPECIAL DETERRENCE	GENERAL DETERRENCE
REDUCE OPPORTUNITIES TO OFFEND	INCAPACITATION	GENERAL PREVENTION

counselling, education, change in home environment, or the like, the preventive mechanism is said to be rehabilitative. The measure of success of such prevention is the individual's crime rate subsequent to the intervention.

Special deterrence also focuses on the individual, but seeks to reduce future crimes by establishing a fear of the repetition of punishment. The thought here is that if the offender contemplates crime, he or she will refrain because of the personal fear of the consequences. An example might be a sentence of a short time in jail for a young offender, in order to give "a taste of the bars." This action would be done to persuade the youngster not to commit future crimes and thus avoid such punishment. Like rehabilitation, special deterrence is focused on the individual offender and is measured by the individual's crime rate subsequent to the intervention.[7]

Incapacitation is a form of prevention that is also individually focused and that aims to deny the offender the opportunity to commit crimes. Thus, a disposition that included confinement with the express intent of keeping the offender out of society to prevent crimes would be incapacitative prevention. The measure of the incapacitative effect is the number of crimes that would have been committed by imprisoned offenders that were not committed because there was no opportunity to do so. Some scholars

(Cohen, 1985) prefer to distinguish between selective and collective incapacitation, the former being the incapacitative affect achieved by special focus on predictive criteria in punishment decisions, and the latter being the incapacitative by-product of punishment decisions made on other grounds.[3]

The forms of prevention that focus on the general population pose different sets of issues. Within this classification, actions are taken not to change an individual offender's chances of engaging in future crime, but rather to change the crime potential of persons not yet in the justice system. Prevention strategies of this sort seek to affect the whole of society or selected sub-groups of society.

When this is sought to be accomplished by public punishments of convicted persons and the mechanism is fear, then general deterrence is the aim. It is measured by the crime rate of the group purported to be deterred, not by the future criminality of the person being punished.

Measures analogous in concept to incapacitation but not directed solely at an individual, here termed "general prevention", are common responses to the opportunities to commit crime. Thus, curfews are designed in part to keep young people in their homes when the "opportunities" for crime are particularly high (i.e., nighttime). (Curfews

for probationers would fall into the category of incapacitation as the terms are used here).

A third prevention mechanism directed to unconvicted groups rather than offenders might be termed "social organization". Akin to rehabilitation, but at the level of groups (communities, neighborhoods, gangs), this prevention strategy seeks to reduce the future involvement of people in crime by changing social institutions, or aspects of social institutions, in ways that reduce the proclivity of people in general to engage in crime. Included here might be changes in schools, families, community organizations, religious institutions, and the like, that alter the probability that a person will choose to break the law in the future.

Each of these group prevention mechanisms is utilitarian, in the sense that they all seek reduction in crime. Each also rests fundamentally on predictive judgments--in that an assessment is made that, absent some prevention, crime will occur--although these predictions are of a different sort than for the individual level forms of prevention. These prevention mechanisms tend to assume that the propensity to commit crime is very widespread in the community, whereas the individual prevention mechanisms tend to assume that the propensity is highly concentrated, (Gottfredson and Hirschi, 1986).

A second general justification for punishment is "just desert". The desert perspective is, of course, ancient in origin and has has been subject to much exposition and commentary. As explained by von Hirsch (1985:31):

> The central principle of a desert rationale for sentencing is commensurability. Sentences should be proportionate in their severity to the gravity of offender's criminal conduct. The criterion for deciding quanta of punishments should, according to this principle, be retrospective and focus on the blameworthiness of the defendant's actions. Prospective considerations-the effect of the penalty on the future behavior of the defendant or other potential offenders-should not determine the comparative severity of penalties.

The justification for punishment is not made in terms of what the punishment will do to the crime rate, but rather in terms of how bad the conduct was that is being punished.

1. Specific Sanctions and the Aims of Punishment

Does the consideration of one or another of these purposes of punishment really matter when it comes to the evaluation of punishment alternatives? Certainly on some grounds it may. To the extent that prison populations are a function of crime (and clearly this is not necessarily the case) reductions in crime (and therefore prison populations) may be associated with one type of sanction more than another due to the validity of one or another utilitarian theory. And, given that punishments can be scaled in terms of their gravity, whether a particular offense is given probation or imprisonment is of moment to

the desert perspective. To the extent that the use of a particular sanction is justified on one or the other of these punishment aims it is fair and appropriate to evaluate it according to the assumptions of the particular aim. As applied to the crowding problem, for example, those who regard probation as insufficient punishment for certain offenses are unlikely to evaluate it as a just alternative to imprisonment to ease overcrowding. On the other hand, once it is recognized that probation can be evaluated as deserved punishment, there may be changes in the form of probation (e.g., home confinement or intensified supervision) that can turn it into a deserved punishment.

It may be, however, that in practice little of consequence may be expected to change by relative emphasis on one or another of these punishment aims, vis a vis prison crowding. This may be true for two reasons. First, particular sanctions are rarely justified on the basis of a single aim of punishment. Scholars and evaluation researchers would certainly like it to be otherwise, but the simple fact is that usually all of the punishment aims are used to justify particular sanctions. Not only is this the case for most penal codes outlining the justification for penalties, but it is nearly universally true for individual decisionmakers when applying a sanction to a particular case. The offender deserves the punishment, it will protect the community, and it may also do him some good.

This of course complicates the task of evaluation. A sentence to probation is given for many reasons, as is a probation revocation order. Thus, for example, many probationers may, in the eyes of the judge, simply not deserve incarceration. Others are seen, rightly or wrongly, to be good risks. To then evaluate probation on the basis of crime reduction aims alone, when in fact multiple purposes were intended by the judge and by the legislature which enacted the penal code, may be questionable. Similarly, the use of probation revocation rates as an indicator of failure on probation may be correct according to some perspectives, but incorrect according to others. One mission of probation officers is to protect the community by anticipating serious criminal conduct and placing the offender back in secure custody prior to its occurrence (i.e., by revocation). To the extent that such an incapacitative aim is successful, and many probation officers claim that this is the case, revocations are a measure of success, not failure.

Second, reviews of the literature about how punishment decisions are now made in the criminal justice system--from arrest to sentence to parole--have found that from the host of offender, offense, victim, decisionmaker, and situational factors that potentially influence who gets punished, three appear to play a persistent and major role throughout the system--the "seriousness of the offense",

the prior criminal conduct of the offender, and the personal relationship between the victim of the crime and the offender. Other factors most surely are also influential (to a greater or lesser extent at various decision points), but none characterizes the process to a greater degree (Gottfredson and Gottfredson, 1980). Perhaps because they so readily are perceived to be of service simultaneously to so many masters (for example, crime control, retribution, efficiency), the factors of offense seriousness, prior criminal record, and the personal relationship between the victim and the offender heavily influence nearly every decision in the process. In nearly every instance they are used as criteria to screen cases from further processing or for invoking more severe sanctions.

If it is true that all of the major punishment aims tend to like to use the same criteria for invoking more or less serious sanctions, at least in global terms, two evaluation issues are raised. First, it implies (to the extent that the theories are true) that the criminal justice system as it now operates provides considerable incapacitation, deterrence, rehabilitation, and just desert. Proponents of these perspectives thus have a considerable burden: they must show how additional effects may be achieved by the system with increased or exclusive reliance on their perspective. Second, they must show

which of the major decisionmaking criteria now used are in error.

A closely related point to be made regarding the evaluation of specific sanctions according to the various aims of punishment is that no one punishment aim "owns" a particular sanction. Thus, a sentence to imprisonment may be made because it is deserved, or because it is felt that the public's safety will be served by incapacitation, or because a judges sees it necessary to make a public statement about the consequences of the sentenced behavior in order to serve a deterrence aim. In principle, prison could be compatible with any of these aims. And, the same may be said for probation and parole. For example, although it is not usually regarded as such, there is evidence that parole serves some limited incapacitative function (Gottfredson et al., 1982). It is not unreasonable to believe that the constant threat of discovery and the limited privacy that accompanies probation and parole may reduce opportunities to offend, at least for particular types of crime. Thus, incapacitation is not the sole province of prison. All of the utilitarian aims are meant to be seen on a continuum; people are more or less incapacitated, deterred to a greater of lesser degree, rehabilitated to some extent. The clear implication is that there are tradeoffs to be made, since higher "dosages" of these punishment aims very likely cost more.

But a further implication is that it is a vast oversimplification to ask "but does it work?" when considering various alternatives to prison overcrowding. Our questions must be more sophisticated: "Is the incapacitative benefit of incarceration relative to intensive probation worth the added cost, once the deterrent effect is taken into consideration?"; "Since house arrest serves an important incapacitative function (albeit not perfectly), is it appropriate to sacrifice some just desert to save some money?".

2. Prediction Issues

Each of these individual level forms of prevention is a utilitarian sanction, seeking to reduce the crime rate. As such they are, at least in part, judged empirically; they can be said to work or not to work. And, importantly, each requires that a prediction be made about an offender's likely offending. Clearly, in the absence of a judgment that a person will offend again, there is little need for rehabilitation, incapacitation or special deterrence.

This later concern addresses the problem that, in the absence of perfection in predictive decision-making, some offenders will be predicted to re-offend when they would in fact not have and others will be predicted to be non-offenders when they in fact will offend again. If the first group --the so-called "false positives"- is incapacitated or punished otherwise solely because of this

erroneous prediction, moral issues are clearly raised. If the second group --"false negatives"-- is not given secure custody solely because of this erroneous prediction, the community is needlessly put at risk, and moral issues are again raised.

The consequences of these prediction errors are important requisites to the evaluation of any utilitarian punishment. Evidence suggests that the false positive problem is substantial, and it increases with the rarity of the criminal conduct to be predicted. Unfortunately for the predictive dispositions, but fortunately for society, the very behaviors for which we are most interested in developing adequate predictors, such as violence, are the rarest.

Complicating the matter is the situation that not all errors of prediction necessarily present the same problems or raise the same issues. Some have argued, for example, that not all false positive errors should be treated alike; rather, with increases in the length and seriousness of the prior record, individual offenders may forfeit some consideration not to be treated as a false positive (Wilkins, 1976). Although the argument is seldom made explicit, the analogous point of view is that some communities, perhaps because of their very low crime rate, or even because of their extraordinarily high crime rate, can afford to suffer a higher false negative rate, thus permitting a riskier stance among decisionmakers.

B. Punitive Dimensions

The various solutions to prison crowding-intensive probation, restitution and other financial penalties, early release, capacity expansion, and supervision with technological assistance-have some things in common. All, presumably are unpleasant for the offender. All, as a consequence, must be coerced upon the offender. Each has been widely hailed as the solution to the correctional crises. And, each may be evaluated as consistent or inconsistent to a greater or lesser degree with one or more of the various aims of punishment discussed above. But clearly there are other ways that punishments should be evaluated in a democratic society, a society that values the maximum possible preservation of individual liberty and privacy, a society that has high standards for the treatment of human beings.

Such considerations are important to an understanding of the evolution in the form of punishment throughout our history. As described earlier, the deprivation of liberty has not always been the characteristic punishment response in America. For reasons quite apart from deterrence, incapacitation, rehabilitation, and desert, we moved from a system that focused largely on corporal punishment to one focused on the deprivation of liberty and a scale based on time. The death penalty has come to be used relatively infrequently and for a much more restricted number of

offenses. And even prisons themselves have improved greatly over time, particularly during the last twenty-five years or so. They are safer, cleaner, more open, and providing of more liberties (Toby, 1986).

How can we account for the apparent conflicting tendencies of our society? The tendency on the one hand is to desire greater punishment and increased safety, and on the other hand is to desire a diminution of the suffering inflicted of criminal offenders, particularly when viewed in an historical perspective.

Part of the answer, it would seem, lies in the multidimensionality of the concept punishment. For in addition to the purposes that punishment is thought to serve are other dimensions along which we constantly think about punishment. Among these properties of penalties (and this is not by any means thought to be an exhaustive listing) are; a) intrusiveness, b) scalability, c) commensurability, d) permanence, e) visibility, and f) diffusion. Each of these punitive dimensions can be used in the evaluation of the various alternative forms of punishment.

Not all punishments involve the same degree of loss of personal privacy or autonomy--referred to here as intrusiveness. Although a difficult concept to measure, we clearly evaluate what we do to offenders by the extent to which the punishment causes loss of dignity as a human

being. Punishment by ridicule--such as stocks--may have fallen out of favor in part because they were too intrusive to be any longer tolerated. Financial penalties may not be particularly intrusive, whereas ankle bracelets, which permit some observation of the offender all of the time and hence in a restricted sense deny privacy, probably are intrusive. (But not as intrusive as prison). Like the stocks of an earlier day, the success of technological aids to supervision may depend in large part not on their incapacitative worth, but on whether the public and policymakers regard them as too intrusive.

Certainly the intrusiveness of particular sanctions is involved in their evaluation according to the aim of punishment adopted. General deterrence operates on the basis of fear. It is probably true that fear of a particular sanction and its intrusiveness are positively related. Thus, capacity expansion may be preferred to house arrest as a solution to prison overcrowding because it is more intrusive, thus increasing the deterrence aim of the criminal law. But, if house arrest and ankle bracelets have similar incapacitative value (or desert value), one may prefer house arrest if it is less intrusive.

Not all punishments are easily scaled, or perhaps more correctly, are as easily scaled as they seem to be. It has been suggested that one of the reasons incarceration came to be the dominant response to social problems was that it lends itself well to scaling (Rothman, 1979)--punishment

can be dolled out in days, weeks, months, and years. A rational society and a rational criminal justice system based heavily on retribution prefers punishments that can be calibrated according to the needs or the deserts of the offender.

There are certainly good questions to be raised about the extent to which time can indeed serve as an appropriate metric to scale prison terms. The fact that judges tend only to use a handful of actual times (e.g., 1 year, 5 years, 10 years, life) (Gottfredson and Gottfredson, 1980) suggests that either there is more homogeneity among offenders than punishment scholars tend to recognize or that time may not be the great scale we assume it to be. Given that it is common also to scale community supervision in terms of time, similar issues might be raised. Might it not be more desirable to scale the punishment of community supervision in terms of caseload size, under the assumption that the lower the caseload the greater the intrusiveness and hence the greater the punishment? Should judges select between a sentence for a fixed time to either a 15 caseload probation term or a 100 caseload probation term rather than select among a number of months to serve? Similar questions of how punishments ought to be scaled should be raised during the course of the evaluation of all punishment alternatives, including financial penalties (is it really true that $100 is $100, for the rich and the

poor alike?) and technological aids (just how visible should the monitor be?)

If some penalties are more difficult to scale than others, then this dimension might serve as a basis for selection among options to prison crowding. Thus, it might be decided that despite the attraction of financial penalties, the present scaling problems that are simply too difficult and therefore must be rejected.

Commensurability is used here to mean the extent to which there is a fit between the punishment and the crime. Many punishment philosophers have regarded it to be important that the punishment for an offense in some sense resemble the nature of the offense--that there not just be a proportionality in degree, but that there also be a similarity in kind. The argument is that financial offenses ought to have associated with them a financial penalty; offenses involving injury should result in injury to the offender.

We probably use to concept of commensurability in the evaluation of particular sanctions, but take a broader meaning than that historically used by penologists. To a considerable degree, we have obviously departed from a literal standard, although the extent to which various penalties "feel right" is an evaluation dimension implicit in many discussions of punishment alternatives. There are, for example, some punishments that just don't "go

together"; no matter how intensive, probation is not right for one convicted of rape.

Different punishments have greater or lesser lasting impact on the offender, and perhaps too, on the victim. The permanence of punishment is indeed very difficult to measure, but should be included in any serious evaluation of punishment alternatives. It is clear, for example that the effects of an extended period of incarceration may have consequences that go well beyond the physical confinement itself. The disruption of family ties, the loss of employment, and the progressive falling behind on contemporary job skills are consequences of incarceration, whether criminogenic or not, that last. These "after effects" of punishment probably vary considerably among the various alternatives. The lasting consequences of corporal punishments may be one reason they fell out of favor as responses to crime.

Visibility refers to the issue of how open to public view and public scrutiny various punishments are. Jeremy Bentham argued that prisons should be built in the center of the city so that each day they could serve as a reminder to the citizens of the consequences of violating the law. General deterrence, of course, assumes visibility in punishments, that fear of penalties is best implanted in the mind by the prompt and public punishment of offenders.

But apart from the demands of general deterrence, we desire our punishments to be non-secret, open to critical examination, and publicly knowable so that their administration can fairly be monitored. The question addresses how well the actions of prison officials can, or should, be publicly scrutinized, how extensive the controls are on the punishments meted out on a routine basis by probation officers, and so on.

Diffusion refers to the negative impact that penalties have on persons other than the offender. When an offender is sentenced to a term of imprisonment, such a sanction affects the offender's family (and the more family he or she has, the greater the effect). Given fixed family resources, financial penalties penalize the family too. Employers may suffer from the loss of an incarcerated employee.

Some punishment aims might implicitly prefer diffuse penalties; general deterrence would conceivably be more effective the greater the scope of the felt sanctions if this greater scope translated into greater fear of punishment. Other aims require the measurement of diffusion to better apply the sanction; just desert might measure the gravity of the penalty in part according to how many innocent persons would be hurt by the penalty.

C. Social and Political Dimensions

Every government action affects many interest groups and the government action we call punishment is no exception. As is true for most other government actions,

some of these interest groups are only indirectly responsible the electorate. Some interest groups, like functionaries of the criminal justice system (including the police, prosecutors, courts and correctional staff, federal agencies) are often overlooked when discussions of the acceptability of punishment alternatives occur. Clearly, this is a mistake, on at least two grounds. First, the implementation of punishment alternatives is in the hands of these citizens. Given the privileged stance from which they daily witness the criminal justice system, a stance that gives major insights into the likely consequences of the adoption of various punishment alternatives it would be unwise not to seek their counsel. Second, the criminal justice system and the affiliated agencies that exist to support it are extremely effective lobbying groups. Pleas made for increased support that stem from this (loosely coupled) lobbying force carry a great deal of political currency.

Less often overlooked, but important nonetheless, are state and local politicians, individuals instrumental in the creation of alternatives as well as in their implementation. Victims, and victim advocacy groups, have become a third major force in the development and implementation of alternatives, as the increased use of incarceration for alcohol related motor vehicle offenses will attest. And, of course, the acceptability of punishments to the general public, and the perception of

what is acceptable to the general public, are important concerns for the thorough evaluation of punishment alternatives.

If innovations are created that judges believe are too risky politically, they will not be used. If punishments are created that add to the burden of already overworked correctional staff, they are not likely to be implemented. If the police perceive an alternative as flouting the work they have done in bringing an offender to justice, they will complain loudly enough to be heard. These sensibilities must be reckoned with, not agreed with, if alternatives are likely to be of any use in prison overcrowding. If parole becomes defined by the public as leniency rather than punishment in the community, if prison construction is defined as an expensive way to coddle criminals who complain about too much togetherness, or if monitoring bracelets are defined as the arrival of 1984, then these public perceptions will limit the role the alternative to crowding might play.

Different groups within society are likely to differ on their stance with respect to these issues. The criminal justice system and those affiliated with it will welcome additional resources to combat the crowding "crisis". Those who directly compete with criminal justice agencies for the expenditure of tax dollars, such as educational institutions, highway departments, welfare departments,

child care centers and the like may outline different priorities.

D. Pragmatic Dimensions

The final set of punishment properties considered here are, for lack of a better word, pragmatic concerns. Three issues may bluntly be stated: How much does it cost?, When is it full?, and Will it make things worse?

1. How much does it cost?

Cost is one issue that needs no introduction to the criminal justice policymaker. The criminal justice system is expensive, accounting for major portions of local and state budgets. And, not all punishments cost the same. Although estimates vary widely, secure incarceration is very expensive, even if new construction is not necessary. Adding on construction costs results in the familiar high figures. One recent study (Petersilia and Turner, 1986) estimated that for recent years in California, for a sample of probationers and prisoners, it cost roughly twice as much to incarcerate than to place on probation, not including construction costs. These authors report that states have allocated about $800 million for new construction and an additional $2.2 billion has been allocated for prison construction through bond issues and other revenue mechanisms (Petersilia and Turner, 1986:39). It has been estimated that every new offender sentenced to prison, when both operational and construction costs are

considered, costs $23,000 (Funke, 1985, as cited in Petersilia and Turner, 1986).

Criminal justice is funded largely from the same sources that state and local health, welfare, transportation and education are funded. There thus should be a very heavy burden placed on those punishment alternatives that are the most expensive. Those who argue for a greater proportionate use of incarceration should justify that use, not in terms with which everyone will agree ("public safety should be protected") but in terms of why the most expensive alternative is required and what goods or services will not be available if the use of incarceration increases.

2. How Full Is Full?

The concept of capacity has been given considerable attention in the contemporary punishment literature, particularly with respect to incarceration. Clearly, it is necessary to give such terms operational definitions in any evaluation of punishment alternatives since they are subject to widely differing estimates and considerable variability over time. Cost and capacity are not independent considerations, since our view of what full is may depend in part on how much it costs to make something less full. Other important dimensions along which capacity is judged may include notions of minimal standards of decency for human living conditions, possible adverse

physical, psychological or criminogenic consequences of crowding and, quite importantly, the effects of crowding on correctional safety, moral, and workloads.

It is important to observe that capacity is a generic concept, in that it applies with equal force to all of the punishment alternatives. Caseload size is really another way to think about capacity and in many respects the ability of offenders to pay financial penalties is a related issue. Certainly given fixed correctional resources, it is true that to reduce overcrowding in one form of punishment might very well be to increase it for another.

3. Will It Make Things Worse?

Many analysts begin their assessment of the various "new" programs--diversion, intensive probation, restitution, etc.--with an attempt to discover whether such programs have served to shunt some persons away from incarceration, persons who otherwise would have been sent to prison. And, as is widely reported in the literature, many of these analysts have concluded that these programs actually increased rather than decreased the level of state control--i.e., the numbers of persons under state sanction or on restricted liberty. The issue of net widening is thus of crucial importance in the evaluation of punishment alternatives. If net widening is widespread, or to be expected, than it would be difficult to conclude that these

programs resulted in any savings and instead to the conclusion that they increase costs. If such programs also fail to indicate lower recidivism than would be expected (a logical impossibility, given the conclusion of the treatment of clients who otherwise would not be treated, but nevertheless an often reported conclusion) the attractiveness of these "alternatives" is surely lessened.

But the studies of "widening the net" are almost always incapable of showing what they nearly universally are claimed to show (Gottfredson, 1982). For a study of, say intensive probation, to be most convincing in providing evidence that it either could or could not divert some persons from imprisonment an experiment would be required, during the course of which judges would have the option, for a randomly selected group of offenders already sentenced to prison, of either placing them on intensive probation or sending them to prison. The actual numbers sent both places and the time served, treatment effects (levels of recidivism and re-incarceration experiences) and revocation experiences of the groups would be followed. If, as seems highly unlikely, this experiment resulted in no probation assignments, universal probation revocations, or greatly increased recidivism for the probation group, then it may fairly be inferred that this alternative could only "widen the net" if it became a regular part of the disposition alternatives of the court. On the other hand, if the common research design addressing this issue is

employed, the design which simply asks whether, if a new program is available, it will tend to be used for regular probationers, it would be astounding if it were otherwise.

Now, contemplate the studies suggesting that such programs only widen the net of state control. The general time series for the last several years has been such that both numbers and rates per serious offense of incarceration have gone up. But recall that so too have the probation and parole numbers and rates. In a period during which all punishments are increasing it is hazardous at best to conclude that an increase in one such punishment is unique--precisely what the widening the net hypothesis concludes. The data may support the contention that even without new programs, the net would have been widened. Two conclusions follow: We should be careful when constructing new alternatives to incarceration not to conclude that an inevitable consequence of them will be to widen the net. It is entirely possible that innovative programs have lost some support unfairly; and 2) we should support experimental implementation and evaluation of all new alternatives.

III. Images of the Offender and Punishment Alternatives

Punishments are meant to have unpleasant consequences for the person punished. In fact, we usually assume (or define; Hart, 1968) punishment's unpleasant consequences by the intent of the punisher rather than on the basis of

the felt consequences for the person being punished. The unpleasantness given to the offender is generally assumed not to interact with characteristics of the person, but instead to apply uniformly to all eligible persons and to increase and decrease similarly for all eligible persons. For example, ten years imprisonment is assumed to be a greater punishment than is five years and a $1,000 fine greater than a $500 fine, both of which are less punitive than imprisonment.

But obviously punishments do interact with characteristics of offenders, a circumstance that sometimes influences the punishments given to otherwise similarly situated persons. So, the rich may be fined more than the poor, on the assumption that an equal dose of pain can only be achieved by taking in proportion to the ability to give. But while some such interactions between characteristics of the offender and punishment are obvious and much discussed, others are not.

It is therefore worthwhile to consider the relationship between particular sanctions and the expected characteristics of the offenders to whom they will be applied. Two facts are evident from the data about offenders who have typically been punished by the criminal justice system. First, they do not represent a random selection of the general population: at the risk of some over generalization, it may be concluded that they are

disproportionately young, male, minority, under-educated, unemployed, unskilled, urban resident, and single. Second, there is only the loosest relationship between the labels we give to offenders and the labels we give to offenses.

Space prohibits all but a cursory examination of the issues these facts raise for the evaluation of various sanctions, but we can illustrate how they might be explored by focusing on a couple of selected problems. First, we will consider the problem of the disjunction between offenses and offenders. Then a single offender characteristic, age, will be discussed in relation to options about penalties. Each offender characteristic could, in turn, profitably be used in such an exercise. Finally in this section, we will turn the tables around and start the evaluation problem from the other side--how might a selected sanction serve as the basis of analysis in light of potential offender characteristics. Financial penalties will serve as the sanction.

A. Offenses or Offenders?

The offense of conviction, or arrest, tells us very little about the offensivity of the offender. This is true for the obvious reason that there is a vast distance between an incident of crime and the conviction for a particular violation of the penal code. Numerous decisions about labels are made by the state and by the offender as the case moves through the criminal justice system.

An example may clarify the point. Consider a holdup on the street by a young man of two other men. The holdup involves the display and a threat with a handgun, the physical assault of a resisting victim, monetary loss, the possession and use of narcotics by the offender, and the physical resisting of arrest when apprehended moments later.

The plea of guilty to one count of unarmed robbery tells us very little about the offensivity of the behavior. Is the offender a "robber"? An "assaulter"? Or a "drug user"? Suppose on the way over to the mugging our offender shoplifted a carton of cigarettes. Had he been caught, would he be a "property offender"? Such a forced taxonomy would, of course, be absurd when viewed from this perspective. Decisions made by the state and by the offender as the case proceeds through the criminal justice system are numerous. They are required in order to translate activity into discrete punishable acts. However, it is extremely common in criminal justice to speak of "violent

offenders", "predatory offenders", "serious offenders" and the like, often taking a conviction label as representative of the offense behavior and then imputing this label as a property of the offender. But the facts make it difficult to speak of "robbers" or "assaulters" when we seek to evaluate punishments. (Note that desert does not use these terms, preferring to punish exclusively for the offense. The slippage between what was done and what the offender is convicted of, might cause some problems for an exclusively behavior-oriented aim such as desert, but the idea of desert does avoid problems associated with the imputation of qualities of acts to persons).

If there is little correspondence between the criminal justice system label for offenders at a given point in time, there is even less correspondence when such labels are considered over time. One of the generally agreed upon empirical facts about crime is the "generality" or the "versatility" of offending. Research continuously shows, regardless of the research design, that offenders do not specialize in any meaningful way in types of crime. Thus, "robbers" are just about as likely to burgle as are "burglars" and there is no good evidence of increasing specialization or increasing seriousness as offenders age. This fact, too, should give pause to those who like to speak of "violent offenders", "serious offenders", "property offenders", and so forth.

The implications of these facts about offending for the evaluation of various punishments are not always clear, although they should be considered in these evaluations much more than they commonly are (Gottfredson and Hirschi, 1986). They do suggest that we should expect little by way of predictive utility simply by the use of offense labels, a suggestion that appears borne out in the literature on prediction (Gottfredson and Gottfredson, 1985). Thus, the incapacitation of "robbers" may have little benefit in reducing the incidence of robbery over and above what the incapacitation of burglars, auto thieves, and shoplifters might yield. The bitter pill to swallow therefore is this: it is misleading to argue that the public is placed at greater risk by a sentence to community supervision in lieu of prison for an "assaulter" than by a similar sentence for an "auto thief". It does not save the community anything by acting after the fact, something that the use of criminal labels always implies. Recidivism rates for both groups may be high, or higher than we would like, or, better yet, high enough to encourage us to pay for a prison term. Or, the behavior may be such that we wish to deter the particular form or crime, or we may simply want to express serious disapprobation for the conduct. But differential incapacitation benefits are not consistent with the evidence.

Other punishment aims may do better when confronted with the versatility of offending repeatedly observed or

with the loose fit between conviction labels and offenses than does selective incapacitation. But each sanction solution--from house arrest through capacity expansion--can be subject to such analyses.

B. Age and Punishment

Offenders tend disproportionately to be young. The propensity to commit criminal acts reaches a peak in the middle to late teens and then declines rapidly throughout life. It has been shown that this general distribution is characteristic of age crime curves regardless of sex, race, place, or offense type (Hirschi and Gottfredson, 1983). Crime is an activity that is very highly concentrated among the young. This is so for all crimes and all people as far as competent research has determined. Therefore, choices among sanctions must consider the likely predominant age distribution of those to be punished and similarly, the likely effectiveness of the various utilitarian sanctions should be gauged by how well they can accommodate to this reality.

Consider incapacitation, the aim that seeks to reduce offending in the general population by restricting the opportunities of offenders to offend. In order for incapacitation to achieve maximum effectiveness it must occur during the time that the incapacitated offender would be committing criminal acts at a high rate. The decline in crime with age is therefore a direct threat to

incapacitation policy. It makes little sense to attempt to prevent crime by locking up people who would not be committing crimes were they free. The decline in crime with age suggests that the optimal point of intervention for purposes of incapacitation is just prior to the age at which crime peaks, i.e., 13 or 14. Such a fact is a serious threat to incapacitation based crime policy, since it implies the lengthy incarceration of children in the interest of crime prevention. Of course incapacitation can be saved if it can be shown that there is a group of offenders who are "serious" and whose crime rate does not decline with age as it does for everyone else. But, despite efforts to locate such offenders, they have not been shown to exist (Gottfredson and Hirschi, 1986).

Other standard characteristics of offenders may be useful for the evaluation of proposed solutions to the overcrowding crises. Does the characteristic employment history and job skill level of incarcerated offenders suggest that restitution is a viable solution for large numbers of offenders, particularly if the sanction for failure to pay were incarceration? Do urban areas, that disproportionately send offenders to prison, have the resources to mount intensive probation services or will a shifting of resources be necessary?

C. Monetary Penalties

The widespread support for and increased use of financial penalties raises numerous evaluation issues. Significant questions include the extent to which typical criminal defendants can be expected to have or to get resources sufficient to pay fines or restitution, whether restitution per se is punishment, and what to do if and when offenders fail, for whatever reason, to meet court imposed financial obligations.

What punitive aim restitution and fines are meant to serve is an open question, with every aim serving at one time or another as a justification for such penalties. Many of the important evaluation questions about financial penalties as punishment alternatives have been noted by Harland in his comprehensive review of the topic (1982:121):

> Although the view of restitution as an alternative to incarceration is widely held, it is usually unclear whether the defendant in such a case is to be spared imprisonment because restitution mitigates culpability, or because incapacitation, deterrence, or desert regrettably have been balanced against rehabilitative hopes or concern for recovery by the victim. To some commentators, imprisonment appears to be simply overused, and a community disposition involving restitution constitutes a sufficiently severe penalty. Other commentators conclude that restitution can operate as an effective deterrent. Several writers view restitution as being an integral part of, if not synonymous with retribution. To that extent, restitution can serve as a symbolic payment of one's debt to society.

As Harland points out, the consequences of identifying the rationale to be used for financial penalties can have considerable consequences. The assumption that restitution is, for example, a creative alternative to imprisonment may result in a restriction of the level of procedural formality in its imposition (Harland, 1982). But unless restitution is perceived as punitive, it may be unlikely to be used as an alternative to incarceration, but instead to be an "added on" penalty. The interaction of financial penalties with offender characteristics (disproportionately poor, lacking in stable work records, etc.) may suggest considerable difficulties in securing payment, raising the question of whether victims are truly better off to be promised restitution and never to receive it or to never be promised it to begin with. Given that failure to meet financial obligations can itself be grounds for incarceration, difficult evaluation questions are raised about the long term effects of such alternative punishments.

A related issue has to do with the use of financial conditions on release prior to trial, that is, with the setting of cash bail. In the case of pretrial detention, not typically referred to as punishment but a major feature of overcrowded jails, it is still common for bail decisionmakers to require the deposit of amounts of cash prior to release while awaiting trial. Certainly, given the characteristics of many criminally charged defendants

the ability to raise such cash in order to secure freedom is quite limited. In fact in one recent study of a major metropolitan court system, it was discovered that a judicial order of $500 cash bail resulted in the pretrial detention of over 90% of those receiving the order for a period of at least 90 days (Goldkamp and Gottfredson, nd.). The message seems clear-- financial obligations, whether prior to or subsequent to adjudication are in many cases incarceration decisions in the long run. The evaluation of punishment alternatives must take such considerations seriously.

IV. Decisions About Solutions

A. What Are The Choices?

Most of this discussion has focused attention around the standard devices offered as solutions to the prison crowding problem. Most of these devices are designed to do one of two things: 1) Incarcerate fewer people, either by being more selective about who will be sent to prison (selective incapacitation) or by establishing practices and procedures to deal with those we would otherwise send to prison, practices and procedures designed to make us feel more comfortable leaving such people in the community (e.g., intensive probation and electronic monitoring), or 2) Expand capacity in prisons, and thereby accommodate greater numbers of inmates. However the device is meant to work, they all share the common feature that they see the solution to the

prison crowding problem within the criminal justice system itself.

Now it may well be that a focus on solutions internal to the criminal justice system is the best strategy. The prison crowding problem is immediate and these "internal" solutions seem to promise rapid (or as rapid as construction permits can be issued) resolutions. On the whole, these solutions find their punishment justifications from the aims that center on individual offenders and which see the crime problem as largely a function of chronic offenders (the first column in Table I).

Not all theories of punishment agree, however, that these "internal" solutions will be of much lasting consequence. These theories argue that the real choices faced by policymakers are in fact much broader than those promising immediate payoff. A few of these arguments should be raised briefly, if only to expand the scope of discussion about possible choices.

All of the theories that focus on the prevention of crime generally, rather than targeting specific offenders, see the crowding problem as potentially being affected by the crime rate and by official decisions about the use of prison as a means of controlling the crime rate. But by and large, these theories see the criminal justice system as a relatively inefficient device for the control of crime. Thus, for example, theories of general prevention agree with incapacitation that potential offenders should be denied the

opportunity to commit crime, but they tend to believe that it is efficient to rely on the actions of ordinary citizens to reduce these opportunities. Bolts on doors, lights on the outside of houses and curfews for teenagers are better and surer ways to prevent burglary than is the incarceration of burglars. Theories of general deterrence, contrary to many recent reviews of the "deterrent effects of sanctions", do not always posit that the sanctions of the criminal justice system are the most effective in creating the fear of breaking the law. In fact there is very good evidence that the sanctions available to parents, friends, schools, and employers are vastly more important (Hirschi, 1979). These theories would suggest that policies the could strengthen these institutions would have a major effect on the crime rate.

Why are such choices not widely discussed? In part it may be that they do not seem "near term" enough. But we should keep in mind that prison populations have been increasing now for quite some time and that today's solutions will likely outlive their creators (and be paid for by generations yet unborn). More fundamentally, we should note that if these short term solutions are premised on faulty images of the causes of crime and the causes of prison populations, then their promises will end up empty.

Another reason such solutions are not widely discussed is that they have come to be defined as "not policy relevant". An increasing tendency among the criminal

justice community to regard the activities of the agencies of the system as the only directly manipulable policy variables has focused attention away from governmental policies (and incidentally, expenditures) designed to effect crime via other social institutions.

B. Who Decides?

Who should decide whether we should build more prisons, increase the use of intensive probation, add technological aids to the probation function, increase the use of restitution, put up with more crime, focus on non-criminal justice system solutions, or redefine our measures of overcrowding in order to meet the incarceration population increases of recent years? Even raising the question illustrates how difficult it is to answer. Money, values, politics, research, and ingenuity are all involved, with different interest groups preferring different mixes in coming up with the solution.

There is something to be said for the experts--correctional administrators, researchers, and scholars--making the decisions about the proper mix of punishment alternatives, about whether and how much to build and when intensive probation should be used instead. After all, many of the evaluation questions discussed above are empirical issues, requiring considerable skill in the design of research and analysis of data. Removed from the heat of daily politics, the experts may better be able to judge the questions of relative costs and come to a more

rational conclusion than would, say, state and local politicians. But of course many of these experts are hardly "distanced" from the outcome of the debate about construction versus other alternatives (Jacobs, 1983-84). The criminal justice system is, after all, in part a self-interested lobbying group.

But state and local politicians, with considerable assistance from federal politicians and some of the federal "mission agencies", are the ones who have decided to embark on the rhetoric and the practice of prison expansion. The fact that large sums of money for construction and large sums of money for operating costs are expended in a period of fiscal conservatism is not a fact that is easy to explain (Jacobs, 1983-84). The role of democratically elected officials in such a vital moral and economic issue can hardly be denied. What can be questioned, of course, is the extent to which that role is responsibly carried out, or carried out on the basis of adequate information (suggesting another critical role for the experts). Are the politicians even adequately informed about what the people think about criminal justice reform? (Gottfredson and Taylor, 1985).

Perhaps the most significant question raised by the entire prison crowding problem is whether criminal justice issues can be partisan issues. The question goes deeper than the simple observation that no one can recall a politician running for office on a platform designed to be "soft on

crime". With an issue with as many sides to it as the overcrowding crisis, with the enormous costs at issue, and with general and genuine uncertainty about most of the claims made in support of every proposed solution, the existing consensus among elected officials is a sure signal that something is wrong somewhere. There is today insufficient tension in the political process about solutions to crowding and that is unhealthy. It is unhealthy if for no other reason than the obvious fact that if there is no diversity in response to the prison population problem there will be no basis upon which we will be able to judge whether the response chosen was the correct one.

And how should the public be involved in the decision about how to select among punishment alternatives? Are the public as willing as elected officials seem to be to authorize huge sums of money for the construction of new prisons? Who takes charge of informing the public of the many dimensions along which punishment alternatives need to be evaluated? Are the people any less informed about these matters than elected officials? Would direct decisions by the electorate result in greater legitimacy for the punishment system? (see generally, Jacobs, 1983-84).

Recognizing these as difficult issues and questions makes their resolution no less important. The fact of the matter is that the problem of punishment alternatives is

being decided daily. The problem requires the resolution of both technical questions (utilitarian effectiveness, crime rate projections, and the like) and political questions. Whatever the outcome, it is clear that the scope of the discussion needs to get wider.

That something needs to be done is clear; some reform is required. But it is best that we not promise too much or expect to finish the job soon, because if we know anything about criminal justice, we know too well the truth of Samuel Taylor Coleridge's words: "Every reform, however necessary, will by weak minds be carried to an excess, that itself will need reforming".

FOOTNOTES

1. The consequences for parole in the growth of imprisonment in recent years is seldom discussed, nor is much attention typically given to the inevitable consequences of increases in imprisonment for the parole process, such as increased workloads and caseload sizes, given fixed expenditures. Certainly the growth in the parole population is in significant ways tied to the growth in the prison population, since it is still true, despite some movement to abolish discretionary release from imprisonment via parole, that the most common mechanism by which offenders are released from prison is by parole.

2. It is virtually impossible to distinguish rehabilitation from special deterrence. Many prefer to think of special deterrence as a special class of rehabilitation, a class wherein the treatment is fear. All forms of aversive conditioning, for example, are special deterrence.

3. There are several reviews of the empirical work on the utilitarian purposes, including Sechrest et al., 1979; Gottfredson, 1982; von Hirsch, 1985; Gibbs, 1975; and Cook, 1980).

4. Portions of this discussion draw upon Gottfredson and Hirschi, 1986.

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APPENDIX A:

WORKSHOP PROGRAM

SCHOLAR/PRACTITIONER WORKSHOP ON PRISON AND JAIL CROWDING

Committee on Research on Law Enforcement
and the Administration of Justice
Commission on Behavioral and Social Sciences and Education
National Research Council

October 15-16, 1986
Hotel Allerton
Chicago, Illinois

PROGRAM

Wednesday, October 15

8:00 a.m. REGISTRATION, COFFEE, CONTINENTAL BREAKFAST

9:00 WELCOME AND INTRODUCTION

Jonathan D. Casper, Chair, Working Group on Prison and Jail Crowding
James K. Stewart, Director, National Institute of Justice

9:30 THE DYNAMICS OF PRISON POPULATIONS

Facilitator: Alfred Blumstein, Carnegie-Mellon University

Presenter: Stephen Gottfredson, Temple University

Discussants:
Roger Tarling, Home Office, London, England
Lawrence Greenfeld, Bureau of Justice Statistics
Norman A. Carlson, Director, Federal Bureau of Prisons

10:45 BREAK

11:00 MEASURING CROWDING AND ITS CONSEQUENCES

Facilitator: Kenneth Schoen, Edna McConnell Clark Foundation

Presenter: Gerald Gaes, Federal Bureau of Prisons

Discussants:
Paul Paulus, University of Texas at Arlington
Thomas Coughlin, Director, New York State Department of Corrections
James W. Marquart, Mississippi State University

12:15 p.m. LUNCH

1:20 p.m. HOW DO COURTS MAKE POLICY?

Facilitator: James Jacobs, New York University School of Law

Presenters:
Malcolm Feeley, University of California, Berkeley, California
Roger Hanson, Justice Resources, Washington, D.C.

Discussants:
Alvin Bronstein, Director, National Prison Project
Robert Brown, Commissioner, Michigan Department of Corrections

2:30 CASE STUDY OF COURT POLICY-MAKING--Texas: Ruiz v. Estelle

Facilitator: Roger Hanson, Justice Resources

Discussants:
Steve Martin, Esq., Former Counsel, Texas Department of Corrections
William Babcock, Esq., Former Deputy Master, Federal District Court, Eastern District of Texas
Donna Brorby, Esq., Assistant Counsel for Plaintiffs, Ruiz v. Estelle

3:45 BREAK

4:00 FORECASTING: POLICY USES OF POPULATION PREDICTION MODELS

Facilitator: Jeffrey A. Roth, National Research Council

Presenters:
Alfred Blumstein, Carnegie-Mellon University
Kay Knapp, Executive Director, U.S. Sentencing Commission

Discussants:
Philip Renninger, Director, Pennsylvania Statistical Analysis Center
Stuart Readio, National Institute of Corrections Jail Center
Arnold Barnett, Massachusetts Institute of Technology

5:30-
7:30 p.m. RECEPTION AND CASH BAR

Thursday, October 16

8:00 a.m. COFFEE AND CONTINENTAL BREAKFAST

8:30 a.m. SENTENCING AND RELEASE STRATEGIES

Facilitator: Norman Carlson, Director, U.S. Bureau of Prisons

Presenter:
James Austin, National Council on Crime and Delinquency

Discussants:
Don M. Gottfredson, Rutgers University
Charles F. Wellford, University of Maryland
Louie Wainwright, Secretary, Florida Department of Corrections

10:00 BREAK

10:15 JAIL CROWDING: A CASE STUDY OF THE DISTRICT OF COLUMBIA

Facilitator: Malcolm Feeley, University of California, Berkeley, California

Discussants:
Background: Sean McConville, University of Illinois at Chicago
Inmates of D.C. Jail v. Jackson:
Mary McClymont, Esq., Counsel, National Prison Project
Michael Zielinski, Esq., Assistant Corporation Counsel, District of Columbia
Implications: Kenneth Schoen, Edna McConnell Clark Foundation

12:00 p.m. LUNCH

1:15 RESPONSES TO CROWDING

Facilitator: Jonathan D. Casper, Chair, Working Group on Prison and Jail Crowding

Presenter:
Michael Gottfredson, University of Arizona

Roundtable Discussants:
Joan Petersilia, Rand Corporation
James Jacobs, New York University Law School
Sally Hillsman, Vera Institute of Justice

3:15 CLOSING REMARKS

3:30 ADJOURN

APPENDIX B

WORKSHOP PARTICIPANTS

PARTICIPANTS
WORKSHOP ON PRISON AND JAIL CROWDING
October 15-16, 1986

James Austin, National Council on Crime & Delinquency

William Babcock, Executive Director, Pennsylvania Prison Society

Arnold Barnett, Professor, Massachusetts Institute of Technology

Alfred Blumstein, Dean, School of Urban and Public Affairs, Carnegie-Mellon University*

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Norman A. Carlson, Director, Federal Bureau of Prisons*

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James Circo, Executive Office of Human Services, Massachusetts

Lawrence A. Cobb, Senator, North Carolina

Thomas A. Coughlin, III, Commissioner, Department of Correctional Services, New York

Philip G. Dantes, Chair, Maryland Parole Commission

Doris Dease, Crime Victims Commission, Alabama

Gaylene Dumouchel, Administrative Secretary, National Research Council

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*Member, Working Group on Prison and Jail Crowding

Morris E. Easley, Jr., State Director of Probation and Parole, Louisiana

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Don M. Gottfredson, School of Criminal Justice, Rutgers University

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Stephen D. Gottfredson, Professor, Temple University

John Greacen, Chair-Elect, Criminal Justice Section, American Bar Association

Reuben Greenberg, Chief, Charleston Police Department, South Carolina

Lawrence Greenfeld, Bureau of Justice Statistics, Washington, D.C.

Anthony Guenther, Research and Evaluation Unit, Virginia Department of Corrections

Roger Hanson, Justice Resources, Washington, D.C.

Gloria Henderson, Senior Legislative Analyst, Florida

Sally Hillsman, Research Director, Vera Institute, New York City

Don Hutto, Executive Vice President, Corrections Corporation of America

Irwin Heinzelmann, Director, Wisconsin Correctional Services

Russ Immarigeon, Criminal Justice Abstracts, Massachusetts

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William D. Kelley, Jr., Director, Criminal Justice Coordinating Council, Atlanta, Georgia

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Kay Knapp, Executive Director, U.S. Sentencing Commission

Frank Kruesi, Executive Officer, Cook County State's Attorney's Office, Illinois

David Landis, Senator, Nebraska

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Ramon Rodriguez, Chairman, New York State Division of Parole

Helge Rostad, Justice of the Supreme Court, Norway

Jeffrey A. Roth, Senior Staff Officer, National Research Council

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Louie L. Wainwright, Secretary, Florida Department of Corrections*

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Dean A. Ziemke, Policy Analyst, Office of Court Operations, Wisconsin

Michael Zielinski, Deputy Corporation Counsel, District of Columbia

APPENDIX C:

BIOGRAPHICAL SKETCHES OF WORKING GROUP

BIOGRAPHICAL SKETCHES

WORKING GROUP MEMBERS AND STAFF

JONATHAN D. CASPER (Chair) is a senior research fellow at the American Bar Foundation and professor of political science at Northwestern University. He has taught at Yale, Stanford, and the University of Illinois. His research involves juror decision-making; plea-bargaining and sentencing in criminal courts; and civil and political rights in the United States. He is the author of American Criminal Justice: The Defendant's Perspective (1972) and The Implementation of the California Determinate Sentence Law (1982). He serves as secretary of the Law and Society Association, and the American Society of Criminology. He received his BA degree from Swarthmore College and MA and PhD degrees from Yale University.

ALFRED BLUMSTEIN is dean of the School of Urban and Public Affairs as well as J. Erik Jonsson professor of Urban Systems and Operations Research at Carnegie-Mellon University. He also serves as the chair of the Pennsylvania Commission on Crime and Delinquency, the state criminal justice planning agency for Pennsylvania. He served as director of the Task Force on Science and Technology for the President's Commission on Law Enforcement and the Administration of Justice (1966-1967), as chair of the National Research Council's Committee on Research on Law Enforcement and the Administration of Justice (1981-1984), and as chair of that committee's panels on research on deterrent and incapacitative effects (1976-1978), on sentencing (1980-1982), and on research on criminal careers (1983-1986). He is a fellow of the American Association for the Advancement of Science and of the American Society of Criminology and is a member of the Scientific Committee of the International

Society of Criminology. He has been president of the Operations Research Society of America (1977-1978) and was recently awarded its Kimball Medal. He is an associate editor of several journals in operations research and in criminology. He received a bachelor's degree in engineering physics and a PhD degree in operations research, both from Cornell University.

NORMAN A. CARLSON has been director of the Federal Prison System since 1970. He began his federal career at the United States Penitentiary at Leavenworth, Kansas, in 1957 as a parole officer, having previously worked as a correctional Officer with the Iowa State Department of Corrections. He has received numerous awards, including the highest award granted by the U.S. Department of Justice--the Attorney General's Award for Exceptional Service--in 1981. He is a member of the National Academy of Public Administration; a member of the American Correctional Association Delegate Assembly; and past president of the ACA, 1978-1980. He received his bachelor's degree in sociology from Gustavus Adolphus College in 1955 and his MA degree in criminology from the University of Iowa in 1957. In 1965 he was selected to spend a year at the Woodrow Wilson Institute of Public and International Affairs, Princeton University, as a fellow of the Institute.

MALCOLM M. FEELEY is professor of law at the University of California, Berkeley, where he is chairman of the Center for the Study of Law and Society and director of the Guggenheim Criminal Justice Program. His research concerns the history of plea bargaining, criminal court reform, and the role of special masters in prison litigation. He is the author of The Process is the Punishment (1980), The Policy Dilemma (1983), and Court Reform on Trial

(1984). He is an editorial board advisor to the American Bar Foundation Research Journal and a former trustee of the Law and Society Association. He received a BA degree from Austin College and a PhD from the University of Minnesota.

JAMES B. JACOBS is professor of law and director, Center for Research in Crime and Justice at New York University. He is the author of "Stateville: The Penitentiary in Mass Society" (1977), "New Perspectives on Prisons and Imprisonment" (1983), and numerous articles on prison social organization, politics, and legal environment. He received a BA degree from Johns Hopkins University and JD and PhD degrees from University of Chicago.

JACQUELINE M. MCMICKENS served as a corrections official in New York City for 21 years. She began her career as a corrections officer and was promoted up the ranks to commissioner of corrections, a post she held from 1983 through 1986. During that time, she served on the Governor's Task Force on Substance Abuse and on the American Correctional Association Task Force on Correctional Policy. She is a member of the National Institute of Corrections advisory board, the American Correctional Association, and The Guardian's Association. She received a BS degree in criminal justice and an MPA degree from John Jay College of Criminal Justice.

KENNETH F. SCHOEN is director of the program for justice at The Edna McConnell Clark Foundation, director of the Office of Compliance Consultants in the New York City Corrections System, and adjunct professor in the graduate school at the John Jay College of Criminal Justice. His research and policy interests concern community-based corrections, prison conditions litigation, and the privatization of prisons. He is author of "The Community Corrections Act" (1978) and "PORT: A New Concept of Community-based Correction" (1972), and he is co-author of Confinement in Maximum Custody (1981). He is a past recipient of the award of merit from the National Council on Crime and Delinquency. He is a member of the board of directors of the National Crime Prevention Council, and was a member of the National Advisory Committee on Juvenile Justice and Delinquency Prevention from 1978 to 1982. He holds BA and MSW degrees from the University of Minnesota.

LOUIE L. WAINWRIGHT recently retired as secretary of the Florida Department of Corrections, after a 34-year career in that department. During that time, he was a recipient of the American Correctional Association's E. R. Cass Award and of the Walter Dunbar Accreditation Achievement Award of the Commission on Accreditation for Corrections. He is a past president of the Florida Peace Officers Association, the American Correctional Association, the Association of State Correctional Administrators, and the Southern Correctional Administrators Association. He received an MS degree in criminal justice from Nova University.

JEFFREY A. ROTH, who served as the working group's study director, is the senior staff officer of the Committee on Research on Law Enforcement and the Administration of Justice. His interest is in the policy uses of social research, especially in the areas of criminal careers, taxpayer compliance, and pretrial release. He is a member of the American Society of Criminology, the Law and Society Association, the American Economic Association, and the American Statistical Association. He received BA, MA, and PhD degrees in economics from Michigan State University.

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