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TRUTH IN SENTENCING

A Report To The Governor

A Study of Sentencing Practices, Punishment Alternatives, and Local Confinement Facilities

June 1987

Governor's Crime Commission
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The North Carolina Governor's Crime Commission serves by statute as the chief advisory board to the Governor and the Secretary of Crime Control and Public Safety on criminal justice issues and policies. The Commission studies current trends and issues and periodically publishes special reports on their findings.

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INTRODUCTION

Task

The Governor's Crime Commission serves by statute as the chief advisory board to the Governor and the Secretary of the Department of Crime Control and Public Safety on criminal justice issues and policies. The Commission is responsible for serving the entire criminal justice system through planning, coordination, support and technical assistance. From time to time the Commission receives requests to study a particular issue.

In early 1985, various representatives from the criminal justice system expressed dissatisfaction with the current sentencing structure in North Carolina. Judges in particular voiced concern about the lack of integrity and credibility in the current system. They were dissatisfied with the percentage of the court-imposed sentence actually served in prison. Concerns were also raised regarding the most effective and efficient use of alternative punishment options and the appropriate use of local jails and satellite facilities.

In May of 1985, Governor James G. Martin requested that the Governor's Crime Commission undertake a comprehensive study of sentencing practices and punishment alternatives in North Carolina. In July of 1985, a Sentencing Committee of the Crime Commission was appointed to study these issues. The Committee was composed of judges, law enforcement officers, district attorneys, corrections officials, county and state officials, and legislators.

Process

The Sentencing Committee met from September 1985 through December 1986 in order to study sentencing practices, punishment alternatives, and local confinement facilities in North Carolina. At various meetings, data was presented describing trends in court-ordered sentences, release mechanisms from prison, and parole supervision. The Committee examined current state and local resources for punishing and rehabilitating offenders. Committee discussions included the purposes of sentencing, public safety issues, and credibility in sentencing. In July and August of 1986, the Crime Commission sponsored seven public hearings statewide to solicit opinions from interested professionals and citizens. After the hearings, the Committee refined its proposals. In December of 1986, the Committee presented its final recommendations to the Crime Commission.

Report

The recommendations in this report represent a system-wide review of the impact of the Fair Sentencing Act (FSA), the use of alternative punishment options and local jails, and the perceptions of many criminal justice professionals regarding problems in the system. From the beginning of the study, the Committee's foremost priority was to protect the public in the most effective manner. Noting that the FSA was a major change in sentencing which has only been in existence for six years, the Committee focused on revising rather than abolishing it, in order to improve its credibility and integrity without losing predictability and certainty of sentences. Finally, the Committee acknowledged the prison capacity problems in North Carolina and attempted to develop recommendations that will not increase the prison population.

The impetus for this study came predominantly from judges and other criminal justice professionals who expressed dissatisfaction with the results of the Fair Sentencing Act (FSA). The issue of "truth in sentencing" was raised by those who feel that our current system lacks credibility. For example, sentences issued in court are automatically shortened by statutorily-required day-for-day good time. As a result, the public is often confused by what they hear a judge sentence an offender to in court, compared to the amount of time the offender actually serves behind bars.

Issues were also raised by criminal justice officials concerning

community-based alternatives to prison. Over the past six years, alternative punishment programs have proliferated in North Carolina, including Community Service, Deferred Prosecution, Treatment Alternatives to Street Crime, Community Penalties, and Intensive Probation. Some of these programs are locally administered and some are state administered. Questions were raised about the best use of these community programs and about ways to divert more offenders from prison to Community Penalties and Intensive Probation Programs.

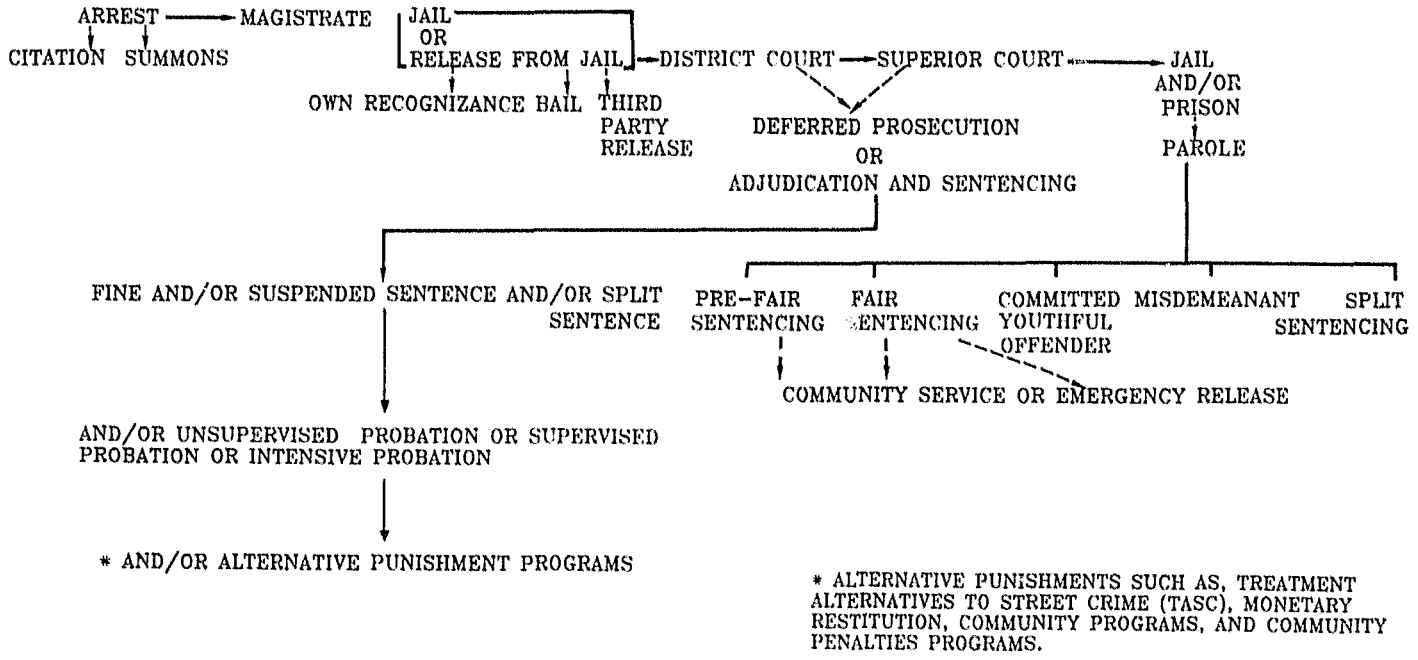
At the time this study began, local and state criminal justice officials were scrutinizing the utilization of traditional medium/maximum custody jails and utilization of minimum custody satellite jails. Over the past several years many of North Carolina's traditional jails have experienced routinely high populations and in some areas, serious overcrowding. Several counties have opened minimum custody satellite facilities in order to more appropriately confine certain offenders and to ease the overcrowding. Concerns were raised about confining more offenders (especially misdemeanants) in satellite facilities, funding the renovation and construction of these facilities, and developing standards for operating them.

This report sets forth statutory and administrative changes intended to ensure public safety, improve integrity in sentencing, and hold offenders accountable both in prison and in the community. It represents the efforts of the Governor's Crime Commission to improve the criminal justice system in North Carolina. These recommendations lay a foundation for future efforts to build a sentencing system that is clear, rational, and just.

THE NORTH CAROLINA CRIMINAL JUSTICE SYSTEM

Diagram I illustrates the processing of offenders through our criminal justice system. The diagram shows the stages of the system from arrest to adjudication and sentencing, to release.

DIAGRAM OF POTENTIAL PENAL SANCTIONS IN NORTH CAROLINA



* ALTERNATIVE PUNISHMENTS SUCH AS, TREATMENT ALTERNATIVES TO STREET CRIME (TASC), MONETARY RESTITUTION, COMMUNITY PROGRAMS, AND COMMUNITY PENALTIES PROGRAMS.

Arrests

1985 Arrests:	360,000	
Frequent Offenses:		
DWI	66,567	20%
Fraud	38,996	11%
Simple Assault	33,009	9%
Larceny	28,413	8%

Source: SBI

Jail

1985 Admissions to Jail:	200,000	
Awaiting Trial	33,053	90%
Serving Sentence	20,306	10%

Source: Jails and Detention Data

Prosecution

1985 Adjudicated/ Sentenced Cases:	236,000	
District Court:	187,000	83%
Plea of Guilty (Non-motor Vehicle)	136,968	70%
Plea of Not Guilty	58,034	30%
Superior Court:	41,487	17%
Plea of Guilty	37,910	91%
Plea of Not Guilty	3,577	9%

Source: Administrative Office of the Courts

Active Sentence

1985 Prison Admissions:	16,370	
Misdemeanants	8,349	51%
Felons	8,021	49%
Frequent Offenses:		
B&E & Larceny	5,132	31%
DWI	2,274	14%
Narcotics/Drugs	1,282	8%
Assault	1,480	9%

Source: Division of Prisons

Suspended Sentence

1984 Supervised Probation (New Admissions):	30,443	
Ordered to Pay Restitution ($16,681,561)		42%
Ordered to Pay Fines ($7,216,389		76%
Misdemeanants		73%
Felons		27%
Frequent Offenses:		
DWI	12,029	23%
B & E'S and Larceny/ Stopped	13,830	27%
Narcotics & Drugs	5,915	11%
Assaults	4,144	8%
Traffic Violations	3,657	7%
1984 Terminations from Probation:	22,897	
Successful (Full Term)	7,746	34%
Successful (Early Release)	9,885	43%
Unsuccessful	1,458	6%
Revocation (Technical)	1,924	8%
Revocation (New Crime)	1,637	7%
Other	247	1%

Source: Department of Correction

1985 Community Penalty Program Admissions:	352	
Plans Presented	196	
Plans Accepted by Judges	160	

Source: Division of Victim and Justice Services

1985 Community Service Programs:	37,302	
DWI Client Admissions:	25,093	
Successful Completions	22,273	90%
Unsuccessful Completions	2,315	10%
Hours Completed	817,862	
Fees Collected	$4,059,944	
Non-DWI Client Admissions:	12,209	
Successful Completions	8,319	89%
Unsuccessful Completions	1,063	11%
Hours Completed	386,522	
Fees Collected	$518,850	

Source: Division of Victim and Justice Services

Treatment Alternatives to Street Crime (TASC) Admissions:	2,753	
Nine Programs (11/85-11/86)		
Successful Completions	1,094	59%
Unsuccessful Terminations	765	41%
Unsuccessful Completions	130	7%

Source: Division of Mental Health, Mental Retardation, and Substance Abuse.

Parole

1984 Supervised Parole New Admissions	7,692	
Statutory Release Type:		
Pre-Fair Sentencing Act	1,378	
Fair Sentencing Act	2,424	
Misdemeanor	3,890	
Committed Youthful Offender	810	
Terminations:	5,653	
Successful Completion	4,243	75%
Successful Early Termination	465	8%
Unsuccessful	128	2%
Revocations	777	14%
(Technical 8%, New Crime 6%)		

Source: Division of Adult Probation and Parole

TRUTH IN SENTENCING

Historical Overview

There are two basic types of sentencing structures in the United States, indeterminate and determinate. In an indeterminate system the state statutes grant wide discretion to officials, judges, prison administrators and parole boards, not only to decide how much punishment an offender will receive, but also at what point he receives it. For example, in an indeterminate sentencing system, the judge is free to select from a number of authorized punishments. If an active prison term is imposed, the parole board has much discretion to shorten the term by paroling the offender. Prison administrators also may shorten the sentence by deducting time for good behavior. Indeterminate sentencing is based on a rehabilitative model of sentencing in which criminal justice professionals: (1) prescribe appropriate correctional treatment and restraint; and (2) decide when offenders have been treated so that they pose an acceptable low level of danger to the community and may be released under parole supervision. Until the mid 1970's, all states had indeterminate sentencing systems.

In the 1960's and 1970's, research accumulated demonstrating that correctional rehabilitation rarely succeeded in reforming criminals. In the early 1970's, legal researchers began to propose ways of making sentences more uniform, predictable, and fair. North Carolina, along with several other states, began considering the merits of a determinate sentencing system. In this type of system the discretion of prison and parole authorities is often curbed or eliminated. A determinate sentencing system uses explicit standards for determining how much an offender should be punished, and ensures that the amount of prison time, if any, that an offender will serve is fixed either at the time of conviction or soon thereafter. This type of system requires that either the legislature or an administrative agency created by the legislature set objective, quantitative guidelines, so that each punishment fits the crime. This type of sentencing system is based on the offender receiving his "just deserts" for the crime committed.

The movement toward enacting determinate sentencing legislation in North Carolina, as in other states, began because of the concern about disparity in sentence lengths and the perception that prisoners were suffering from the uncertainty of parole. In addition, from the beginning of the legislative process until the legislation became effective in 1981, there was concern about North Carolina's growing prison population. In the early 1970's the North Carolina Bar Association, through two influential reports, criticized the disparity of prison sentences imposed in similar cases, and called for a comprehensive study of sentencing philosophy and practices. This concern was heightened by new national statistics released in 1974 showing that North Carolina, at least since 1971, had the highest per capita imprisonment rate of any state. The development of what became the Fair Sentencing Act (FSA) began in 1974 when the General Assembly extended the Knox Commission's existence for a year and directed it to develop a coordinated state policy on correctional programs, and a basic philosophical approach toward inmate rehabilitation. The Commission decided that in order to develop a clear philosophy for criminal justice sanctions, a revision of sentencing laws was needed. As a result, the Commission focused its attention on drafting what eventually became the Fair Sentencing Act. The commission used a national study, "The Report of the Twentieth Century Fund Task Force on Sentencing," as a major guide in developing a new sentencing structure.

The Fair Sentencing Act

The Fair Sentencing Act (FSA) was drafted, redrafted, and revised over a period of eight years before it went into effect on July 1, 1981. It was intended to reduce unjustified variation in sentence lengths for felonies, and to make such sentences more predictable, but not necessarily more severe. The FSA set presumptive or standard sentences for most felonies, sharply curtailed parole release and parole supervision, established statutory day-for-day good time credits for inmates, and facilitated appellate review by requiring judges to explain in writing their reasons for giving sentences other than the presumptives.

The FSA contains many provisions which conflict with a true "just deserts" philosophy. For example, rehabilitation and incapacitation of offenders are included as goals of sentencing, along with punishment. The FSA increased the authority of prison officials to shorten sentences through statutory day-for-day good time credits and retained a ninety day period of re-entry parole. Under the FSA, judges retain much discretion and are not required to impose presumptive sentences if they make written findings of aggravating or mitigating factors to justify departure from the presumptive. Consequently, under the new felony classification system, the range of possible sentences remains wide. The FSA retains judicial discretion in the in/out decision (whether to suspend a sentence or give an active sentence), whether to grant youthful offender status to certain defendants, and whether to impose consecutive rather than concurrent sentences. The FSA exempts sentences imposed pursuant to plea bargains from the requirement that non-presumptive sentences be supported by written findings. There is no provision for proportionality review of sentences, i.e., review of fairness of the sentence in relation to the crime committed. North Carolina's current felony sentencing system is a hybrid of old and new concepts.

Results of the Fair Sentencing Act

The Institute of Government (IOG) of the University of North Carolina assessed the effects of the FSA by comparing data before and after the Act was passed. Studies released by the IOG indicate that length of active sentences clearly varied less after the FSA. There were indications that the disadvantage of black defendants in sentencing disappeared after the FSA.

CHART I

ALL FELONIES: DISTRIBUTION OF TOTAL ACTIVE MAXIMUM PRISON SENTENCE, 1976-77 TO 1984-85.

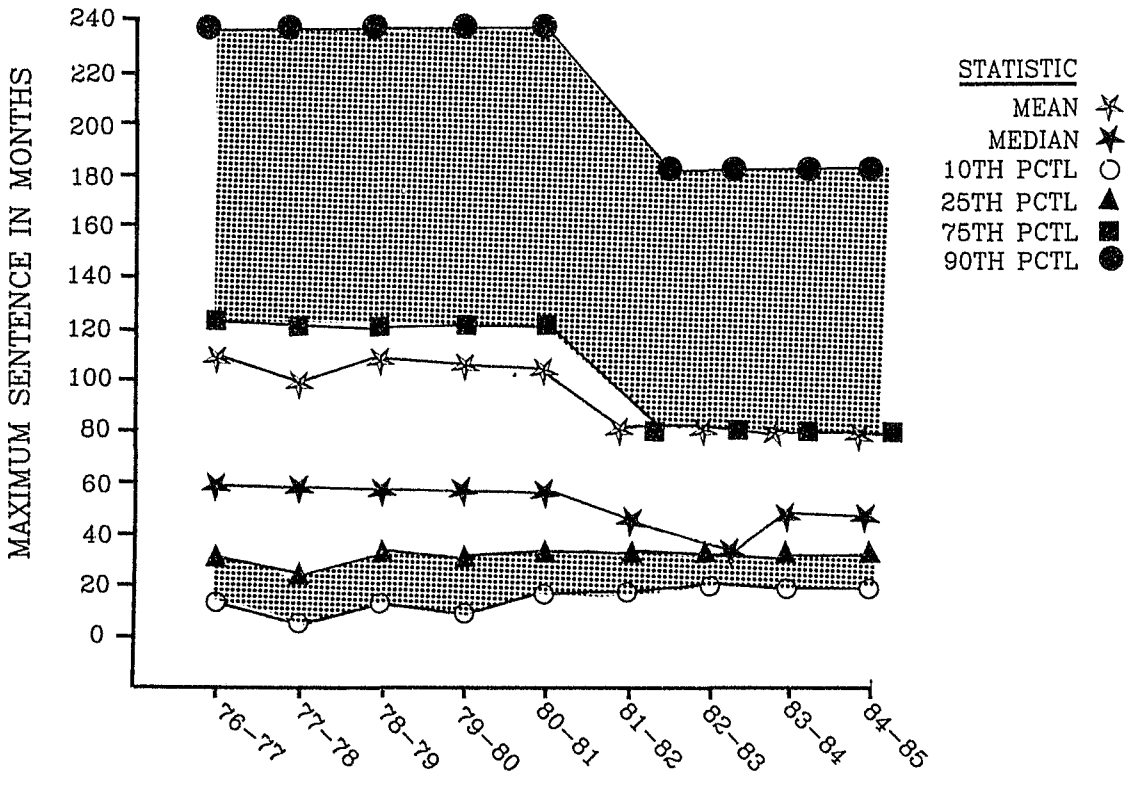
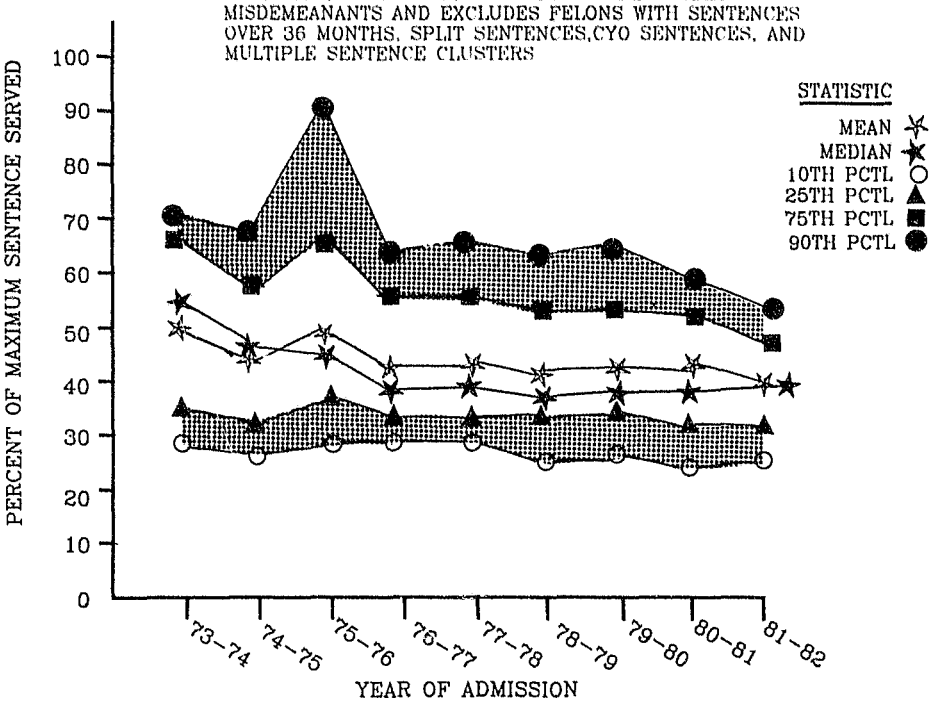


CHART II

DISTRIBUTION OF PERCENTAGE OF MAXIMUM SENTENCE ACTUALLY SERVED BEFORE FIRST RELEASE, BY YEAR OF ADMISSION, 1973–74 TO 1981–82. NOTE:EXCLUDES MISDEMEANANTS AND EXCLUDES FELONS WITH SENTENCES OVER 36 MONTHS, SPLIT SENTENCES,CYO SENTENCES, AND MULTIPLE SENTENCE CLUSTERS



Charts I and II were prepared by Stevens Clarke of the IOG and are included in his report *"Felony Sentencing In North Carolina, 1976 - 1985: Effects of Presumptive Sentencing Legislation."* Chart I illustrates the significant decline in both the average sentence length and the range of sentence lengths since the enactment of the FSA in 1981. Before the FSA, the length of the average felony sentence was 10 years; since 1981 it has dropped to slightly over 6½ years. The range in sentence lengths has declined dramatically, as is shown by the narrowing of the percentile distribution. In 1977, 80 percent of all sentences were between 16 and 240 months. By 1985, that range has narrowed to between 24 and 168 months.

Chart II illustrates the trend in the percent of a sentence that was actually served in prison for felony sentences of 36 months or less. Both the average time served and the range of time served as a percent of the court imposed sentenced declined. For 1973 admissions, the average time served was around 55 percent of imposed sentences. By 1982, inmates going to prison served an average of only 33 percent of imposed sentences. Chart II also graphically depicts the significant decline in the range of time served, from a percentile distribution of 28 to 70 percent down to a range of only 25 to 42 percent.

The length of time served in prison generally was shorter for two reasons: (1) most active sentences grouped around presumptive levels; and (2) presumptive sentences were set below pre-FSA average sentence lengths. The percentage of time served also was reduced by increasing good time from 8 days off for 30 days good behavior to 30 days off for 30 days good behavior. This is commonly called "day for day" good time.

Currently, the estimated percentage of a sentence actually served in prison is about 40 percent for sentences of nine years or more, and between 30 percent to nearly 40 percent for sentences from two to nine years. Table I shows how a 10-year sentence results in a prison term of only about four years. Basically, a 10-year court sentence becomes five years when an offender enters prison, and then is further reduced to about 4 years, if he earns gain time. The "day for day" good time credit is projected forward by the Department of Correction when an inmate first enters prison. This is done because it is required by law to set a "projected release date" at admission. The additional time taken off a sentence, such as gain time or mandatory parole, is deducted from that "projected release date," which compounds the effect of good time credits on actual time served. For example, an offender given a 10-year sentence immediately gets 5 years taken off for good behavior while in prison, but actually is in prison for about 4 years. He gets more time off his sentence for supposedly being good in prison than he actually serves in prison.

Judges and district attorneys are not content with these deductions from courtroom sentences. In response, they appear to be choosing longer sentences in order to ensure an appropriate amount of punishment for offenders.

Chart III seems to indicate an erosion of confidence in the FSA manifested by the steady increase in sentences above the presumptive level. In 1982, only 19 percent of all felony sentences were above the presumptive level. By 1986, that figure had increased to 46 percent

Many officials are scrutinizing the effectiveness of 90 days of supervision after release from prison, since this does not provide adequate opportunity for reintegration into society and accountability for the crime, especially in terms of victim restitution. Concerns about the percentage of the court-ordered sentence served in prison, the amount of discretion in the system, and offender accountability have provided the impetus for revising the Fair Sentencing Act.

(Portions of this material were excerpted from various articles written by Stevens H. Clarke, Institute of Government, University of North Carolina at Chapel Hill.)

TABLE I

VARIOUS CREDITS TOWARD PRISON SENTENCE

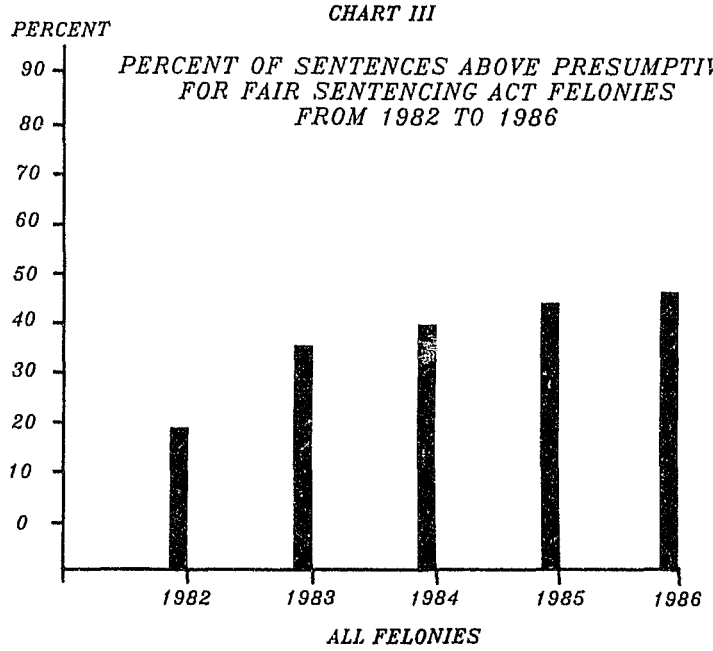
Using average values of credits for good time, gain time, emergency time, jail credit, and lost good time for infractions, a 10 year sentence would be served as follows:

SENTENCE	10 years
Good Time	– 5 years
Gain Time	– 6 months and 18 days
Emergency Gain Time	– 3 months and 2 days
Mandatory Parole	– 3 months
Good Time Lost for Rule Infraction	+ 28 days
TOTAL TIME IN JAIL AND PRISON	= 4 years and 8 days*

- Actual time served is approximately 40% of the original sentence.
- Good time awarded is 50% of sentence but more than 124% of the actual time served.
- Good time lost for rule infractions is only about 1.5% of sentence.
- Regular gain time and emergency gain time together are about 8% of the original sentence but almost 20% of the actual time served.

* Based on an average of 40 days of jail credit.

CHART III



Recommendation

The Governor's Crime Commission recommends that sentencing practices in North Carolina be revised to attain "truth in sentencing" and increased offender accountability. The General Statutes should be changed to extend the time an offender is under correctional supervision, by redefining court-imposed punishment as a combination of an active sentence in prison and mandatory supervised time in the community.

Table II lists the presumptive term, maximum term and actual time served in prison on a presumptive sentence for FSA felony classes. Table II also shows how an offender sentenced under the new system could spend approximately the same amount of time in prison as he would under current law.

The General Statutes should be revised to eliminate good time credits and to allow for gain time credits to be lost for disciplinary infractions. These changes will ensure public safety, improve integrity in sentencing and hold offenders accountable both in prison and in the community. The Governor's Crime Commission recommends that the General Statutes be revised as follows:

(1) Redefine court-imposed presumptive sentences by changing the phrase "prison term" to "supervision term" in GS 15A-1340.4 and by substituting the word "supervision" for the word "imprisonment" in GS 15A-1340.4 (f); also, redefine maximum sentences in GS 14-1.1 (a) 3-10 and (b) by substituting the word "supervision for the word "imprisonment."

(2) Define "supervision term" as a period of supervision by the Department of Correction to include an initial prison term and a mandatory parole term.

(3) Require a mandatory minimum parole term of eighteen months in all cases where the sentencing judge imposes a "supervision term" of thirty-six months or more.

(4) Eliminate good time credits, but retain gain time credits with some modifications. Credit may be granted for meritorious conduct as well as for working and/or participating in a rehabilitative program. Such credits earned will be subject to forfeiture for misconduct.

Impact

Effective October 1, 1987, these revisions would leave intact many of the positive aspects of the Fair Sentencing Act while moving it closer to a flat sentencing structure, so that the actual time served in prison will represent a higher percentage of the court-imposed prison term. The new "supervision term," a combination of an active prison term and a mandatory parole term, will increase the length of time an offender is under correctional control. These revisions will improve offender accountability for crime, and will bring North Carolina much closer to the goal of "truth in sentencing."

TABLE II

	CURRENT STRUCTURE			NEW STRUCTURE[1]	
Felony Class	Presumptive Term	Current Maximum	Average Time Served on Presumptive Sentence	Active Time	Parole Time
Class C	15 years	50 years	6 years	7 years	8 years
Class D	12 years	40 years	5 years	5.5 years	6.5 years
Class E	9 years	30 years	3.5 years	4 years	5 years
Class F	6 years	20 years	2.5 years	3 years	3 years
Class G	4.5 years	20 years	2 years	2 years	2.5 years
Class H	3 years	10 years	10 months	1 year	2 years
Class I	2 years	5 years	7 months	8 months	16 months
Class J	1 year	3 years	6 months[2]	7 months	6 months[3]

1. Example of new correctional supervision term, if presumptive sentence is imposed that equals resent actual time served in prison.

2. Presently an inmate serving a prison term of less than 18 months is not eligible for 90 day re-entry parole. Accordingly, the actual time served is a larger percentage of the active sentence.

3. Under proposed revision all inmates given an active term in prison must have a minimum parole term of six months.

INCREASED USE OF LOCAL CONFINEMENT

Historical Overview

In North Carolina throughout the colonial period, counties were exclusively responsible for corrections. There was no state prison system. The majority of those held in county jails were defendants waiting for their cases to be heard. During this period the function of jails was limited because imprisonment was virtually unheard of as a punishment ranging from public ridicule to physical torture - even to death. In 1741, the colonial General Assembly passed a law requiring each county to build a courthouse, a prison (jail), and stocks. This requirement was not enforced.

In 1791, legislation was proposed to establish a state-operated penitentiary to reform criminal offenders. The proposal failed, but the reform movement continued. In 1868 the State Constitution abolished all forms of corporal punishment and limited the use of the death penalty. Imprisonment was substituted as the usual punishment for crimes, along with fines. The Constitution also directed the General Assembly to construct a state penitentiary. However, Central Prison was not completed until 1884. As a result, between 1868 and 1884, the county jail system became severely overcrowded and financially strained. In order to alleviate overcrowding and respond to serious road construction and maintenance needs, legislation was passed in 1867 authorizing superior court judges to place offenders on county chain gangs. Removing prisoners for road work immediately alleviated the jail overcrowding problem. Within ten years the practice of working prisoners on the roads became widespread. Even after a state prison system developed, counties kept able-bodied offenders in jails to perform road work, and sent only physically unfit prisoners to the state system.

Public disenchantment with county corrections grew as the State Board of Public Charities repeatedly called attention to miserable jail conditions. In 1931, the state finally took charge of most convicted prisoners, and in 1957, the General Assembly created a Prison Department. The practice of assigning only inmates with short sentences to county jails still prevails.

(Portions of the material for this section were excerpted from articles written by Michael Smith, Institute of Government, University of North Carolina at Chapel Hill.)

Responsibilities

Currently, North Carolina jails represent a complex combination of joint local and state responsibilities. Counties provide funds for the construction and operation of jails. County personnel (Sheriff's Department) supervise prisoners and operate the jails on a daily basis. However, the state contributes to jail budgets by partly reimbursing counties for keeping certain prisoners. State-mandated jail standards are monitored by state inspectors who have the authority to close jails for non-compliance. State officials, the Secretary of Correction and the Parole Commission, issue rules for prisoner conduct, authorize credit for good behavior, and authorize paroles.

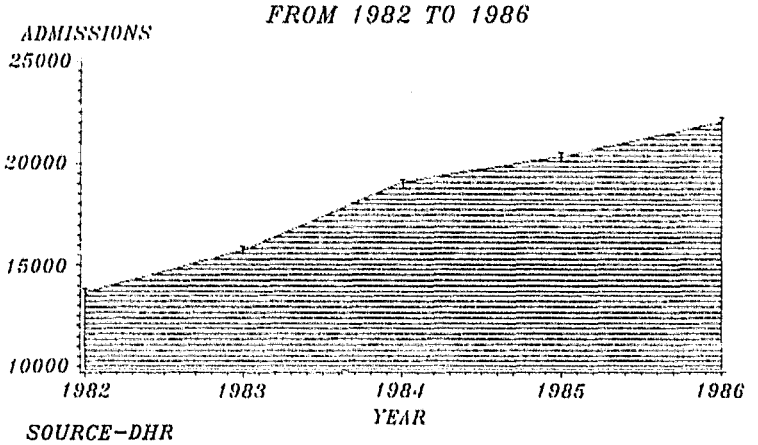
Overcrowding

North Carolina has 97 county jails. The state rates the maximum capacity of the jails on a given day at 5,813. This figure is frequently unrealistic due to special housing needs and supervision of female inmates. Between 1976 and 1985 the average daily population in jails went from 2,344 to 4,142, an increase of 77%. In 1985 more than 208,000 persons were detained in a jail facility for some period of time. Around 160,000 were eventually released on bail or on their own recognizance, and approximately 28,000 were held until their court date. Around 22,000 offenders served an active sentence in a county jail in 1985.

In 1979, the Local Confinement Act required that offenders given active sentences of between 30 days and 180 days serve their time in jail, unless certain conditions are certified. The state partly reimburses counties for these offenders on a per diem basis. In 1983, the Safe Roads Act created five levels of punishment for persons convicted of Driving While Impaired (DWI) which combine

CHART IV

NORTH CAROLINA ADMISSIONS TO JAILS TO SERVE A SENTENCE FROM 1982 TO 1986



SOURCE–DHR

active time (from 24 hours to 14 days), community service hours and loss of driving privileges. The Local Confinement Act and the Safe Roads Act (1983) have created serious overcrowding problems in many jails.

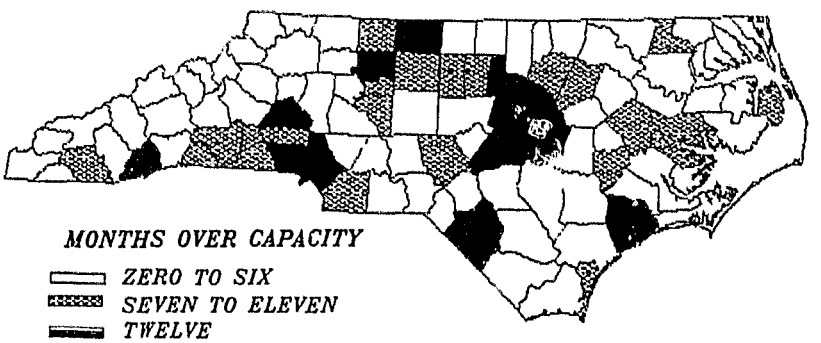
Chart IV illustrates the significant and steady increase in admissions of offenders to local jails to serve a sentence over the last five years. In 1982 there were less than 14,000 such admissions. By 1986, there were almost 22,000 admissions, an increase of about 60 percent.

Since 1981, counties have had the legal authority to declare their jails filled to capacity and to transfer both sentenced and pre-trial prisoners to state facilities. Counties must then reimburse the state for these prisoners on a per diem basis. Because the state prisons are crowded, the 1986 General Assembly authorized the state to make per diem payments to local jails for housing sentenced prisoners whose terms are more than above 180 days. In 1986, thirty-two of the jails reported being over capacity for at least six months of the year and thirteen jails were over capacity at some time during all twelve months of the year.

Map I geographically depicts the jail overcrowding situation across the state. As one would expect, the urban areas tend to have a greater, or at least a more consistent problem with jail overcrowding.

MAP I

COUNTIES WITH JAILS OVER CAPACITY BY MONTH DURING 1986



SOURCE–DHR

Satellite Jails

The overcrowding situation in local jails has produced a significant increase in admissions to prison for offenders convicted of driving while impaired. In 1981, there were 874 admissions to prison for drunk driving. By 1985, that number had increased to 2,274. Processing these short-term offenders through the Department of Correction is very expensive and inefficient, both in terms of utilizing limited prison resources, and in providing appropriate punishment. One alternative is to send offenders to a satellite jail or work/study release center operated by the county. Such facilities currently exist in Mecklenburg and Robeson counties. There, offenders voluntarily agree to follow certain rules and regulations and agree to pay for their room and board. They continue to work or go to school during the day and spend nights in the minimum custody facility. If the offender breaks the rules or doesn't pay boarding expenses, he returns to the regular maximum custody jail to serve the remainder of his sentence.

The most recent analysis of traditional jail inmate housing shows that it costs approximately $25 per day per inmate for housing in a maximum/medium custody unit. The federal government pays this amount to house federal prisoners in local jails in North Carolina. This figure is much higher than the unit cost per day at minimum custody facilities operated by the Department of Correction (DOC). Most of the DOC units operate at a cost of between $15 and $19 per inmate per day. The cost of a minimum custody satellite jail operating 24 hours a day, seven days a week, as a work/study release center should be much less than $25 per day per inmate. The satellite facility in Mecklenburg County operates at a per unit cost of only $5.60 per day, not including utility, capital or debt servicing costs. Mecklenburg County collects $25 from the federal government for federal prisoners and $23.50 for state prisoners ($12.50 from DOC, and $11 from the inmate). Last year the Mecklenburg satellite facility saved the county an estimated $2.5 million.

Over-populated jails and prisons are vulnerable to lawsuits. In this climate, certain traditional practices are being questioned, and new ideas are being considered. The use of minimum custody satellite jails is being explored as both a means of alleviating crowding in the state system, and as a means of facilitating continued employment in the community. However, many sheriffs and county officials are reluctant to initiate and operate minimum custody, work/study release centers because current North Carolina law and operating standards do not specifically address this type of facility. The Division of Facility Services of the Department of Human Resources is in the process of developing new standards for all types of jail facilities. A Task Force on Jail Standards has been appointed by Secretary Kirk and is expected to complete its report by April of 1987. The primary emphasis of this task force will be on physical plant, staffing, dietary, and recreational standards for satellite jails.

A major obstacle to the establishment of county-administered minimum custody units is the initial cost of construction or renovation. Across the state, there are many vacant buildings such as closed schools which could be renovated and turned into minimum custody units. County officials are reluctant to fund such projects due to budgetary constraints and the ambiguity surrounding the sheriff's authority to run such a facility and charge a "work release" fee in excess of the mandated $6 a day "jail" fee. Mecklenburg County currently charges $11 under the assumption that its satellite facility is not a "jail."

Recommendations

The Governor's Crime Commission recommends that the North Carolina General Assembly enact legislation to:

1) Give explicit authority to sheriffs to establish and maintain minimum custody detention facilities as "satellite jails" or "work/study release centers" and to charge a "work release" fee in excess of the present $6 a day jail fee, up to $12.50 per day;

2) Require the North Carolina Department of Correction to reimburse local units of government $12.50 per day for housing female offenders in local confinement facilities; and,

3) Establish a statewide construction/renovation assistance program for local correctional facilities operating as work/study release centers. Funds for the program would be generated by tax-exempt lease-purchase bonds issued by a non-profit corporation created solely for that purpose. The facilities would be operated and owned (once the debt has been retired) by the local unit of government to which the loan was issued. Guidelines would be promulgated by the Department of Correction as to work release procedures, good/gain time credits and risk assessment for offenders sentenced to these local facilities.

Misdemeanants

North Carolina is one of the few states that confines traffic offenders and other misdemeanants in the state's prison system. In many states only felons are admitted to the state's prison system, while misdemeanants are confined in local jails.

As Chart V shows, there was a decline in misdemeanor admissions to prison in mid-1970's. Since 1978, however, there has been a steady increase in the number of misdemeanor admissions to the state prison system. There were 4,893 misdemeanor admissions in 1978. By 1986,

that figure had increased by 75 percent, to approximately 8,600. Attempts to change this trend, such as the Local Confinement Act of 1979, have been blunted by the emphasis on drunken drivers and the ability of sheriffs to declare their jail facilities filled to capacity.

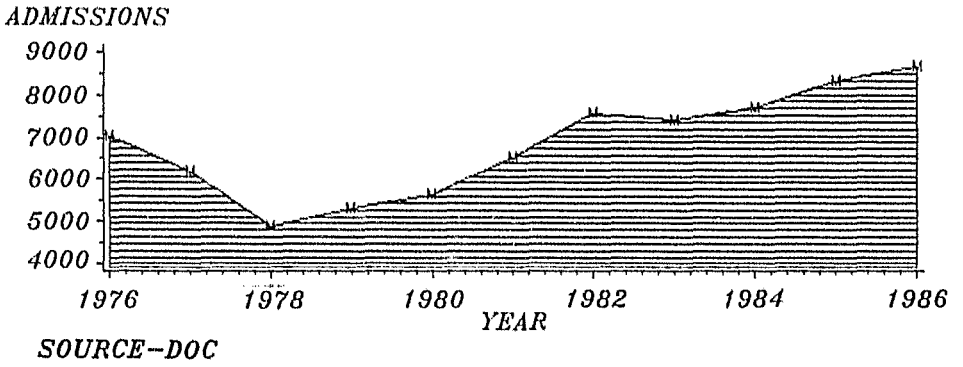
Map II graphically depicts the counties which sentenced misdemeanants to prison. The similarities between Map I and Map II are noteworthy, illustrating the correlation between overcrowded jails and the admission to prison of misdemeanants.

The average length of stay in prison for misdemeanants is five months. Processing these short term offenders through the Department of Correction can be very inefficient, both in terms of utilizing limited prison resources, and in providing appropriate punishment.

Recommendation

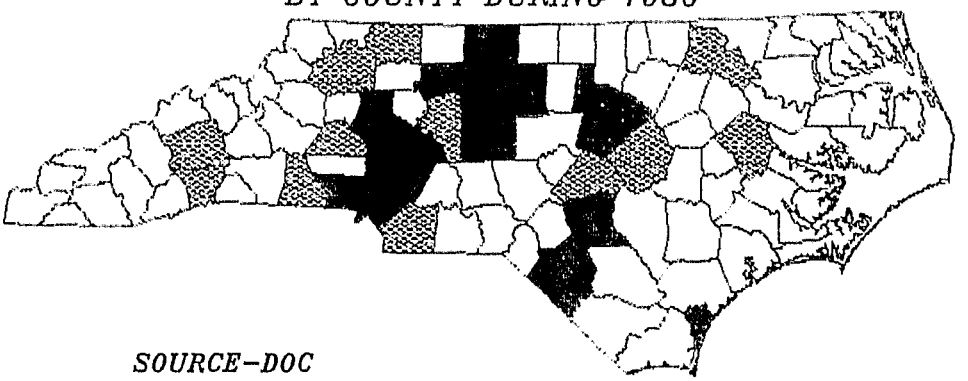
The Governor's Crime Commission recommends that the North Carolina General Assembly enact legislation prohibiting the sentencing of a misdemeanant to a state correctional facility, unless the defendant has first served an active term in jail or prison, or has been or currently is on supervised probation.

CHART V
NORTH CAROLINA ADMISSIONS TO PRISON FOR MISDEMEANOR CRIMES FROM 1976 TO 1986



SOURCE–DOC

MAP II
MISDEMEANANT ADMISSIONS TO PRISON BY COUNTY DURING 1986



SOURCE–DOC

LESS THAN 50 INMATES *50 TO 99 INMATES* *100 TO 267 INMATES*

Traffic Offenders

In 1985, there were 833 admissions to prison for traffic offenses other than DWI. As of June 30, 1986, there were 363 inmates in our state correctional system for non-DWI traffic offenses. These offenders could serve their time in a locally maintained facility at a reduced cost to the state and with greater rehabilitative potential for them. The use of county-run satellite jails or work/study release centers can more efficiently punish these offenders while allowing them to continue working or do community service and reimburse the county for their detention expenses. This community-based sanction can also reduce the criminalizing effects of an active term in prison.

Obviously there are certain serious traffic offenses which indicate that the defendant presents a greater threat to public safety. In these instances, a longer term of confinement and incapacitation of the offender's threatening behavior (ie. his driving) may be warranted.

Recommendation

The Governor's Crime Commission recommends that the North Carolina General Assembly consider developing legislation reducing the maximum to 12 months for all misdemeanor traffic offenses except those of hit and run, death by motor vehicle, driving while impaired, DWI resulting in death and driving while license has been revoked.

EXPANSION OF ALTERNATIVE PUNISHMENT IN THE COMMUNITY

Changing Purposes of Punishment

From the Middle Ages through the seventeenth century, sanctions for those who disobeyed the law were based on the philosophy that human beings were naturally evil and that crime was a form of sin. It was believed that the only way to fight crime was through severe punishment because offenders could not be reformed. The eighteenth century Enlightenment philosophy changed the view of humans from sinful beings to rational beings who strove to achieve personal self-interest. Crime became viewed as an expression of self-interest. The belief was that if the gain from illegal behavior outweighed the consequences, i.e., the punishment, then an individual would engage in illegal behavior. As a result of this new philosophy, legal codes were written to make punishment more certain. In addition, prisons and asylums were built as places to more humanely punish offenders.

By the end of the nineteenth century, a new sanctioning reform movement began. Reformers argued that prisons had no rehabilitative effect on offenders, but simply served as warehouses for isolating offenders from society. The new reform movement called for the rehabilitation of offenders through treatment and educational and industrial training. Instead of fitting the punishment to the crime, the punishment was fit to the individual offender, depending on his or her needs. Three correctional innovations also developed during this time — parole, probation, and the abolition of capital punishment. The rehabilitation philosophy remained basically unchallenged during the first half of the twentieth century.

Rehabilitative programs were heavily criticized in the 1960's and 1970's as crime rates soared and economic conditions worsened. In response to the growing offender population, a variety of correctional programs were established. A new correctional philosophy developed which continued to emphasize rehabilitation rather than punishment. This new philosophy focused on the reintegration of the offender into the community. Reformers encouraged treatment of offenders in a community setting wherever possible. They emphasized the high cost and negative effects of institutionalizing offenders compared to community corrections. Obviously, correctional philosophies have changed over time, in response to changed attitudes and needs. Today, correctional programs must often attempt to meet competing purposes of sanctioning.

Growth of Alternative Programs in North Carolina

Until the late 1970's, a judge's primary alternative to incarcerating an offender was to suspend an active sentence and order supervised probation in the community. Since that time, North Carolina has developed various programs designed to more appropriately punish offenders and hold them accountable to their communities and victims.

North Carolina currently has a variety of alternative sanctioning programs relevant to different stages of sentencing. Some programs exist statewide, while others operate only in certain parts of the state.

Pre-trial release programs are diversionary programs/processes developed as an alternative to cash bail and as an alternative to awaiting trial in jail for those individuals who meet specified criteria. Many North Carolina jurisdictions use the pretrial release process informally as an alternative to bond release. In other words, the district attorney sets the release conditions instead of going through a "formal" program.

There are two formal pre-trial release programs in North Carolina, in Mecklenburg and Wake counties. While both programs were originally established as alternatives to posting bond, they are viewed today as one solution to jail overcrowding as well. The effectiveness of these programs can be determined by reviewing the average failure to appear rate of these and similar programs nationwide. Comparing the rates of these two pro-

grams with those found in a study sponsored by the National Institute of Justice in Washington, D.C., the average failure to appear rate falls within or well below the average of programs across the country. In addition, according to the Mecklenburg County Program, more than $36 million in jail costs have been avoided and more than $7 million in bond fees have been saved since the program began in 1971.

Deferred prosecution programs are a type of pre-trial intervention program developed as an alternative to criminal prosecution. Successful completion of the program by a defendant results in a dismissal of charges. Deferred prosecution takes place after an individual has been arrested and charges have been brought before the court by the prosecutor but before the trial. Defendants who are chosen to participate in deferred prosecution programs are diverted from the criminal prosecution process and are placed under voluntary supervision, which can be either supervised or unsupervised probation. Fifteen programs now operate in district attorneys' offices across the state. These programs are located in Judicial Districts 5, 6, 10, 14, 15A, 15B, 17B, 18, 22, 24, 26, 27A, 28, 29, and 30.

Restitution is a correctional philosophy which holds that offenders should reimburse their victims for the value of what was taken from them. Restitution programs focus on victims' needs and offender accountability. Restitution in North Carolina exists in three forms - financial restitution, community service, and victim compensation.

In 1937, the North Carolina General Assembly provided statutory authority for the practice of ordering monetary restitution as a condition of a suspended sentence. In 1977, changes were exacted in the General Statutes with regard to conditions of probation. These changes significantly increased the use of monetary restitution as an aspect of criminal sentencing. Today restitution is used by the sentencing judge in three ways; as a condition of probation (unsupervised or supervised), work release, or parole.

In 1983, the General Assembly required that Clerks of Court collect data concerning the amount of restitution monies ordered, collected, and disbursed, for research being conducted by the Governor's Crime Commission. Data was collected from 83 of the 100 counties. In 1983, the total amount of restitution ordered by judges in the reporting counties was over $10 million. In addition, over $4.5 million was disbursed to victims or to the state for court costs, fines, or related items.

Community service programs assign and monitor community service placements for offenders. Amendments to the N. C. General Statutes in 1979 increased judges' discretionary authority to order community service as a condition of probation. In 1981, five local programs requested assistance from the Governor's Crime Commission to operate Community Service Restituion Programs. The General Assembly appropriated funds in the form of a grant for three consecutive years from 1981-1983. In 1983, the General Assembly passed the Safe Roads Act which established community service as a sanction for DWI offenders. The two programs merged and are now administered by the Department of Crime Control and Public Safety in each judicial district.

There are three ways that community service is used today by prosecutors and judges - as a condition of deferred prosecution, as a condition of supervised probation (referred to as court-ordered community service), and as a condition of early release parole (referred to as community service parole). At least one community service coordinator is located in each judicial district in the state. There are now four types of community service programs: (1) DWI community service; (2) first offender (felony and misdemeanant) community service; (3) probationary community service; and (4)community service parole.

Offenders who are placed in DWI community service programs must perform either 24, 48, or 72 hours of community service. According to the Division of Victim and Justice Services, in 1985, more than 800,000 hours were completed and more than $4,000,000 in fees were collected from offenders in DWI programs across the state.

Non-DWI community service includes first offender and probationary community service programs. In 1985, more than 300,000 hours were completed and more than $500,000 in fees were collected by offenders in non-DWI programs. Early Release Parole, or community parole, is also a component of community service programs. In 1984, legislation was passed allowing the early release of prisoners on community service parole. Offenders who are released to the program must perform 50 hours of community service for every month of early release from prison, until they have completed at least their minimum sentence imposed under the Fair Sentencing Act. Offenders who participate in the program must be non-dangerous prisoners who have been placed under the supervision of an intensive probation/parole officer, a community penalties plan, or a community service restitution program. Since the program began in April 1985, 50 clients have successfully completed the program. Two hundred and fifty clients are currently in the program.

Treatment Alternatives to Street Crimes (TASC) programs were established in 1972 for persons

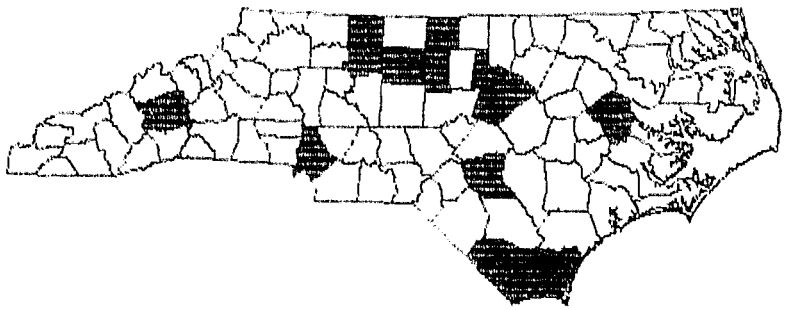
with substance abuse problems who are being processed through the criminal justice system. TASC services can be used in lieu of, or in addition to sentencing judgments. Offender participation in TASC programs may be required as a condition of pretrial release, deferred prosecution, alternative sentencing plans, regular intensive probation or parole. TASC program staff monitor the progress of offenders in treatment programs and report back to appropriate criminal justice officials.

Eleven TASC programs now operate in North Carolina with a combination of state and federal funds administered by the Governor's Crime Commission. They are located in Raleigh, Charlotte, Greensboro, Winston-Salem, Wilmington, Durham, High Point, Greenville, Asheville, Burlington, and Fayetteville. Map III indicates the counties covered by TASC programs in North Carolina. According to the Division of Mental Health, Mental Retardation, and Substance Abuse Services of the Department of Human Resources, from November of 1985 to November of 1986, 2,916 persons were screened by TASC projects; 2,753 persons were accepted into programs; and 1,094 persons successfully completed the programs. (It should be noted, however, that this data represents 9 programs, and that 4 of the remaining programs did not begin operation until November 1, 1985.)

Intensive probation programs are designed for prisoners who would otherwise be sent to prison. Judges may sentence an offender to intensive supervision in lieu of an active prison sentence, thereby reducing the number of offenders being sent to prison. Clients are selected carefully, using guidelines and selection criteria which take into consideration the level of risk posed to the community.

MAP III

T.A.S.C. PROGRAMS SERVICE AREA



NOT PLANNED *OPERATING*

SOURCE–DHR

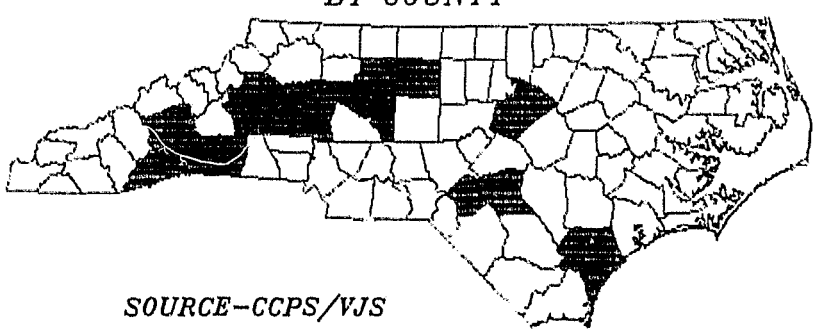
In 1981, the General Assembly authorized the establishment of "a program of intensive supervision." The Department of Correction established eight intensive probation "teams." Each team consists of a surveillance officer who ensures that an offender complies with the program conditions, and an intensive officer who provides counseling and skill training for offenders. The programs are located in Greensboro, Winston-Salem, Raleigh, Charlotte, Asheville, Fayetteville, Wilmington, and Salisbury. There is also an intensive parole program operating in Guilford County. In 1986, the General Assembly provided funding for thirty-six additional Intensive Probation teams.

According to the Division of Adult Probation and Parole, 392 clients were under intensive probation supervision in 1985, and 35 were under intensive parole. If used as intended, intensive probation/parole can help relieve prison overcrowding at an acceptable cost. While each of the 17,000 inmates in North Carolina's prisons today costs taxpayers approximately $32 a day, intensive probation costs approximately $6.50 a day per client. In addition, intensive probationers have completed a total of 21,256 hours of community work as conditions of their probation sentences.

The Community Penalties Program develops specific punishment plans for prison-bound defendants, combining sanctions as appropriate for the best interest of the community, the victim, and the offender. A

MAP IV

COMMUNITY PENALTIES PROGRAMS SERVICE AREA BY COUNTY



SOURCE–CCPS/VJS

NOT PLANNED *OPERATING*

punishment plan may include incarceration (even for first offenders), supervised probation, community service restitution, victim restitution, fine, etc. These programs provide highly structured, individualized plans so that each offender remains in the community, continues to support himself and his family, and makes restitution to the victim of his crime. Intensive probation also may be included as a part of a Community Penalties plan in order to provide greater supervision of a defendant while he remains in the community. Community Penalties plans for property offenders also allow maximum flexibility in dealing with a large and diverse group of offenders and victims.

In 1982, the "Report of the Citizen's Commission on Alternatives to Incarceration" recommended that a statewide community-based penalties program be created to divert all appropriate nonviolent offenders from the prison system. In 1983, the General Assembly authorized the establishment of five Community Penalties grant programs; and, in 1986, funding was provided for four additional programs. The ten programs are now funded through the Division of Victim and Justice Services. They are located in Buncombe, Guilford, Wake, Cumberland, Catawba, Iredell, Forsyth, New Hanover, and McDowell counties. Map IV shows the areas covered by community penalties programs and, more importantly, the counties that do not have these programs for offenders.

In 1985, 196 plans were presented in court. Of those, 160 were accepted by sentencing judges. In addition, approximately $9,000 in restitution was paid by these clients. In light of the success of these programs, the Community Penalties Programs should be expanded statewide.

Recommendations

1) The Governor's Crime Commission recommends that the General Assembly increase the TASC Program budget of the Division of Mental Health, Mental Retardation, and Substance Abuse Services by $202,000 in order to maintain these programs in the 1987-88 biennium. (This amount is being requested by the Department of Human Resources in its expansion budget.)

2) The Governor's Crime Commission recommends that the General Assembly appropriate to the Division of Victims and Justice Services of the Department of Crime Control and Public Safety the sum of two million dollars in each fiscal year of the biennium 1987-1989, to expand the Community Penalties Program statewide.

Benefits of Alternative Programs

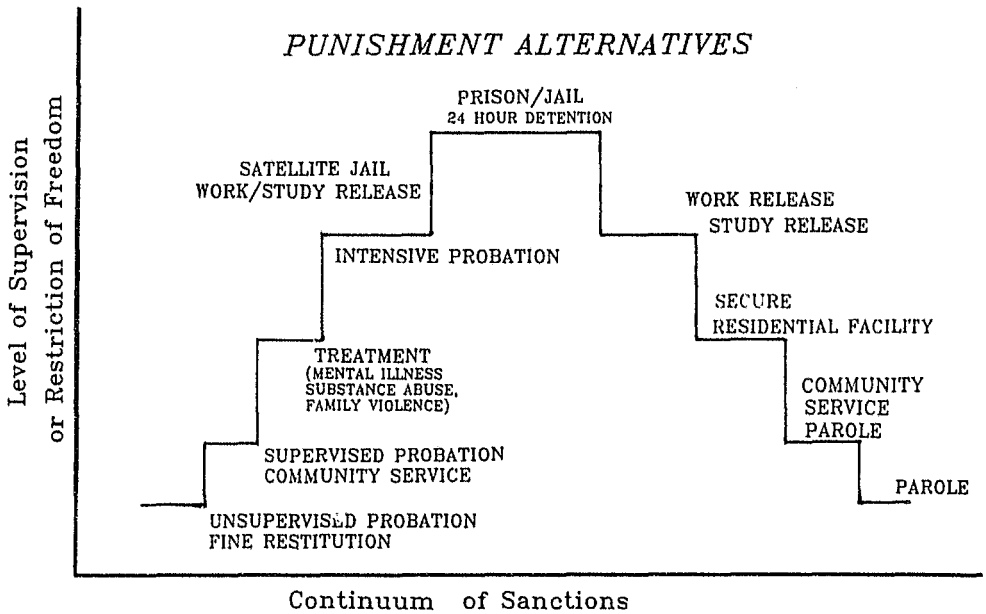
In recent years, many individuals have adopted the view that offenders should be punished, and also should be provided with rehabilitative activities in addition to or in place of incarceration. Alternative punishment strategies can be less expensive and more valuable in rehabilitating offenders than probation or prison. Offenders can remain employed in the community, repaying their debts to society and victims, while their freedom is restricted for punishment and public safety. Alternative programs offer a more effective and efficient sanctioning strategy which utilizes the least restrictive (and least expensive) sanction, consistent with public safety. The programs are tailored to the individual defendant and victim.

CONCLUSION

Creating a sentencing structure that imposes a just punishment in each individual case is an evolutionary process. It is refined over time to meet the often conflicting demands of society and the criminal justice institutions of a democratic republic. The Fair Sentencing Act of 1981 was enacted to reduce disparity in sentences and provide more certainty in actual time served in prison. By restricting judicial discretion in sentencing through the establishment of presumptive sentences, and by eliminating discretionary release by parole boards, North Carolina adopted a determinant sentencing structure. Recent analysis of prison data indicates that the FSA has accomplished what was originally intended.

It has also had the unintended effect of decreasing significantly the percentage of a sentence that is actually served, and of essentially eliminating any meaningful term of post-release supervision. The typical Class H felon who receives the presumptive sentence of three years will be out of prison in less than a year and free from all correctional supervision after 15 months.

This situation has undermined the integrity and credibility of our justice system, and negated the degree of offender accountability after incarceration. Victim restitution and treatment for substance abuse or other rehabilitative programs that might help the offender assimilate back into society as a law abiding citizen, can rarely, if ever, be successful within the current 90 day mandatory parole period. National figures indicate that 61 percent of all admissions to prison were recidivists (ie., they had previously served a sentence of incarceration as either a juvenile, an adult, or both). Furthermore, an estimated 46 percent of the recidivists would still have been in prison at the time of their readmission if they had been confined for the entire maximum term of their last sentence.



The "Truth In Sentencing" proposal of the Governor's Crime Commission will enhance the integrity of our sentencing structure and provide for greater offender accountability, both in and out of prison. Statutorily prescribed "correctional supervision terms" will have much more meaning. The Class H felon who gets a 3-year sentence will be under some form of correctional supervision for about 34 months. The only time that will be deducted from an offender's active sentence will be that which is earned by working or participating in rehabilitative activities. The longer period of court-imposed parole supervision will facilitate the collection of restitution payments, as well as the monitoring of participation in treatment programs, if so ordered by the court. An extended period of supervision after incarceration also will enhance public safety by restricting the ability of high risk offenders to commit new crimes.

Expansion of alternative punishment programs and local confinement facilities will provide courts with a broader array of

penal sanctions, so that "just" punishment may be meted out in each case. The diagram of punishment alternatives illustrates the continuum of sanctions that should be available statewide so that the appropriate restriction or deprivation of freedom can be applied to a particular offender for any given offense. It also shows how increasingly severe sanctions should be imposed for certain offenders that continue to break the law, and how inmates' freedom should be regained gradually to better assimilate them back into society. If they have a wider range of sanctions from which to select, judges increasingly will impose alternatives to incarceration. These alternatives may also be used in addition to, as well as in lieu of, terms of imprisonment so that the actual period of incarceration may be reduced while the punishment is enhanced. For example, instead of just sending an offender convicted of breaking and entering for the second time to prison for 3 years, a judge could impose a six-month active sentence, plus 2½ years on supervised parole during which time he must work, pay restitution to the victim and perform some type of community service.

The sentencing structure and alternative sanctions recommended in this report represent a comprehensive, systemwide approach to providing punishment which will be perceived as just and equitable by offenders, victims and the public in general. These proposals are an attempt to build on the positive aspects of the Fair Sentencing Act and its presumptive sentencing structure, while enhancing the integrity and credibility of the court-imposed sentence, and by allowing for more punishment options after a term of incarceration or in lieu thereof. These recommendations will provide for a more just sentencing structure by facilitating the imposition of the least restrictive and least expensive punishment, consistent with the needs of public safety and social justice. The Governor's Crime Commission also believes that the quality of criminal justice in North Carolina will improve if the needs of victims and the redress they deserve are more adequately addressed in the sentencing process.

APPENDIX

COMMENTS FROM PUBLIC HEARINGS

During July and August, 1986, the Governor's Crime Commission held a series of public hearings across the state to solicit the response of criminal justice officials and the public concerning the Sentencing Committee's preliminary recommendations. These draft recommendations follow. Input received at the hearings and subsequent discussion with officials was considered by the Committee and the recommendations were modified accordingly. A comparison of the draft recommendations found below and the final recommendations presented in this report reflect the time, labor, and deliberation of Committee and Commission members.

Public hearings were held in Asheville, Fayetteville, Charlotte, Greensboro, Greenville, Raleigh, and Wilmington. The following is a summary of the comments and suggestions for each recommendation.

Recommendation 1: Revise the Fair Sentencing Act to Enhance "Credibility" of Court-Imposed Sentences by Restoring Discretionary Parole Release and Parole Supervision and Reducing Good Time Credits Earned by Inmates in Conjunction with Adjusting Presumptive and Maximum Sentence Lengths.

Those who supported this recommendation supported the proposal for the following reasons:

- The proposal reduces good time credits earned by inmates thereby reducing the difficulty of calculating sentence lengths.
- The proposal restores discretionary parole release and parole supervision.
- The proposal establishes truth in sentencing and lends credibility to the sentencing system in North Carolina.

Those who were not in favor of all or part of the recommendation made the following comments and suggestions:

- The proposal is not needed because under the Fair Sentencing Act sentences are less disparate and more predictable. Defense attorneys and prosecutors can compute an approximate sentence length and use it for plea negotiations.
- The proposal amends a sentencing system that is not "truthful" in terms of the relationship between court-imposed sentences and actual time served. A system should be developed that allows judges more discretion and control over sentence length, i.e. flat sentences.
- A proposal is needed creating a joint bipartisan committee or commission to study what type of sentencing structure we want to have in North Carolina, its purpose, structure and resources. Instead of reacting to problems perceived with the system we have now, this body should start from the premise that we can design any system that we need in order to fulfill designated sentencing purposes.
- Reinstating discretionary parole release is not warranted because it reintroduces the elements of disparity and uncertainty into our sentencing system. It also could affect the plea negotiation process since sentence lengths would be less predictable.
- The proposal should not reintroduce discretionary parole release but should introduce an extended period of post-release supervision. Inmates would still be under mandatory parole release but would be supervised for some period, one-fourth of the original sentence up to 5 years, or 18 months minimum to max-out period. This would leave predictability in the system and would increase the period under correctional supervision.
- The proposal does not go far enough. Gain time should be abolished or severely limited since it is one of the main causes of the credibility gap between the court-imposed sentence and the actual time served.
- The proposal should be revised to set a flat sentence to be served with no good time or gain time credits but to allow the Department of Correction to impose "punitive" or "bad time" for rule violations as a management tool.

Recommendation 2: Study the Creation of a Sentencing Review Panel to Review Felony Cases In Which the Sentence Exceeds the Presumptive (Upon Motion of the Defendant) or Where the Sentence is Less Than the Presumptive (Upon Motion of the District Attorney).

After consideration of the comments and questions received from citizens and criminal justice officials during public hearings, and concerns of committee members about the feasibility and effectiveness of an appellate review panel, the committee decided not to include this recommendation in its package.

Those individuals who were in favor of an appellate review panel generally approved the concept itself, but had some reservations about the particular method of review described in the proposal. The questions which frequently arose were:

- Who would comprise the panel?
- How much time and money would be involved?
- Would it delay cases?

Those who did not like the concept of a review panel or the panel itself had the following concerns:

- Creation of the panel is not necessary; it would add another layer of judicial review and would result in increased time for disposition of cases.
- The creation of a panel would not necessarily reduce the number of cases heard by the Court of Appeals. Attorneys could find other grounds to appeal.
- As proposed, the process for reviewing cases would be subject to numerous constitutional challenges.
- As proposed, administering the panel review of cases would be time consuming and costly.

Recommendation 3: Amend the Fair Sentencing Act to Include a Range of Sentences for Class B Felony Offenses.

There was a general misconception concerning the effects that this recommendation would have on the sentencing of Class B felons. As originally written, the recommendation left the impression that the creation of a range of sentences for Class B felonies would result in shortened sentences for these crimes. The recommendation was later rewritten to clarify the intent of increasing the chances of jury conviction by offering a range of sentences instead of a mandatory life sentence.

Those who supported the recommendation stated that:

- A range of sentences for this felony class would provivde judges with greater flexibility in sentencing which is more consistent with the punishment structure for other classes in the Fair Sentencing Act.
- Having a sentencing range for this felony class might lead to more convictions in cases where previously the mandatory life sentence has resulted in an acquittal or a mistrial.

Those who opposed creating a range of sentences for Class B felony offenses commented that:

- The proposal is not necessary; mandatory life is an appropriate sentence for Class B offenses.
- The proposed range is too drastic a change from a mandatory life sentence.
- If the proposed range is adopted, treatment programs for sex offenders should be available in the prison system.

Recommendation 4: Expand the Intensive Supervision and Community Penalties Programs with the Focus on Non-Violent, Property Offenders.

There was unanimous support for this recommendation across the state. Comments included:

- Judges need community-based alternatives so that they have a range of options from which to sentence offenders.
- The use of community-based alternative programs has been the most positive step that has been taken in the criminal justice system in years.
- Community programs have proven to be as effective as punishment, as well as cost-effective.
- Community programs operate with smaller caseloads thereby offenders can be given personal attention.

There were several suggestions to expand or modify this recommendation, as follows:

- The proposal also should recommend expansion of other types of alternative punishments, such as deferred prosecution, TASC, drug education schools, mediation, dispute settlement centers, and electronic monitoring. The result would be to broaden the range of alternative punishments available to judges.
- The proposal should require the preparation of pre-sentence reports for all felons in order to assist judges in alternative sentencing decisions.
- The proposal should expand eligibility criteria for Community Penalties to allow participation by some people convicted of violent offenders.
- The proposal should include procedures for reviewing violations of Community Penalty Plans to ensure swift and sure sanctions for violations.
- The proposal should define local involvement in alternative punishment programs in order to enhance local ownership of problems and program effectiveness.

Recommendation 5: Increase the Use of Local Confinement Facilities and Community Punishments for Traffic Offenders and Selected Misdemeanants

As with Recommendation 1, after the public hearings and several committee meetings, the original draft of Recommendation 5 underwent major revision. This recommendation was later divided into three separate recommendations identified as Recommendations 2, 3, and 4 in the final report.

The following comments were made at the public hearings in support of the recommendation as originally drafted:

- Local confinement facilities are a great idea as long as they receive adequate funding to handle additional offenders and they operate under appropriate procedures.
- Misdemeanants burden the scarce program resources of the prison system. Placing these offenders in local confinement facilities is a more cost effective and efficient means of punishment.

Criticisms and suggestions concerning this recommendation are as follows:

- The proposal should describe the preferred type of local confinement units as locally owned and operated minimum custody work/-study release centers that utilize existing buildings when possible.
- The proposal should specify funding mechanisms for developing locally owned and operated minimum custody centers.
- The proposal should define who can be sent to local minimum custody units to include all misdemeants serving sentences, and not just selected misdemeants or those serving weekend sentences.
- The proposal should promote adoption of new minimum standards for jails including classification, custody level, work/study release and space standards.
- The proposal should include Driving While License Revoked and DWI Resulting in Death as traffic offenses for reducing the maximum sentence from 24 months to 12 months.
- The proposal should set a time limit for implementation of a data base management system for collection of fines, fees and restitution in lieu of supervised probation solely for collection purposes.

During the public hearings there were several issues that were raised that were not directly addressed in the Sentencing Committe's proposals, and in some cases issues that were not directly related to sentencing. These issues are listed below:

Sentencing/Courts Management

- North Carolina needs to study its sanctioning system and consider the development of sentencing guidelines.
- Offenders convicted of nonsupport should be diverted from prison and should be dealt with on a local level in alternative punishment programs or in minimum security jails.
- North Carolina should study decriminalizing certain laws, such as marijuana possession.
- North Carolina should review the provision of the FSA which relates to capital cases for pecuniary gain. Currently pecuniary gain is an aggravating factor for the person who receives the money but not for the person who paid it.
- A standard set of instructions needs to be developed for judges to use with juries in cases where "life" is a sentence. Currently in these cases if a judge says anything other than "life means life," the case has to be tried again.
- Convicted child sexual abusers should receive a minimum active sentence of 30 days and a minimum term under correctional supervision of 12 months. They should be placed in work release programs whenever possible in order to provide financial support for their families. They should be involved in at least 80 hours of specialized counseling during a one-year period.
- There should be a limit on the number of times a case can be continued, two times within the 120-day period and once after the 120-day period, for a maximum of 30 days at a time.
- District Attorneys should prioritize prosecution of offenders who accept pleas and those charged with Class H felonies and are in jail awaiting trial.

Parole

- Statutory and administrative provisions should be made to ensure that parolees pay restitution that was ordered at the time of their incarceration.
- Inmates who have served in prison and have been released on parole should not be eligible for parole a second time.
- Submission to periodic drug testing should be a mandatory condition of parole.
- Violating parole should be a criminal offense.

Probation

- The $10 supervision fee paid by probationers should go to the Department of Correction instead of to the General Fund.
- Intensive probation officers should be given the power of immediate arrest. Currently it can take 14 days to get a warrant for arrest.
- Intensive probation services should be available for all probationers.

Prisons

- There is a need to review the Interstate Compact regulations about trading prisoners between states. There needs to be more flexibility, especially in the regulation limiting transfer until the prisoner is within one year of parole.
- Specialized treatment programs should be provided in prisons for substance abusers and sex offenders.
- There needs to be more community college involvement on prison campuses so that inmates learn viable vocational skills.

Miscellaneous

- The juvenile age should be increased to Age 18.
- Additional money should be targeted for prevention of crimes.