GOVERNOR'S OFFICE OF CRIMINAL JUSTICE SERVICES

THE USE OF COMMUNITY CORRECTIONS AND THE IMPACT OF PRISON AND JAIL CROWDING ON SENTENCING

JANUARY, 1989

State of Ohio
Richard F. Celeste, Governor

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David G. Schroot, Director

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A Survey of Ohio Judges
for the
GOVERNOR'S COMMITTEE ON PRISON AND JAIL CROWDING

by

David Diroll
Director
Governor's Committee on Prison and Jail Crowding
January, 1989

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INTRODUCTION

The Governor's Committee on Prison Crowding was established in 1984 to quantify the level of crowding in Ohio's prisons and to make recommendations to the Governor and General Assembly. The Committee issued an Interim Report in 1986. Six of the Committee's 16 recommendations were adopted by the Legislature in 1987 and 1988. Another proposal was embraced by administrative rules.

Nevertheless, Ohio prisons remain crowded. As of December 31, 1988, there were 26,000 inmates in space designed to accommodate 18,500. Record numbers of inmates entered Ohio prisons during 1987 and 1988, offsetting many gains made by enactments based on the Prison Crowding Committee's recommendations. Ohio prisons house 40% more inmates than they were designed to hold. This is in spite of the construction and availability of space for 5,000 extra inmates since 1984. In fact, when the current construction program ends in 1992, Ohio will have added bedspace for 8,000 prisoners at a cost exceeding one-half billion dollars. Yet, State prisons are projected to have more surplus inmates than when construction began.

Local officials long have bemoaned the level of crowding in Ohio county jails. Preliminary results from a GOCJS jail survey show that more than half of the county jails house inmates in excess of the number authorized by the State. The number of overcrowded jails would be higher if over 30 of Ohio's 88 counties did not alleviate crowding by maintaining lists of offenders who must wait for available jail space before serving their sentences. Several counties' waiting lists contain over 100 sentenced offenders. In one county, the total exceeds 800.

During 1988, the Prison Crowding Committee staff in the Governor's Office of Criminal Justice Services conducted two survey projects. A survey of sheriffs designed to compile a jail inventory was conducted late in the year. Early findings from this survey were mentioned in the prior paragraph. The survey will be published under separate cover in the Spring, 1989. The other project forms the basis of this report. The staff surveyed 260 judges with criminal jurisdiction. Judges were asked about community corrections options they use as alternatives to sending offenders to prisons or jails. They also were asked whether prison or jail crowding has affected their sentencing practices.

On November 28, 1988, Governor Richard F. Celeste issued Executive Order 88-79. The Order authorized the Governor's Committee on Prison and Jail Crowding. The Committee is to continue the work of the Prison Crowding Committee established in 1984 while also focusing on jail crowding issues.

ACKNOWLEDGEMENTS

This project is funded in part by a grant from the United States Justice Department's Bureau of Justice Assistance. The grant is administered by the National Council on Crime and Delinquency of San Francisco.

Several members of the GOCJS staff contributed to this effort. Tim Stubbins and Chuck Askew completed most of the telephone surveys that form a basis for this report. Bob Swisher, Tracy Mahoney, and Brian Simms also conducted telephone interviews. In addition, Bob Swisher helped evolve the methodology used. Marsha Chapman, Mark Davis, and Barb Hines contributed computer work.

SUMMARY

Methodology. The surveys devised for this report sought to better understand the use of community corrections by Ohio judges as alternatives to prison or jail sentences and to learn whether prison or jail crowding affects criminal sentencing. 469 Ohio judges with criminal jurisdiction were contacted. Over 55% (260) participated in the surveys, including 107 common pleas judges, 118 municipal court judges, and 35 county court judges. About half were interviewed by telephone, the rest replied by mail. Judges from 87 of Ohio's 88 counties participated.

Community Corrections: Common Pleas Judges. Common pleas judges surveyed generally saw prison as the appropriate sanction for most violent and many repeat offenders. The judges often reserved community corrections programs for nonviolent, low level felons with short criminal histories.

The most popular community corrections alternatives to prison for felons actually involve periods of incarceration, albeit for less time than full prison sentences. Over 90% of the responding common pleas judges said they sometimes use shock probation and split-sentencing as alternatives to longer prison sentences. And more community-based correctional facilities were sought by the judges.

Shock probation was used more on high-level felons than other community corrections options. Split-sentencing felons to local jails has potential to be used even more if there were more space in county jails, more release programs for jobless felons, and greater resolution of liability, safety, and health issues raised by work release programs.

Thirty percent of the responding common pleas judges said they sentence felons to community-based correctional facilities (CBCFs). Scarcity, not opposition, accounts for the lack of usage. Nearly 90% of the judges said CBCFs were unavailable to them. Two-thirds of this pool said they would use them if available. Only two CBCFs operate in Ohio at present. Clearly, the greater availability of CBCFs would ease prison crowding.

Since CBCFs are expensive, policy makers must learn whether shorter stays by inmates, local control, their popularity with judges, and other factors make CBCFs better bargains than prison construction. The converse issue is whether the offender level served and the greater likelihood of use by sentencing judges make CBCFs better bargains than less expensive nonincarcerative options such as intensive supervision. Relative recidivism rates could be factored into these analyses.

Among the alternatives to prison that do not involve some period of incarceration, intensive supervision probation (ISP), although not often used at present, has potential to help ease prison crowding. Only 38% of the common pleas respondents said they sometimes sentence felons to ISP in lieu of prison.

However, most judges said this is because ISP is unavailable or too expensive. Few voiced philosophic opposition to ISP. Most said they would use the program if available. Moreover, mechanisms are in place for more ISP programs in Ohio. The Community Corrections Act, administered by the Department of Rehabilitation and Correction, allows ISP funding and the Department's "Pilot Probation" subsidy targets ISP programs. However, limited funding and other DRC priorities keep the number of ISP programs in Ohio at about one dozen.

A little-used program with potential when used with other sanctions is house arrest. Merely 9% of the responding common pleas judges said they sometimes use house arrest. Many were uncomfortable using house arrest alone as a felony sanction. However, the market for house arrest in combination with other nonincarcerative sentences or as a condition of shock probation or split-sentencing is virtually untapped.

In giving reasons why house arrest is not used, many of the nonusers said it is unavailable (43%) or too expensive (23%). Well over half of these judges said they would use house arrest for felons if the option were available. Although some would not use house arrest if available as evidenced by the number of judges who said they are philosophically opposed to the concept generally, or specifically regarding felons (26%), there seems to be a market for greater use of the option by the majority of responding judges.

Electronic monitoring may facilitate the greater use of house arrest and intensive supervision probation. Unavailability and cost were given as reasons for not using electronic monitors two to three times more often than philosophic opposition, which ran from 12% to 13% of the nonusers. An informational clearinghouse at the State level could help judges make informed decisions on electronic monitoring and other new technologies.

Alcohol and drug treatment programs are known commodities, widely used and understood by the judges surveyed. Sex offender therapy seems to be the treatment area with potential for greater use. Many judges who do not sentence sex offenders to such programs expressed an interest in them.

Although many judges prefer to use it in tandem with other sanctions, little opposition was expressed to restitution by common pleas respondents. Community service work was less popular, although it is sometimes used as a sentencing alternative for young, first-time felons. Many judges felt community service is a more appropriate sanction for misdemeanants. Others were apprehensive about liability for such programs. A study of exemplary restitution and community service work programs in Ohio to learn how some counties successfully address administrative and liability issues could prove helpful to nonuser judges and probation officials.

Few common pleas judges sentenced felons to education programs as alternatives to prison. Those using the option were likely to combine it with other sanctions against young, first offenders who had not finished high school. The option alone seems to have little potential to ease prison crowding in the future.

Community Corrections: Municipal and County Court Judges. Generally, municipal and county court judges were more likely to use community corrections options in sentencing misdemeanants than common pleas judges were for felons.

Municipal and county court judges were less likely to use alternatives involving incarceration than their common pleas counterparts. Also, misdemeanor judges were less inclined to oppose community corrections for philosophic reasons. These findings were expected, given the less dangerous nature of misdemeanants generally and the closer ties between municipal and county judges and their jail officials than between common pleas judges and State prison officials.

Regarding community corrections involving some period of jail incarceration, split-sentencing with work release was popular with the municipal and county court judges responding to the surveys. Four-fifths of the respondents said they use the option. However, some mentioned that administrative, security, and health concerns deter its use.

Although not formally recognized by statute for misdemeanants, many municipal and county court judges use informal "shock" probation to release misdemeanants from jail before their terms expire. Typically, this is done to make room for other offenders. In some cases, judges do it grudgingly.

House arrest and community service work may have the most growth potential among misdemeanor community corrections options. Although used by only one in six of the responding municipal and county judges, house arrest is becoming more popular because of new technologies that aid monitoring. Most judges who do not use house arrest said the option is unavailable or too costly. Some suggested that offenders pay the costs of the option.

House arrest is used as a pure alternative to a jail sentence or as a sanction that allows judges to grant early releases from jail. Judges who use house arrest typically couple it with electronic monitoring. Conversely, the cost of monitoring deters many other judges from sentencing offenders to house arrest.

House arrest is no panacea. Although many judges said they would use the option if available, 16% of the nonusers voiced philosophic opposition and 13% said the option does not work. Many judges in the latter groups are not likely to quickly embrace the concept. However, given limited usage now and the willingness of many judges to try it, cost effective house arrest programs have potential to divert many more misdemeanants from jails.

Community service work already is used by 73% of the responding misdemeanor judges as an alternative to jail. And over half of the judges not using the option said they would if it were available. Those not inclined to use community service as a sentencing option fret about liability issues.

Some judges using community service programs said the sentencing option is popular in their communities. If more public agencies and private charitable organizations were persuaded to create opportunities for the free labor of misdemeanants, then community service work probably would be used more often. Of course, the lessons learned in programs that have successfully addressed liability issues would have to be shared with others.

Intensive supervision probation programs for misdemeanants are not widely used by municipal and county court judges. Only about one-fourth of the respondents mentioned them. Yet, there is little opposition to them. Generally, they are unavailable to misdemeanants. The growth potential of this option is limited by the focus of the State on ISP programs for felons only, cost, and a feeling among many judges that ISP provides more scrutiny than is needed for public safety when the probationers are misdemeanants.

Restitution is a popular sentencing alternative that would be used more often if more structured restitution programs existed. About 79% of the responding municipal and county court judges said they use restitution. A few commented they use it for jail-bound offenders in lieu of some of their jail time.

Treatment programs were used more often than any other alternative to jail by municipal and county judges. Such programs are established in the counties and many municipalities and viewed with favor by most judges. Over 80% of the misdemeanor judges said they sentence offenders to residential and outpatient treatment.

A key factor in the popularity of treatment is its use on convicted drunk drivers. Judges are authorized to divert first-time drunk drivers from an otherwise mandatory jail sentence into drivers' intervention programs. Judges were not uniform in categorizing these programs. Some said they were residential treatment, some called them outpatient treatment, some styled them education, and some placed them into more than one category. Nevertheless, the lesson is that, given the choice, most municipal and county court judges are willing to use treatment programs as alternative to mandatory jail time for first offender drunk drivers.

Nearly 70% of the misdemeanor judges said they use education programs as sentencing alternatives. As noted above, the education program many respondents had in mind is the intervention program for drunk drivers. Otherwise, the most common education programs seem to be high school diploma or GED plans. In addition, anecdotal information gleaned during the surveys indicates many municipal and county court judges have been inventive in creating education programs for shoplifters and other targeted offenders. A couple of judges mentioned "social responsibility" clinics as alternatives.

Separately, additional research may be needed to determine whether the paucity of State legislation and programs that focus on community corrections for misdemeanants has retarded the development of more alternatives to jail sentences. Perhaps the State could foster local community corrections clinics and boards. Such a board could serve as an inexpensive forum for judges, sheriffs, prosecutors, defense attorneys, and community corrections advocates to meet regularly, discuss the level of crowding in the jail, and consider community corrections alternatives when appropriate.

Impact of Prison and Jail Crowding on Judges. A small majority (53%) of common pleas judges who responded to the surveys said they are not affected by prison crowding in sentencing. Many said they are not statutorily authorized to consider prison crowding in sentencing. Also, several commented that prison crowding is a problem for the General Assembly and the Governor to address, not the judiciary.

Many in the 47% who said they are so affected believe that prison space is a scarce resource that must be used parsimoniously. These judges were more inclined to use their statutory authority to suspend sentences and use community corrections options as terms of probation because of crowding.

Three-fourths of the responding municipal and county court judges said they are affected by jail crowding in sentencing. Several judges were frustrated by jail crowding because it reduces their sentencing flexibility. Lack of space forces some judges to consider alternative sanctions for offenders they would rather jail. Many misdemeanor judges said they maintain diurnal contact with sheriffs to learn whether early releases or more alternatives to jail sentences may be needed.

Some judges said federal court orders have reduced the jail space available to them, while others claimed they must compete for space with common pleas judges who use the jail for split-sentencing and for alleged felons whose charges are reduced to misdemeanors.

The surveys indicate that the problems of jail crowding are more tangible to municipal and county court judges than the problems of prison crowding are to common pleas judges. Many misdemeanor judges said they systematically work with sheriffs and other local officials to cure jail crowding woes. Conversely, communication between common pleas judges and State prison officials seems to be sporadic and anecdotal. These findings probably reflect judges' greater physical proximity to, and familiarity with, local jails and jailers rather than any calculated indifference to prisons by common pleas judges.

Irrespective of whether they are affected by prison or jail crowding, many common pleas, municipal, and county court judges bemoaned the loss of sentencing discretion to mandatory incarceration bills enacted earlier this decade. The problem for common pleas judges is Senate Bill 199. The bill mandates prison terms for certain felons and added terms when firearms are involved. Several common pleas judges blamed Senate Bill 199 for prison crowding.

Municipal and county court judges said mandatory jail time for drunk drivers is the primary cause of jail congestion. Several suggested that cheaper, less secure facilities should be available for drunk drivers if mandatory incarceration were retained.

METHODOLOGY

The goal of the surveys was to gather information on community corrections and prison and jail crowding from a substantial number of the 469 judges who have authority to sentence felons or misdemeanants to penal facilities in Ohio.

The staff devised a compact questionnaire designed to measure which community sentencing options judges used, which were not used, and why the latter were not used. Checklists of options and reasons for not using options were included. Also, the form allowed for unlisted options and reasons. Judges were promised their individual responses would remain confidential.

Some options on the survey forms involved incarceration. Shock probation, community-based correctional facilities, and "split-sentences" involving jail time with work release were included as alternatives because they may be used to shorten the time actually spent incarcerated which, in turn, has an impact on crowding.

In addition, the questionnaire asked whether knowledge of jail or prison crowding has affected the judge's sentencing practices. Judges were encouraged to discuss answers in this section.

Two training sessions on the questionnaires were held for the staff designated to conduct the telephone surveys. Relevant statutes and the argot of community corrections were discussed.

The questionnaires were tested on two common pleas and two municipal court judges. Copies were mailed to the judges, followed by telephone calls approximately one week later. Further training of staff occurred based on the results of the tests. The actual surveys forming the basis for this report began in February, 1988.

Substantially the same three-page questionnaire was sent to all judges surveyed. The key difference was that, as the judges with jurisdiction to sentence felons to prison, common pleas judges were asked about prison crowding and alternatives to prison while, as the judges with primary jurisdiction to sentence misdemeanants to jail, municipal and county court judges were asked about jail crowding and alternatives to incarceration in jail.

Judges to be telephoned were mailed questionnaires for review in anticipation of the calls. All other judges were asked to complete the survey forms and return them to the GOCJS in postage-paid envelopes that were provided.

Finite staff resources and costs were factors in deciding not to call all common pleas, municipal, and county court judges. The key targeting judges for calls was to assure broad geographic representation, given the vagaries of polling by mail.

The Ohio Judicial Conference provided a list of Ohio's judges, current through January 1, 1988. A list of the 212 common pleas court judges with felony sentencing jurisdiction was gleaned from the master list. Common pleas judges

whose jurisdiction was limited to domestic relations, probate, or juveniles were not included. Also, lists were made of the State's 198 municipal court judges and of the 59 county court judges, all of whom have misdemeanor jurisdiction.

In an attempt to get information from as many jurisdictions as possible, random techniques were not used. Rather, at least one judge from every county was targeted at each level of sentencing.

The questions in the telephone surveys were identical to those in the mail surveys. However, during training on the surveys, telephone interviewers were encouraged to reiterate to judges that the survey sought to measure community corrections options that were used as true alternatives to prison or jail, not merely options that were used for otherwise probation-bound offenders.

Telephone interviewers also were instructed to follow the listing of alternatives by asking the judge for the name of a contact person and information on the types of offenders selected for the community programs used by responding judges.

A total of 260 judges participated in the surveys, representing 87 of Ohio's 88 counties. Common pleas judges were contacted during February, March, April and May, 1988. Municipal and county court jurists were contacted during June, July, August, and September, 1988.

The staff completed telephone interviews with 62 common pleas court judges. Another 45 common pleas judges responded by mail. Together, these 107 respondents represented slightly more than half (51%) of the 212 common pleas court judges with criminal jurisdiction in Ohio. Felony sentencing judges from 72 of Ohio's 88 counties participated. (Percentages of respondents cited in this report are rounded to the nearest whole number).

Of judges with primary sentencing authority over misdemeanants, the survey included 118 of 198 municipal court judges (60%), 48 by phone and 70 by mail, and 35 of 59 county court judges (59%), 15 by phone and 20 by mail. The 153 misdemeanor judges surveyed came from 76 of the State's 88 counties.

Notes on Overreporting and Underreporting. Common pleas judges specifically were asked to list the "alternatives to confinement" used for "felons who would otherwise be sentenced to prison". Municipal and county court judges were requested to list "alternatives" to confinement used for "convicted misdemeanants who would otherwise be sentenced to jail". The intent was to learn which alternative sentences were used to truly divert persons from all or part of prison or jail sentences.

The staff expected some overreporting of usage of alternatives not involving incarceration. This was especially true in the mail surveys where a quick reading might lead a respondent to list probationary options used, irrespective of whether offenders given the alternatives would have been sent to prison or jail if the options did not exist. To guard against such overreporting in the telephone surveys, callers were instructed to periodically remind judges that the intent of the surveys was to measure the use of options on offenders not likely to be imprisoned or jailed if the options did not exist.

Evidence of overreporting in the mail surveys emerges from a comparison of the responses for each nonincarcerative option to those in the telephone surveys. Although there were no significant differences in composition between the group of judges responding by telephone and those answering by mail, higher numbers of judges surveyed by mail consistently reported they use each of the nonincarcerative alternatives.

Among common pleas judges, the dichotomies ranged from 3% for house arrest to 43% for community service programs. Among municipal and county judges, the differences ranged from 5% for house arrest to 28% for restitution. (The only exception was residential treatment in the municipal and county court judges survey. A slightly higher percentage of judges responding by telephone (4%) said they use the option.)

The verbal emphasis placed on finding true alternatives to prison or jail in the telephone surveys probably explains much of the disparities. Because of inconsistencies between callers and differing interpretations by judges, some overreporting probably also occurred in the telephone surveys. But not nearly as much as in the mail polls. In short, the telephone surveys probably are more representative of the use of true alternatives than the mail surveys.

The level of overreporting probably was lower in the municipal and county court surveys than in the polls of common pleas judges. Options such as community service work alone generally are not perceived to be enough punishment to fit the crime in felony cases. Yet they are viewed as appropriate and proportionate alone in many misdemeanor cases.

In spite of the disparities in reported use between the mail and telephone surveys, the patterns of usage, if plotted on a graph, were nearly identical for the telephone and mail surveys. Thus, although percentages may be proportionately overstated, the reported popularity of options relative to other options is informative.

Little disparity between the mail and phone surveys was expected or seen regarding incarcerative alternatives. This probably was because the use of shock probation, split-sentencing, and CBCF's almost always results in a reduction in the length of an offender's incarceration or placement of a felon in a local facility rather than a prison. As such, they are true alternatives to some time in confinement. Thus, it is unlikely that responses regarding incarceration-related alternatives were overstated by mail or phone. Unlike the nonincarcerative alternatives, a judge cannot exercise these options without having some impact on the prison or jail population.

Another point should be clarified in the context of overreporting. The surveys attempted to measure usage, not frequency of usage. When this report gives a percentage of usage for a sentencing alternative, it does not mean the option is used in X% of the cases tried. Rather, it means X% of the judges surveyed said they sometimes use the option. Whether a judge used an alternative once or many times cannot be determined from the surveys. By giving equal weight to options rarely used and those frequently used by an individual judge, the surveys could be misread to overstate the frequency of use. Please guard against making such conclusions.

Underreporting likely occurred when the judges gave reasons for not using certain alternatives. Some judges chose not to give reasons. Others indicated an option is unavailable, but did not explain whether they would use it if available and, if not, why.

ALTERNATIVES TO PRISON USED BY COMMON PLEAS JUDGES

Common pleas court judges have jurisdiction over felony sentencing in Ohio. They were told that the purpose of the survey was to learn about "alternatives to prison sentences, including the use of local jails." The judges were asked, "What alternatives to confinement do you use for convicted felons who would otherwise be sentenced to prison?" The same question was asked of the 62 common pleas judges interviewed by telephone and the 45 who responded by mail. 107 judges participated out of a total of 212 (51%). This section summarizes their responses.

Alternatives Involving Incarceration

The survey sought to measure incarcerative and nonincarcerative alternatives. Judges could cite alternatives that include incarceration, but for a shorter period than would be given if the alternative were not available. In particular, three incarcerative "alternatives" were widely discussed in the common pleas surveys: shock probation, "split-sentencing" a prison-bound inmate to a local jail, and the use of community-based correctional facilities. In fact, shock probation and split-sentencing were by far the most popular "alternatives" cited by the common pleas judges surveyed.

Shock Probation. If a common pleas judge sentences an offender to prison who would have been eligible for probation, Ohio Revised Code Section 2947.061 allows the sentencing judge to belatedly grant probation after the offender serves 30, but not more than 60, days in prison. This is called "shock" probation. There is an exception for felons sentenced to prison for committing any of the class of heinous crimes known as "aggravated" felonies. Aggravated felons do not become eligible for shock probation until at least six months of their sentences are served. This is sometimes called "super shock" probation.

Overall, 92% of 105 common pleas judges responding said they use shock or super shock probation as an alternative to a longer prison sentence (95% of those surveyed by telephone; 89% of those questioned by mail). One judge spoke for many when she said, "In less serious cases, I might use shock probation more readily" because of prison crowding. Another said he uses "super shock" probation more frequently to ease the glut in prison. Still another judge took a "scared straight" tack in explaining why he prefers shock probation over split-sentencing to a local jail, "I believe that if I am going to rehabilitate, the jail is not as fearful a place to send them." A judge who "rarely" uses shock probation expressed a negative view saying, "Shock is a vehicle to pacify victims, lawyers, and police. They hear about a tough sentence. Quietly, shock probation is granted later."

When asked which offenders are chosen for each alternative, common pleas judges typically said they use shock probation on youthful offenders who either had no prior record or had not been incarcerated in a State prison before. The judges indicated that a property offender is more likely to receive shock probation than a person who committed an offense of violence. However, while many judges targeted low-level (third and fourth degree) felons for shock probation, many others used it as an alternative only for high-level (first and

second degree) felons. Several judges were more inclined to use shock probation over other alternatives when the offenders were unemployed.

Split-sentencing. Courts are authorized to sentence felons to local jails under the law governing intermittent confinement and "split-sentencing". Revised Code Section 2929.51(A) allows common pleas judges to suspend the sentence of an offender, grant probation, and, as a condition of probation, require the offender to serve a definite sentence of six months or less in a county jail. The term may be served intermittently, meaning the offender could be freed periodically to maintain his job or care for his family. Because a term of six months or less is the shortest sentence of incarceration available for a felon, split-sentencing results in a reduction in the time of incarceration the prisoner would have received if sent to prison. Also, since felons generally must be incarcerated in prison unless granted split-sentences, use of split-sentencing for felons reduces prison crowding, albeit at the expense of jail crowding.

Almost 92% of 107 respondents (92% by telephone; 91% by mail) said they use split-sentencing to local jails because of prison crowding. Judges in counties that do not have jail crowding woes often were inclined to use split-sentences. Several judges in counties with congested jails said they would use split-sentences more often if space were available. Many of these judges felt squeezed by both prison and jail crowding. One such judge said he uses house arrest with electronic monitoring to shorten the amount of jail time given on a split-sentence. Another said he targets female offenders for split-sentencing. However, many other judges bemoaned the lack of local jail space for females.

Split-sentencing was used almost exclusively for third and fourth degree felons, according to the common pleas judges surveyed. Some judges used split-sentences for persons convicted of personal assaults, but most used the alternative for property offenders. Speaking of property offenders, one judge stated, "their crimes don't warrant the money spent to house them in State institutions."

Over three-fourths of the responding common pleas judges sometimes combined their split-sentences with work release to enable offenders to keep jobs and to ease the burden of split-sentencing on local jails. However, several judges deemed work release too risky to public safety. Others faulted work release for the administrative problems it can cause jailers. "The sheriff doesn't like the in-out traffic," said one. Relatively few (35%) of the common pleas judges responding said they use intermittent sentences other than work release, such as family visits (N=83).

When asked which offenders are considered for work release, judges said they were willing to use the option on low-level felons convicted of offenses against property who have jobs. Some judges tied work release to restitution to the victim. One mentioned he requires the victim's consent before work release is granted.

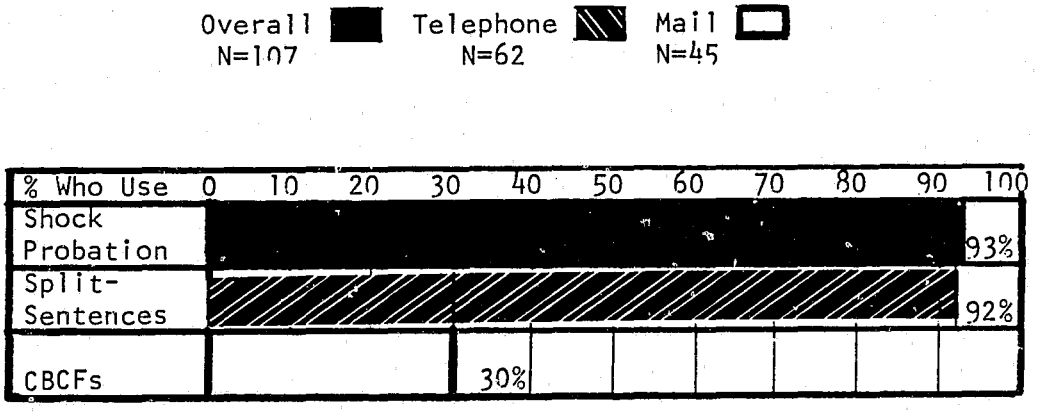
Community-based Correctional Facilities. At the instigation of common pleas judges, a county with at least 200,000 people, or counties that aggregate a population of at least 200,000, may operate a community-based correctional facility (CBCF) if approved by the Department of Rehabilitation and Correction. Judges may sentence non-dangerous felons who are eligible for probation to CBCFs. CBCFs are secure facilities that comply with the State's Minimum Jail Standards.

(See R.C. Sections 2301.51, et seq.) The use of CBCFs eases prison crowding by diverting felons to local facilities. At this writing, only two CBCFs operate in Ohio, one in Montgomery County (MonDay) and one in Mahoning County. Each may take offenders from other counties. Regional CBCFs are under construction in Athens and Columbiana counties, and are planned in several other counties.

Thirty percent of the 106 judges responding said they use community-based correctional facilities (CBCFs). At first this may seem incongruous, given the popularity of other incarcerative alternatives. However, of the 74 judges who said they do not use the option, 89% said CBCFs were unavailable to them and two-thirds of this group said they would use CBCFs if available. One judge echoed the sentiments of many when he said, "Our jail is crowded and we have no community-based facility, so local time is not available for felons." Another said, "We need a facility to house nonviolent third and fourth degree felons at State expense; a lot of cases are like that." Besides unavailability, no other reason for not using CBCFs was cited by more than a handful of the judges surveyed.

Common pleas judges indicated that CBCFs typically are used for property offenders (the Revised Code limits the option to "non-dangerous" felons) who were in need of skills or treatment that could be provided at the facility. The CBCF alternative is the only option involving incarceration that was never used for persons convicted of crimes against persons, according to the judges surveyed.

ALTERNATIVES INVOLVING INCARCERATION
COMMON PLEAS JUDGES



Commentary. To the likely disappointment of advocates of pure community corrections, the most popular community corrections programs in the minds of common pleas respondents involve some period of incarceration. The popularity among judges of sentencing options involving incarceration probably reflects the citizenry's current bias in favor of penal over rehabilitative sentences. This sentiment favors punishment that fits the crime over programs that treat the offender.

Prison crowding could be eased by the greater use of shock probation, split-sentencing, and community-based correctional facilities. In fact, judges indicated they would like to use split-sentencing and CBCFs more often, but facilities are not available to meet the demand.

The most popular alternative to a full prison term according to the judges surveyed was shock probation. As a prison-community hybrid, shock probation occupies a middle ground between incarceration and pure community corrections. It allows judges to sentence offenders to prison, while retaining some control over their lengths of stay. On balance, the judges used shock probation for higher level felons than those selected for other community sanctions.

Shock probation is widely understood and used by common pleas judges. Thus, great increases in the use of shock are unlikely unless something is done to make the option more appealing in more cases.

Several judges said they use shock probation exclusively for first and second degree felons. If one's goal is to ease prison crowding, maximum benefit from shock probation occurs when judges use it for such high level felons. That is, the longer the underlying term of imprisonment, the greater the bedspace savings when the term is truncated by shock probation.

Even zealous supporters of community corrections do not argue for the use of shock probation in all cases involving violent assaults. However, by using shock probation in certain cases involving burglary or drugs, judges ease the burden on prisons and thereby help reserve space for repeat, violent criminals.

Maybe shock probation could be palatable in more first and second degree felony cases if certain nonincarcerative options were made conditions of shock probation. As we will see, restitution and community service work are not generally viewed by judges as providing enough punishment for felons. Yet, the programs are popular when combined with other sanctions. Perhaps more burglars and drug offenders could be considered for shock probation if their probations were tied to restitution to victims, community service, or electronic monitoring. Halfway houses could be used to aid transition when appropriate.

The surveys show that common pleas judges often target different offenders for split-sentencing to the local jail than for shock probation from a State prison. On balance, judges used split-sentencing on lower level felons than they chose for shock probation. Few judges were inclined to grant split-sentencing for first and second degree felons. Since the law allows split-sentencing for first and second degree felons such as burglars and drug offenders, prison crowding could be eased somewhat if judges were to consider such offenders for split-sentences more often.

Some judges indicated they would like to use split-sentencing more often. An offender sent to prison comes under control of the State. Many judges like split-sentencing because it keeps the offender in a local facility and program. Obviously, greater use of split-sentencing would ease prison crowding. However, three barriers impede the greater use of this option.

First, there is little room in local jails for felons serving split-sentences. Until more jail space is created and more misdemeanants are sentenced to community corrections programs outside jails, the impact of split-sentences on the prison population will remain limited.

Second, judges surveyed said they tend to limit split-sentences to offenders with jobs. Such offenders fit into work release programs. Development of school-related, family-related, and other intermittent incarceration programs for jobless felons, perhaps with State assistance, may be necessary to maximize the potential of split-sentencing.

Third, some judges and sheriffs resist work release because of inconvenience, security, and liability issues. Perhaps the time is right for a statewide review of work release programs to determine how best to address these issues and which of Ohio's many successful programs can be replicated in other counties.

Scarcity accounts for the relatively low usage of community-based correctional facilities. The concensus of judges who do not have ready access to CBCFs is they would use them if available. In fact, of the alternatives not widely used, CBCFs were the most desired by the common pleas respondents. Relatively few judges made negative comments about CBCFs. Six of the 106 common pleas judges responding commented on the expensiveness of the option. (Although cheaper to bring on line than prisons or jails, program expenses make CBCFs more expensive than prisons or jails in per diem costs. However, they can be cheaper per inmate given the shorter sentences served.) Only three judges said they were philosophically opposed to CBCFs.

Anecdotal evidence gathered in the surveys suggests that persons sentenced to CBCFs although nonviolent, are tougher than those given nonincarcerative options. The evidence is less conclusive regarding offenders given split-sentences. In addition to the impact on jails, the diversion of clearly prison-bound offenders makes the CBCF concept more appealing than split-sentences from a prison crowding standpoint. Arguably, more CBCFs could ease jail crowding if more split-sentenced felons were sent to CBCFs instead of jails.

The key issues are: One, whether shorter terms in CBCFs than prisons, local control, popularity with judges, and other factors (such as recidivism rates) make CBCFs better bargains than prison construction; Two, whether the level of offenders served and the greater likelihood of use by sentencing judges as shown in this report make CBCFs better bargains than less expensive nonincarcerative alternatives such as intensive supervision.

Separately, some states enacted, or are contemplating enacting, sentencing guidelines to provide benchmarks for the types of offenders best suited for each type of sentence. Jurisdictions typically use sentencing guidelines to determine the length of prison sentence appropriate for a given offender. It seems the concept could be expanded to target offenders for community sanctions as well. A couple of judges said they would like to see sentencing guidelines. However, their enthusiasm should not be construed as a judicial groundswell.

Alternatives Not Involving Incarceration

In the discussion above, we saw that two alternative sentences involving some incarceration--shock probation and split-sentencing--were widely used by common pleas judges surveyed. More than 90% of the respondents surveyed said they sometimes used each option. Among alternatives to prison that involve no incarceration, none were used by nearly as many judges.

Most popular among the nonincarcerative alternatives were treatment programs; about two-thirds of the respondents said they sometimes use them. Nearly two-thirds indicated they sometimes use restitution. Community service and intensive supervision were less popular. About two-fifths of the responding common pleas judges said they occasionally use each of these. Least popular were education programs, with about one-fifth usage by the judges participating in the survey, and house arrest, said to be used by less than 10% of the respondents.

Outpatient Treatment. The Revised Code allows common pleas judges to suspend the prison sentences of most felons and place them on probation, subject to conditions (see R.C. Section 2951.02). Treatment for alcohol abuse, drug dependency, and psychological problems long have been made conditions of probation. Lately, participation in special programs for sex offenders also has been required by some judges.

Outpatient treatment programs were cited by more of the common pleas judges surveyed than any other nonincarcerative alternative to incarceration. Slightly more than 70% of the respondents said they sometimes use outpatient treatment as an alternative (N=106). As with all nonincarcerative options, judges in the mail survey seemed more inclined to use outpatient treatment (80%) than those interviewed by telephone (65%). As noted in the discussion of methodology, some overreporting was expected, especially in the mail survey.

Among the 29% of the common pleas judges who said they did not use any outpatient treatment programs as alternatives to incarceration (N=31), over one-third said they were philosophically opposed to the programs as substitutes for imprisonment (36%). Nearly 30% of those not using the option said outpatient treatment programs were unavailable. About one-sixth of those not using outpatient programs as diversions from prison said such programs do not work (16%). Few judges gave other reasons for not using outpatient treatment. Several judges did not give a reason.

For most common pleas judges, outpatient treatment was virtually synonymous with alcohol and drug treatment. The number of judges who said they use outpatient treatment alternatives per se was nearly identical to the number who said they use outpatient drug or alcohol programs.

In contrast, 56% of the common pleas judges responding said they do not use outpatient treatment programs for sex offenders as alternatives to incarceration (N=102). About one-fifth of those who said they did not use such programs gave unavailability as a reason (just under half of this group said they would use outpatient sex offender programs if available). Otherwise, the reasons given for not using outpatient sex offender programs roughly parallel those given by common pleas judges for not using any outpatient program as an alternative to prison: about one-third were philosophically opposed and nearly one-fifth said the

programs do not work.

Most responding common pleas judges did not use outpatient mental health or mental retardation programs as alternatives other than programs specific to alcohol or drug abuse or for sex offenders.

Many common pleas judges surveyed by telephone who said they sometimes use outpatient alcohol or drug treatment as an alternative to prison sentences were asked to categorize the offenders most likely to be selected for the programs. Almost all judges who used the programs targeted felons who have a "history of the substance abuse" or those whose alcohol or drug problem "related to the offense". Most limited the availability of the option to low-level felons. Several judges indicated that some first and second degree felons might be eligible for such treatment programs, but not when a heinous assault is involved, regardless of the need for treatment.

The follow-up questioning of judges who said they opt for outpatient sex offender programs showed that this group of judges generally used the option for third or fourth degree felony sex offenders who did not have extensive criminal records.

Since fewer judges used or commented on general outpatient programs for mentally ill or retarded offenders, it is difficult to stereotype the offenders likely to be sentenced to this alternative. One judge said he uses mental health treatment as an option for all levels of felony and for both personal and property offenders. Another said she uses the alternative only for first time property offenders. Still another said the option is used for persons not addicted to drugs. Of course, some mentally ill or retarded offenders are winnowed from the pool eligible for this alternative because they are incompetent to stand trial or, in rare cases, found not guilty by reason of insanity.

Residential Treatment. Residential programs were slightly less popular alternatives than outpatient treatment, according to the common pleas respondents.

Overall, nearly two-thirds of the judges said they sometimes use residential treatment as an alternative sentence (65%) (N=99). Again, those interviewed by telephone were less likely to use the option (54%) than those queried by mail (82%), where more overreporting probably occurred.

As with outpatient treatment, responding common pleas judges generally equated residential treatment with alcohol or drug programs. The number of common pleas judges who said they use any residential treatment program as an alternative sentence was nearly identical to the number who said they use residential programs for alcohol or drug abuse treatment.

However, besides alcohol or drug programs, common pleas judges surveyed indicated that residential programs generally were less available than their outpatient counterparts. This may account for higher rates of nonuse of residential sex offender and mental health programs. Nearly 72% of the common pleas respondents (N=102), said they do not use residential sex offender programs as alternatives (versus 56% not using outpatient sex offender programs) and few judges said they use residential mental health or retardation programs as alternatives. Overall, 57% of those not using any residential treatment program

said such programs were unavailable. Three-fifths of this group said they would use such programs if available.

About one-fourth of the common pleas judges surveyed who did not use residential treatment as a sentencing alternative (N=35) said they were philosophically opposed (23%). A handful said they did not use the option for each of the following reasons: it is too expensive (14%), too risky to public safety (11%), or it does not work (11%). Respondents could give more than one reason or no reason.

When judges interviewed by telephone were asked to list the characteristics of likely candidates for residential alcohol or drug abuse programs, they targeted persons with a history of substance abuse. For judges using both outpatient and residential alcohol or drug programs, felons selected for residential programs often had a longer history of alcohol or drug abuse or of offenses related to such abuses than those selected for outpatient care. Judges often placed additional restrictions on persons sent to residential treatment, especially where halfway houses were involved. As with outpatient treatment, judges indicated that residential programs for alcohol or drug abusers were available as alternatives to low-level, nonviolent felons. A minority of the judges responding said the programs are sometimes used for high-level felons.

Since relatively few responses were given by common pleas judges who use residential sex offender or mental health programs as sentencing alternatives, it is difficult to generalize about the types of felons chosen for such alternatives. Several judges who do not have access to residential sex offender programs mentioned they would like to learn more about the programs. One judge characterized sex offender treatment as "the area of biggest need" in his county.

Restitution. Restitution ranked with treatment as a popular sentencing alternative, according to the common pleas judges participating in the survey. However, its actual use as a true alternative to prison for felons may be overstated by the surveys.

The Revised Code gives judges discretion to impose a term of restitution as part of a sentence in many criminal cases. A court may order an offender to make restitution for all or part of the property damaged or stolen in his crime. The judge is required to order restitution in certain arson and peculation cases. Moreover, courts are encouraged to impose restitution as part of an offender's sentence when victims are aged or disabled. (See Section 2929.11(E).) A few other specific crimes also call for restitution.

Independent of the use of restitution as a sentence, it may also be ordered as a condition of probation once a judge suspends a term of imprisonment (R.C Section 2951.02(C)). It is in this context that restitution as an alternative to prison is likely to arise.

Nearly two-thirds of the common pleas respondents (65%) said they sometimes use restitution as an alternative sentence (N=102). However, there was great disparity between the telephone survey, in which about half (49%) of the respondents said they use the option, and the mail survey, in which over four-fifths (88%) indicated they use restitution as an alternative. Again, overreporting probably occurred in both samples, especially in the mail poll.

Evidence of the overstatement of restitution as a true alternative comes from comments made by many judges. Several indicated they use restitution as part of an alternative sentence, but not alone, for a prison-bound felon. Others questioned whether restitution programs were appropriate in common pleas court, thinking restitution is a "soft" sanction better suited for use on misdemeanants by municipal and county courts.

Judges who said they use restitution typically did so in cases involving economic losses to victims that were caused by defendants who had employment. The alternative was used more often on low-level felons, according to the judges who commented. Several judges said they reserve the alternative for youthful offenders.

Of those not using restitution as an alternative to incarceration by itself, or in conjunction with other options, relatively few said the sanction was unavailable (4 of 102). The most popular reason for rejecting restitution was, as one judge stated, "It is not severe enough for felony offenders." About one-fourth of the judges who did not use restitution as an alternative to prison stated similar philosophic objections (23.5%). No other reason was given by more than a couple judges. Many judges did not explain their opposition to restitution as a pure alternative. One judge who did not use restitution said, "Many defendants are indigents who can't afford an attorney, much less restitution."

Community Service Work. Community service and intensive supervision were each said to be used by about two-fifths of the common pleas judges polled. Overall, 40% said some type of community service is used as an alternative to prison for some felons (N=105). Once again, overreporting arguably occurred as only 21% of the judges interviewed by telephone use the option, while 64% of those responding by post said they use it.

The Revised Code specifically authorizes the use of community service work as a condition of probation in misdemeanor cases. But it is not expressly permitted by law in felony cases. Yet, many common pleas judges have found a place for community service work in their general discretionary authority to set appropriate conditions of probation. Only one of the common pleas judges surveyed said he does not use community service as an alternative sentence because it is not clearly allowed by law.

Where community service is used by common pleas judges, it is generally reserved for first-time offenders, convicted of third or fourth degree felony property offenses, who were under 25 years old. A couple of judges mentioned they use community service as a sanction when felonies are plea bargained down to misdemeanors.

Of the judges who said they do not use community service as an alternative for prison-bound offenders (N=63), four reasons were each given by about one-fourth of the respondents (remember, more than one reason could be given): first, this was the only option for which many judges said there are too many liability issues inherent (27% of those who did not use the option); second, in an answer that relates to the first, community service was deemed too risky to public safety by several judges (22%); third, the same number said community service does not work as punishment or a deterrent; and, fourth, community service programs were unavailable to many judges (22%). However, a sizeable

majority of the latter group said they would use community service programs for felons if available (71%).

Intensive Supervision. Intensive supervision is not specifically mentioned in the Revised Code. It is a form of probation designed to make probation less risky to the public and more beneficial to the offender by increasing the interactions between probationers and probation officers. Regular probation officers often have caseloads of 80 to 100 probationers. Intensive probation officers generally supervise 25 to 35 offenders. As a result, there is more time for face-to-face meetings, programming, and monitoring in the intensive programs.

Currently, there are about one dozen intensive supervision programs for felons in Ohio that receive State funds. Since the programs are more expensive than regular probation, few counties have intensive supervision programs funded solely by local money. The State-funded programs, administered by the Department of Rehabilitation and Correction, are designed to admit persons who otherwise would be sent to prison, not merely to give more scrutiny to probation-bound offenders.

Overall, 38% of the common pleas respondents said they use intensive supervision as an alternative. One-fifth of those surveyed by telephone opted for intensive supervision (21%), while more than half of the mail respondents reported they use the option (62%). Overreporting, especially in the mail survey, probably means the overall figure overstates usage as a true alternative.

According to judges responding to follow-up questions about the types of offenders targeted for intensive supervision, nonviolent third and fourth degree felons made up the bulk of the target population.

When giving reasons for not using intensive supervision (N=66), two related answers predominated: 46% said the option was unavailable (of these, three-fifths said they would use intensive supervision if available) and 44% said the option was too expensive, especially for local coffers.

Judges could give no reason, one reason, or more than one reason for not using a sentencing option. When the responses were matched with counties that operate intensive supervision programs funded by the State, it became obvious that some judges, for whom intensive supervision was unavailable, did not give unavailability as a reason. Often, they said the option was too costly. Other judges indicated the option was both too expensive and unavailable. Of course, some judges chose not to explain why intensive supervision was not used.

Besides unavailability and cost, the only other reason given by more than a few of the 66 common pleas judges who indicated they did not use intensive supervision was philosophic opposition (15%). As one judge remarked about inmates given intensive supervision by other judges, "This group belongs in prison."

Education Programs. Another community corrections alternative to prison cited by some common pleas judges is education. Overall, 22% of the respondents said they use education programs as alternatives to prison sentences (N=105). Fifteen percent of those questioned by telephone said they use the option, while 31% of those answering by mail claimed they used the alternative. Comments by judges in the telephone survey indicated that relatively few common pleas judges

would use education programs alone as true alternatives for prison-bound offenders.

Among the nine common pleas judges interviewed by phone who said they used education programs as diversions, many noted the option is used only in conjunction with other sanctions. It is difficult to glean a pattern from the limited use of the option. The common denominators for persons chosen for education programs are their lack of a high school diploma and their youth.

Of the substantial majority of common pleas judges who said they do not use education programs as alternatives to prison (N=82), over one-third said no such programs are available for felons (38%). Many judges gave other reasons for not using education programs. About 16% said they were philosophically opposed to using education as a substitute for prison. "They are not appropriate for the prison bound population," commented one. "It's more appropriate for municipal court cases," claimed another. Nearly as many judges (15%) said education programs do not work to serve any theory of punishment. One judge said an education program "doesn't serve a purpose as an alternative to the pen". Many judges said meaningful education programs are too expensive (11%).

House Arrest. House arrest is not clearly stated as a sentencing option in the Revised Code. However, given the discretion judges have to impose conditions of probation, only five common pleas judges said house arrest is not allowed by law (N=107).

Only 9% of the common pleas respondents said they rely upon house arrest as an alternative sentence for felons (8% by telephone, 11% by mail). Where used, the option is generally reserved for young first offenders who commit crimes against property. But, limited usage makes stereotyping house arrest candidates difficult and imprecise.

Of the 91% of common pleas judges who said they do not use house arrest (N=97), over two-fifths said there are no house arrest programs available in their counties (43%). Of these, more than half said they would consider using such programs, if available (57%).

About one-fourth of the judges said they are philosophically opposed to house arrest (26%). One judge characterized house arrest as appropriate only in juvenile court. Another said, "It doesn't punish; it doesn't teach." Nearly as many judges said house arrest programs are too expensive (25%). "It's expensive and difficult to monitor," stated one. Several judges said the option is too risky (11%) or it does not work (9%).

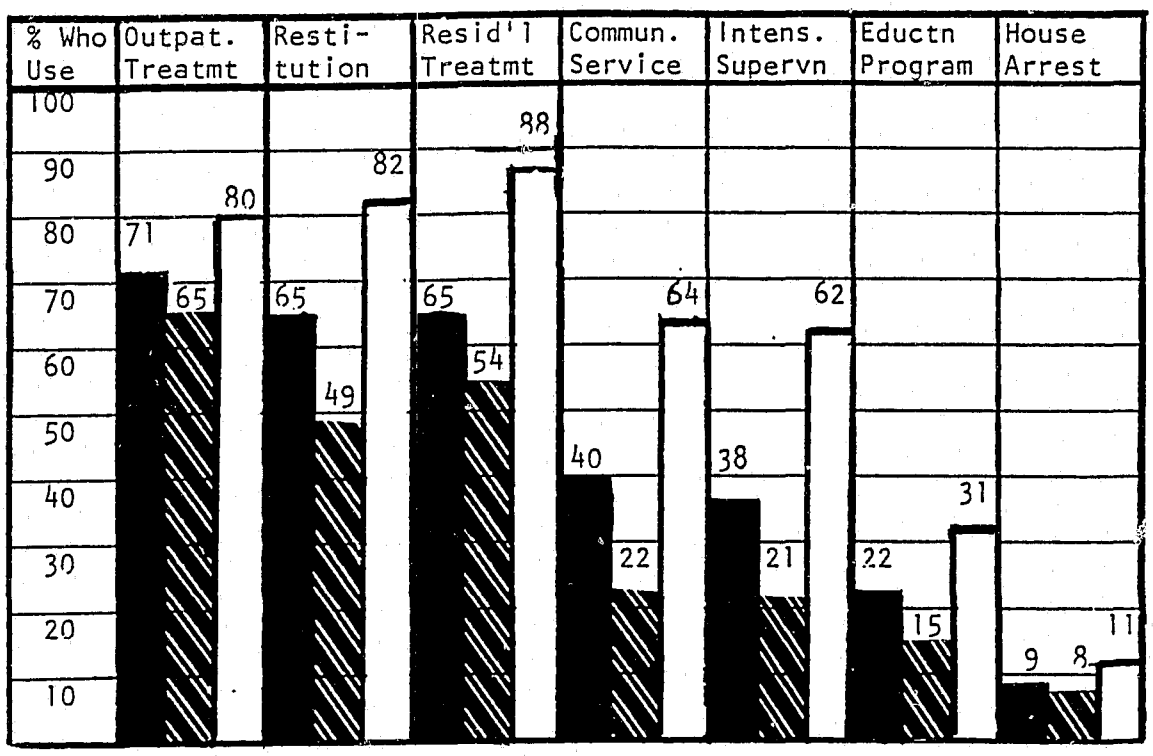
Electronic Monitoring. The Revised Code is silent on the use of electronic monitoring as a sentencing tool. Where used, common pleas judges rely upon their broad discretion to choose appropriate conditions of probation for felons. Judges were asked about electronic monitoring in the contexts of intensive supervision and house arrest. Only two of 106 responding judges said they use electronic monitoring in tandem with house arrest. Four of 106 said they tie electronic surveillance to intensive supervision.

Of the multitude of common pleas judges who did not use electronic monitoring, many said such programs are not available in their jurisdictions (39% in the context of intensive supervision; 31% regarding house arrest). Of these,

half said they would use the option if available in the intensive supervision context and less than half (44%) would use it with house arrest.

One-fourth of the respondents said they do not use electronic surveillance because of cost (23% regarding intensive supervision; 26% regarding house arrest). At least one judge said electronic monitoring is too expensive when long-distance telephone lines are needed for monitoring. Some philosophic opposition to electronic monitoring also was evident (12% regarding intensive supervision; 13% regarding house arrest). "It's 'Big Brother' and I don't believe in it," said one judge. Another commented that his predecessor tried electronic monitoring and had a 100% violation rate.

ALTERNATIVES NOT INVOLVING SOME INCARCERATION
COMMON PLEAS COURT JUDGES



Commentary. Despite the widespread availability and popularity of treatment programs, the nonincarcerative options that may have the most potential to further ease prison crowding are two of the least used: intensive supervision probation and, to a lesser extent, house arrest. Ironically, opportunities exist for greater use of these alternatives because they are not popular now. Only 38% of the common pleas respondents said they use ISP as a sentencing alternative. A paltry 9% of the same judges said they sometimes sentence offenders to house arrest.

In explaining why intensive supervision is not used, nearly half of the common pleas judges who responded said it is unavailable. Only CBCFs were said to be unavailable by a higher percentage of judges. In addition, many judges said ISP was not used because it is too expensive. Nearly 44% of those not using the option gave cost as a reason. This percentage was nearly two times higher than the percentage who did not use any other option because of expense.

Three-fifths of the judges who said ISP is unavailable also said they would use the program if available. This is a conservative figure, since many judges who said intensive probation (and other options) is unavailable did not answer whether they would use the alternative if available.

Most intensive probation programs are funded by State money through the Department of Rehabilitation and Correction. The Department runs a Pilot Probation subsidy program and administers the State's Community Corrections Act (CCA). The Department calls ISP programs "Intensive Diversion Units." Limited funds and population requirements restrict the availability of ISP programs. In the State budget process, ISP funding must compete with other DRC priorities, including the need to staff and operate the half billion dollars worth of prisons being constructed or recently opened.

In 1986, the Governor's Committee on Prison Crowding recommended spending more State funds on the Community Corrections Act and Pilot Probation programs. The Committee also suggested revising the CCA's arcane funding formula to allow all counties to participate. The recommendations were embraced by the Ohio Community Corrections Organization in 1988 and became part of the OCCO's legislative agenda. If safeguards are maintained that assure the true diversion of offenders from prisons to intensive supervision and other community corrections programs, the expansion of the programs could help ease prison crowding significantly.

The potential of house arrest to help ease prison crowding is less direct than ISP's. Judges seldom feel comfortable sentencing felons to house arrest alone. About one-fourth of those not using house arrest in sentencing said they are philosophically opposed to the concept. Many judges felt house arrest seems lenient and better suited to misdemeanants. About one-eighth added that house arrest is too risky to the public.

Nevertheless, house arrest has potential as an adjunct to other felony sentences. Only three of 107 common pleas judges said house arrest raises liability issues. Over two-fifths of those not using house arrest gave unavailability as a reason. Nearly 60% of these judges said they would use the option if available. Availability is a function of funding. The undercurrent of acceptance for house arrest may be tapped by house arrest programs that allow more shock probation, split-sentencing, furloughs, shock paroles, and earlier

paroles. The effect on prison crowding would be less direct than if house arrest were used as an original sentence, but it would be real.

Statutory changes that explicitly authorize house arrest in sentencing and in conjunction with shock probation, split-sentences, furlough, shock parole, and parole may be needed to unlock house arrest's potential. However, the real key seems to be the creation of structured, reliable programs with resources to pay for monitoring, whether by humans, machines, or both.

Few of the judges polled use electronic monitoring of offenders. Nevertheless, reluctance to use the new technologies appears to be because of cost rather than philosophic opposition in most cases.

Well over half of the respondents said electronic devices for monitoring intensive supervision or house arrest are unavailable or too expensive. Conversely, only about one-eighth of those not using electronic monitors stated philosophic objections. Perhaps surprisingly, less than 5% of the common pleas judges said electronic monitoring is too risky to the public or raises liability issues.

About half of the judges who said electronic monitoring is unavailable to them indicated they would use the devices if available. Many said they do not know enough about electronic monitors and would like to learn more. Some said they are looking into the devices.

There seems to be a market for using electronic monitors on offenders who otherwise would be incarcerated. The gadgets appear to be more than a fad. The monitors could be part of a program of house arrest, intensive supervision, shock probation, furlough, shock parole, parole, or work releases. A study of the electronic monitoring technology available should be undertaken to determine when programs are cost-effective. An informational clearinghouse may be needed at the State level to help judges systematically make informed decisions about new technologies. (As this report went to press in January, 1989, House Bill 51 was introduced. The bill would specifically authorize the use of electronic monitors. It also contains various safeguards.)

The potential for diverting more felons from prison exists with other existing nonincarcerative sentencing options mentioned by the judges surveyed, albeit to a lesser extent than with ISP.

Although no panacea, increased availability of residential treatment programs could help ease prison crowding somewhat. Common pleas judges surveyed generally use residential programs to divert some offenders, when available. Perhaps because the programs are residential, relatively few judges commented that inpatient programs are not punitive enough to serve as alternatives to prison. Less than a quarter of those not using residential programs gave philosophic opposition as a reason (versus nearly 36% of the same judges regarding outpatient programs).

Changes in outpatient treatment programs are not likely to greatly affect prison crowding. Most counties have at least one alcohol and drug program. Generally, judges are aware of the services provided and the programs' success rates. In short, judges have a keen sense of where outpatient alcohol and drug programs fit in the hierarchy of sentencing alternatives. Also, many judges feel

outpatient treatment alone is not a substitute for incarceration, especially regarding repeat offenders.

The growth area in treatment seems to be sex offender therapy. There may be a demand among judges for more outpatient and residential programs that focus on sex offenders. About 72% of the common pleas respondents said they did not use residential sex offender programs as a sentencing alternative. About 56% said they did not use nonresidential sex offender programs. (Lack of availability of residential programs may explain the disparity.) Many of the judges who said sex offender programs are unavailable in their counties expressed a willingness to use them, especially for offenders with short criminal histories. Several said they welcome more information on the programs. Conversely, many judges are skeptical about sex offender therapy. The success of the programs has not been established to their satisfaction.

The disparities between the telephone and mail surveys regarding the use of restitution and community service work probably shows that the options are not as popular as true alternatives to prisor as the naked overall data might indicate. After reviewing judges' reasons for not using restitution more often as a true alternative, one realizes that it would be difficult to change the feeling of many judges that restitution alone is "too soft" a sanction for most felons. Nevertheless, most judges appear willing to use restitution in combination with other penalties for felons who commit property crimes.

The key problems with restitution seem to be administrative headaches and the sheer number of indigent offenders who limit the candidates for restitution. The time is right for a study of successful restitution programs statewide in an effort to learn what could be copied in other jurisdictions. Regarding indigents, pilot programs outside of Ohio are deducting mandatory fines and restitution from public assistance benefits. Perhaps it is time for debate in Ohio on the merits of these and other controversial programs.

Judges also indicate a willingness to use community service work programs in conjunction with other sanctions to divert prison-bound offenders. However, to have full effect, two key criticisms of community service work programs must be addressed. One, over one-fourth of the common pleas respondents said such programs raise liability issues. Few other nonincarcerative alternatives brought liability issues to the minds of judges surveyed, none to this extent. (It is worth noting in this context that many other judges indicated they had resolved liability problems in their community work programs.) Two, in a related criticism, nearly as many (22%) judges said the option is too risky to public safety. Other than work release from jail, no other option was deemed as risky. (Again, many judges disagreed and said their programs were not threatening to public safety.)

As with restitution, the time is right for a review of the successful community service work programs in Ohio. This may enable local officials to learn how key issues are addressed and what could be duplicated by counties that do not have such programs.

Education programs are seldom used alone as alternatives to prison for felons. Given the number of common pleas judges who are philosophically opposed to such programs and who do not believe the programs work, it is unlikely that a meaningful dent in prison crowding could be made by more or better education

programs. Many judges commented that the programs are more appropriate in misdemeanor settings.

Conclusion

The more punitive the option, the more popular it is. Common pleas judges overwhelmingly support incarcerative programs such as shock probation, while questioning the appropriateness of community service, education, and other "soft" programs as punishment enough for felons. The availability of more CBCFs would be welcomed by the judges surveyed. The controversial key to greater usage of many of the "softer" community sanctions may lie in making them more penal. One method may be to make more offenders pay for community corrections. Another might be to use community alternatives in conjunction with one another more often. (For example, a person in treatment also could be required to perform community service work.) Public embarrassment and other stigmas could be considered to mete out retribution.

ALTERNATIVES TO JAIL USED BY MUNICIPAL AND COUNTY COURT JUDGES

Municipal and county court judges have jurisdiction over misdemeanor sentencing in Ohio. (Narrow exceptions include felony cases reduced to misdemeanors that are sentenced by common pleas judges and traffic cases heard in mayor's courts.) Fifty-four counties have county-wide municipal courts, 19 have county-wide county courts, and 15 have both municipal and county courts operating within their borders. Ohio's 198 municipal court judges and 59 county court judges are authorized to try misdemeanor cases and sentence offenders to local jails rather than to State prisons.

Municipal and county court judges were told the intent of the survey was to gather data on "alternatives to regular jail sentences." Judges were asked, "What alternatives to confinement do you use for convicted misdemeanants who would otherwise be sentenced to jail?" The staff interviewed 63 municipal and county court judges by telephone (48 municipal and 15 county). Ninety judges participated by mail (70 municipal and 20 county). In sum, 153 municipal and county judges participated out of a total of 267 (nearly 60%).

Alternatives Involving Incarceration

The main purpose of the survey of misdemeanor judges was to learn about alternatives to jail terms. However, there are situations in which misdemeanor judges sentence offenders to shorter than usual jail terms in conjunction with probation. This is sometimes called split-sentencing. Four-fifths of the responding municipal and county court judges said they use jail sentences in this manner. Also, although shock probation was enacted as an alternative sentence for felons, it seems that a less formal cousin of shock probation is used by some misdemeanor judges to ease jail crowding.

Split-sentencing. The Revised Code authorizes two types of split-sentencing for misdemeanants. First, under Section 2929.51(D)(3), a court may, upon sentencing a misdemeanant to a jail term, "permit the offender to serve his sentence in intermittent confinement, overnight, or on weekends, or both, or at any other time or times that will allow him to continue at his occupation or care for his family."

Second, Section 2929.51(D)(4) allows judges to "require the offender to serve a portion of his sentence, which may be served in intermittent confinement, and suspend the balance. . . upon any terms that the court considers appropriate or suspend the balance of the sentence and place the offender on probation".

Therefore, misdemeanor split-sentencing does not always result in a shortened jail term. It may be used solely to spread out the days of incarceration so that family and job contacts remain relatively normal. For instance, a misdemeanant who is given a 10 day jail sentence may be allowed to serve the sentence on five weekends, two days at a time, rather than 10 consecutive days.

Split-sentencing affects jail crowding in misdemeanor cases when it is used pursuant to the latter provision, Section 2929.51(D)(4). This form of split-sentencing results in shortened jail time when the court's terms are met.

About 80% of the responding municipal and county court judges (N=149) said they sometimes use alternative jail sentences (73% by telephone; 85% by mail). Some overreporting was anticipated on both surveys, with overreporting most prevalent on the mail survey. (See Notes on overreporting in the METHODOLOGY Section above.)

Alternative jail sentences often are tied into the gamut of probationary options, according to the judges surveyed. Many suspended part of a jail term contingent on the successful completion of a restitution requirement or a treatment program. One judge explained, "Our court studies indicate short sentences of actual jail time are effective in recidivism reduction. The most effective punishment combines short jail sentences with the options listed" (in the questionnaire). Some judges tied early release from jail to participation in community service programs. For instance, a few judges mentioned they give misdemeanants credit for two days of jail time for each day spent in community service. "If the case calls for jail, I believe it is best that the person serve some days and then be released for alcohol treatment, community service, et cetera," said one judge. Some judges indicated they give shorter sentences and place offenders on probation when the jail is full. Others use house arrest after early releases.

Work release from jail and other intermittent confinement can be used to temporarily free jail space. Nearly 70% of the responding municipal and county judges said they sometimes use work release. Some work release programs are administered by sheriffs, who decide which inmates are appropriate candidates. Other programs are controlled by judges or their probation officers and are part of inmates' sentences.

Also, 30% of the judges surveyed said they sometimes use other intermittent confinement plans. For instance, one judge alternated five in jail with two days out of jail until the sentence was served. Another used a "relay system": two days in, two days out, et cetera.

The common denominator among inmates who received a sentence involving work release or other intermittent confinement was holding a job. No judge indicated that the programs are used for unemployed persons. Many judges added that they make work release or intermittent confinement available only to inmates whose criminal records do not contain "serious" or "violent" offenses.

Work release and intermittent incarceration were criticized by several judges, including many who used it. The most common criticism was that, given staffing limitations, both programs are difficult to administer. For some, the lack of staff made it a nuisance to keep track of inmates. "It's too much trouble for the jailers," said one. Others said that, in the words of one judge who does not use work release or intermittent confinement, "jail security would be jeopardized" by the programs. Another judge argued that work release "creates a difficulty for smaller jails with limited staff and the ever present danger of contaminating the jail population."

"Shock Probation". The statute governing shock probation applies only to felons. There is no formal shock probation procedure for misdemeanants held in local jails. However, Section 2929.51(D)(2) and (4) of the Revised Code states that, "at the time of sentencing or after sentencing, when imprisonment for misdemeanor is imposed, the court may . . . suspend the sentence . . . upon any terms that the court considers appropriate" or require the misdemeanant "to serve a portion of his sentence . . . and suspend the balance . . . upon any terms that the court considers appropriate". Pursuant to this authority, municipal and county court judges can release misdemeanants from part of their jail sentences in a manner similar to shock probation for felons.

The surveys did not specifically ask municipal and county court judges about shock probation. Nevertheless, anecdotal information indicates that informal shock probation is used by many judges to release sentenced misdemeanants from jails, especially when there is no space for new offenders.

"I must review the jail list on a daily basis to release prisoners so that newly sentenced misdemeanants can be incarcerated," said one judge. "Prisoners are released when the jail is full," added another. Others mentioned the need to release misdemeanants when space is needed for felons accused of violent offenses who are held pending further proceedings.

A few judges complained that, in the words of one, "Long term prisoners are released earlier than they should be" because of jail congestion. Another said that tensions between sheriffs, county commissioners, and the court arose because the judge has been "asked by county officials to release early many who should remain confined."

In addition to granting early releases because of the jail space shortage, a couple of judges noted that some inmates are released early because of inadequate funds for programs. For example, one judge said, "Lack of funds to cover medical treatment of prisoners results in early release or no commitment at all."

Community-based Correctional Facilities. CBCFs are funded by the State for the diversion of felons from State prisons. They are not available as sentencing alternatives for municipal and county court judges.

Commentary. Responding municipal and county court judges were less likely than their common pleas counterparts to opt for community corrections that involve some term of incarceration. Perhaps this is because misdemeanants generally are less dangerous than felons. Nevertheless, split-sentencing to the jail was said to be used by 80% of the municipal and county court judges (versus 92% by common pleas judges). Split-sentencing of misdemeanants ranked third in popularity behind outpatient and residential treatment.

Several obstacles impede the expanded use of misdemeanor split-sentencing. First, its use tends to be limited to offenders with jobs. Development of more split-sentencing programs for unemployed misdemeanants may be needed.

Second, split-sentencing increases administrative work for sheriffs, especially when combined with work release and similar programs. Release programs require sheriffs and judges to carefully budget jail space. The programs can cause security and health problems.

Third, a related problem is the tendency to sentence offenders to weekend jail time. As a result, jails may be glutted on weekends. Perhaps more rotation is needed, even if offenders are compelled to take vacation or other leave from jobs to serve some jail time on weekdays.

In spite of the problems, split-sentencing has the popular advantage of being punitive without the socially and economically disruptive aspects of continuous jail terms. The time may be right for a State-level study of Ohio's many successful split-sentencing and work release programs. Such a study could help other jailers better handle the administrative problems caused by the programs.

Currently, several municipal and county court judges use their statutory authority to require a misdemeanant to serve part of her sentence in jail and to suspend the remainder. Although the survey did not focus on misdemeanor shock probation, the responses indicated there may be a market for a formal misdemeanant shock probation program, established by statute. Formal statutory recognition of shock probation for misdemeanants could foster greater use of the option, thereby alleviating some jail crowding. Such a statute could establish procedures for obtaining misdemeanor shock probation and authorize it for sound jurisprudential reasons unrelated to the need for more jail space.

In addition, the notion of jail good time could be explored. Inmates in State prisons can reduce their sentences by up to one-third through good behavior while incarcerated ("good time") and through credits earned by gainfully participating in work, school, and substance abuse programs while in prison. No such programs exist under statute for jail inmates. A reduction in sentences served for good behavior and other meritorious activities should not be so large as to mock the underlying sentence given by the judge. Even small reductions for individual inmates can cumulatively affect considerable jail space, given crowded conditions.

Alternatives Not Involving Incarceration

According to the municipal and county court judges surveyed, treatment programs--both residential and outpatient--were the most popular nonincarcerative alternatives to sentencing misdemeanants to jail. About four-fifths of the judges said they sometimes use treatment programs as diversions. Slightly over 70% said they use community service work as an alternative and just under 70% mentioned they use restitution. Education programs, typically for drunk drivers or offenders who have not received high school diplomas, also were used by nearly 70% of the respondents. Intensive supervision and house arrest programs were less used. Nearly one-fourth said they used the former, about 16% the latter.

Residential Treatment. Municipal and county court judges are authorized to suspend jail sentences and grant probation to misdemeanants conditioned on participation in residential treatment programs (see R.C. Section 2929.51). Moreover, in drunk driving cases, when the offender does not have a prior drunk driving conviction in the last five years, the judge may suspend the mandatory three-day jail sentence and, in turn, require the violator to enroll in a three-day drivers' intervention program certified by the Department of Health (see R.C Section 4511.99). Although often educational, drivers' intervention programs may include treatment.

Residential and outpatient treatment programs ranked slightly ahead of community service, restitution, and education programs as sentencing alternatives for the municipal and county court judges surveyed. Overall, 83% of the municipal and county judges surveyed (N=152) said they sometimes use residential treatment as an alternative to jail confinement (36% by telephone; 81% by mail). Hospitals, halfway houses, county mental health centers, and private facilities were popular sources of residential treatment for misdemeanants.

Residential programs probably fared better than outpatient programs in the survey because many judges categorized drunk driver programs as "residential treatment". Others classified the program as "education".

As with common pleas judges, residential treatment was synonymous with drug and alcohol treatment for the misdemeanor-sentencing judges surveyed. The number of judges who mentioned they use residential programs generally was nearly identical to the number who said they use residential drug or alcohol treatment specifically. Conversely, residential treatment programs for sex offenders were mentioned by only one-fifth of the judges responding. Very few judges said they sentence misdemeanants to residential mental health treatment.

Even when drunk drivers are set aside, the bulk of the misdemeanants ordered into residential treatment programs by the judges surveyed have alcohol or drug abuse problems. In fact, a few judges said they specifically exclude all drunk drivers from residential alcohol and drug programs. Another indicated he sends repeat drunk drivers to residential programs.

Unlike common pleas judges, few municipal and county judges indicated they discriminate between offenders who have committed property offenses and those guilty of crimes against people in deciding whether a misdemeanant is sent to residential treatment. The circumstances of the offender seemed to be more critical than the circumstances of the offense.

Of the 17% of the municipal and county judges who said they do not use any form of residential treatment in lieu of jail incarceration (N=26), nearly half said such programs are not used because they are too expensive.

Outpatient Treatment. Outpatient treatment programs were said to be used as alternatives to jail by 82% of the responding municipal and county court judges (N=153). Those interviewed by the telephone were less likely (76%) to say they use the option than those questioned by mail (86%). Again, more overreporting was expected in the mail survey (See Notes on overreporting in the METHODOLOGY section above).

As with residential treatment, outpatient treatment generally was viewed as outpatient drug and alcohol treatment, which was said to be used by 81% of the municipal and county judges surveyed (N=144). Less than half (44%) of these judges said they use outpatient sex offender programs (N=141).

Although many municipal and county court judges were inclined to consider residential programs for repeat offenders, several of the same judges said they use outpatient programs only for first or second offenders. "I use a trade-off of counseling sessions as equal to jail time for offenders without long records," said one.

Some judges categorized drivers' intervention programs for persons convicted of drunk driving as outpatient treatment (rather than inpatient treatment or education). Other offenders selected for outpatient programs had a history of drug or alcohol abuse or were involved in offenses while under the influence of drugs or alcohol. Some judges required offenders to pay for their treatment.

Few judges mentioned they use mental health programs other than those for persons with drug or alcohol programs. However, a couple of judges said they use crisis intervention centers and other family violence programs when an offender is convicted of domestic violence.

Less than one-third (29%) of the 28 municipal and county court judges who said they use no outpatient treatment programs said such programs are unavailable in their jurisdictions. No other reason for not using the programs was given by more than a few judges.

Community Service Work. Roughly 70% of the municipal and county court respondents said they sometimes use community service, restitution, and education programs.

Community service work may be imposed as a condition of probation in misdemeanor cases. Specifically, Revised Code Section 2951.02(H) states that a misdemeanant may "be required to perform supervised community service work under the authority of health districts, park districts, counties, municipal corporations, townships, other political subdivisions . . . or under the authority of charitable organizations that render services to the community or its citizens". Community service cannot be required as a condition of probation unless the misdemeanant agrees to perform the work. The court may require an offender to deposit a fee to procure insurance to cover the time during which he will perform the work.

The Revised Code further sets limits on the use of community service as a condition of probation. The period of work must be fixed and distributed over times that allow the offender to retain his job and care for his family. The maximum sentence of community service allowed is 200 hours (80 hours was the limit before September 9, 1988). A political subdivision, agency, or charity must agree to employ the offender. By law, work should be performed near the misdemeanant's home. Supervision and written reports are required.

Community service work was sometimes used by 73% of the municipal and county judges questioned (N=153). About two-thirds (65%) of the municipal and county judges surveyed by phone and 78% of those responding by mail said they use community work as an alternative. Overreporting probably occurred on both surveys, especially the mail poll. When used, judges typically require that a set number of hours of community work be completed in lieu of time in jail. One judge said, "It's a well-received program; the whole community benefits."

The programs used by judges are diverse. Litter programs are especially popular. Many judges used programs run by their probation departments. Others tie into programs administered by charities and other nonprofit groups.

Most judges who commented on the types of misdemeanants sentenced to work programs in lieu of jail said they target property offenders with short criminal histories. Quite a few judges also make the programs available to offenders who

have committed crimes against persons and who do not have more than one prior conviction.

Of the 42 municipal and county court judges who said they do not use community service work programs as alternative sentences, nearly half (48%) said such programs are not available to them. More than half (55%) of these nonusers said they would sentence misdemeanants to community service if available. About one-quarter (26%) of the judges who do not use the alternative said they are deterred by liability issues. For example, one judge mentioned he has trouble finding an insurance carrier to safeguard the program. No other alternative raised liability issues with nearly this many judges. Conversely, judges who use community service often mentioned their worker's compensation programs as important prerequisites.

Several judges said they do not use community work programs because they are too expensive to administer (19%) or they are philosophically opposed to equating community service with jail time (17%). On the latter point, one judge stated, "Community service is not appropriate for the type of offenders who go to jail."

Restitution. As in felony cases, judges are authorized to sentence misdemeanants to terms of restitution for property damaged or losses caused. When an oldster or disabled person is victimized, the court is supposed to consider the fact in favor of ordering restitution (see R.C. Section 2929.2(E)). Also, restitution must be ordered as part of the sentence for certain misdemeanors. For instance, persons convicted of theft of utility service have to be ordered to make restitution (see R.C. Section 4933.99). Restitution may serve as an alternative to incarceration when it is imposed as a condition of probation after a misdemeanant's jail sentence is suspended (see R.C Section 2951.02(C)).

Overall, 70% of the responding municipal and county court judges said they use restitution as an alternative to jail incarceration (N=149) . This includes 53% of the judges in the telephone survey and 82% of the judges in the mail poll. Overreporting probably occurred in both surveys, but more often in the mail poll where there was not a caller present to remind judges that true alternatives for jail-bound offenders were sought.

Judges who commented on the types of offenders given restitution as an alternative sanction generally indicated they select for the programs property offenders who have jobs. Some judges said they only use restitution as an alternative for first or second offenders.

As with common pleas judges, many municipal and county court judges said they use restitution in conjunction with other sanctions. A few tie it to jail terms. One judge said, "restitution is not usually a substitute for jail, but is ordered under threat of more jail if they don't comply."

Many judges commented that they do not have a structured restitution program. Some administer the program themselves or through their probation officers.

Of the judges who said they do not use restitution as an alternative to jail (N=45), over one-fifth (22%) said they do not have access to a restitution program. "It's difficult for the court to be a bill collector," said one.

Three-fifths of this group said they would use restitution as an alternative if someone administered such a program in their jurisdictions. Some of the judges who did not use restitution are philosophically opposed to restitution in lieu of jail time (13%), while others said restitution programs are too expensive (11%).

Education Programs. Education programs as alternatives to jail incarceration were nearly as popular as community service work and restitution. Overall, 68% of the responding municipal and county judges said they sometimes use education as an alternative sentence (N=152). There was a disparity between the percentage who claimed they use education programs in the mail poll (78%) versus those who said they use the programs in the telephone poll (56%). Again, overreporting was expected particularly in the mail survey.

The popularity of education programs among misdemeanor judges is explained, in part, by the tendency to classify programs for drunk drivers as "education". Remember, the statute that sets forth penalties for drunk driving imposes a mandatory three-day jail term on first offenders which may be supplanted by having the violator spend three days in an approved drivers' intervention program (see R.C Section 4511.99). Some judges consider drivers' intervention programs to be "treatment", others categorized them as "education". Some placed the programs in both categories.

It is difficult to assess how many judges use education programs in lieu of incarceration for misdemeanants other than drunk drivers. Nevertheless, it is clear that many judges use education for other offenders. High school diploma programs were mentioned by several judges. One judge said he uses a job training program for unemployed misdemeanants. Another has a "shoplifters' awareness program." A third created a "social responsibility clinic" for first time theft offenders. Still another judge said she requires persons with problems related to alcoholism to attend Alcoholics Anonymous meetings in lieu of jail time, which again shows how imprecise the line between education and treatment is.

Of the 48 municipal and county judges who said they do not use education as an alternative sentence, nearly half (48%) said such programs are unavailable to them. Over half of the latter group (57%) said they would use the programs if available. One in six (17%) of the judges who did not use the programs said they are too expensive. "We can't afford a probation officer to follow-up the offender," said one judge whose sentiments echoed those of several others. About one judge in seven (15%) mentioned philosophic opposition to education programs in lieu of jail time. "Education is not punishment," explained one judge.

Intensive Supervision. Intensive supervision probation and house arrest programs were by far the least used common sentencing alternatives among municipal and county court judges. Overall, 24% of the respondents said they use intensive probation as an alternative to jail time (N=153). Thirty percent of those responding by mail and 16% of those answering by telephone said they sometimes use the option. Again, some overreporting probably occurred in both surveys, especially in the mail poll.

Although not mentioned as a sentencing alternative in the Revised Code, judges clearly have the authority to suspend misdemeanants' jail sentences and require terms of intensive supervision. Such "probation-plus" programs generally involve more contact between probation officers and offenders. They cost more than regular probation, although generally not as much as incarceration.

Few of the 24% of the judges who said they use intensive supervision for misdemeanants commented on the types of offenders sent to the program. Conversely, most of the three-fourths of the judges who said they do not sentence misdemeanants to intensive supervision gave reasons (N=116). As with common pleas judges, two reasons predominated: intensive supervision is not available and is too expensive.

Well over half (60%) of the judges who did not sentence offenders to intensive supervision said such programs are unavailable in their jurisdictions. Typically, these judges said they do not have probation departments or lack the staff to run intensive probation programs. Of those for whom intensive probation was not available, 41% indicated they would use the program if it became available.

Similarly, 48% of the judges not utilizing intensive supervision said the program is too expensive. "We lack the money to hire the manpower," said one judge. (Remember, more than one reason for not using a program could be given. Thus, several judges who said the program is not available also indicated it is too costly.)

It is noteworthy that a couple of judges said they do not use intensive supervision because they cannot impose sanctions on violators because of jail crowding. One judge commented, "Due to our federal court order, we are unable to incarcerate misdemeanants who violate this type of system. This makes this sentencing alternative impractical."

House Arrest. Less than one respondent in six (16%) claimed to use house arrest as an alternative to jail incarceration (18% by mail, 13% by phone) (N=153). There was a split among the judges who said they use house arrest. Many used the program for offenders after they serve short jail stints in a manner similar to split-sentencing. "I have begun to use home incarceration more frequently due to the early release of dangerous persons from jails," said one judge. Others use the program as an alternative to any jail time. "Jail crowding has forced me to look at house arrest," said a judge who does not tie home incarceration to a jail term.

As with other options, the largest group of judges who said they do not use house arrest said the alternative is not available to them (47%; N=129). Of these, 43% said they would employ the option if available. Over one-fourth (29%) of the judges, including many who said the option is unavailable, said house arrest is not used because it is too expensive. "Funds are not available," commented one. "I have no probation officer to supervise the program," added another.

Several municipal and county judges (16%) were philosophically opposed to house arrest programs. Criticism ran the gamut from "house arrest is too lenient" to "it's Big Brother meddling in our personal lives." A higher than usual number of respondents (13%) said that house arrest does not work. Some of these judges said home incarceration is "too risky" to public safety.

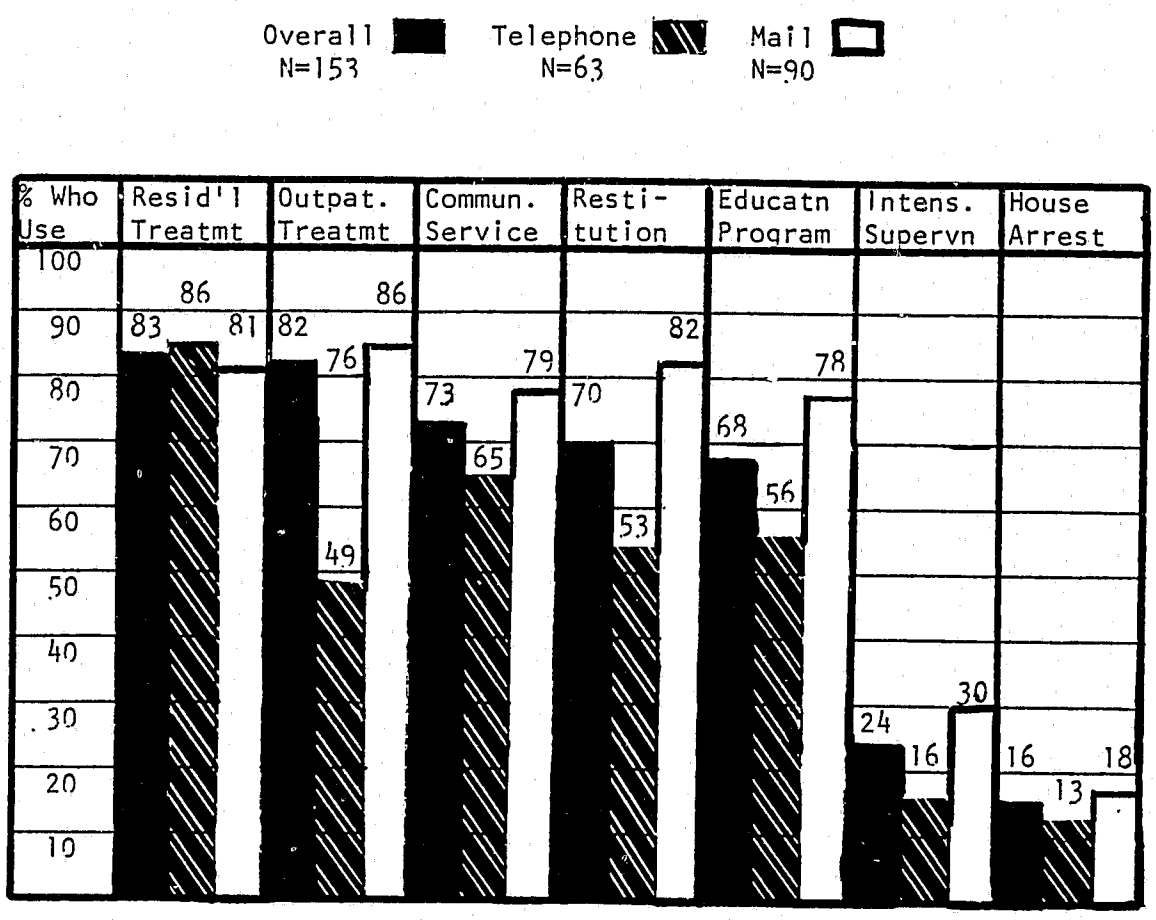
Although the Revised Code does not expressly authorize house arrest as an alternative to incarceration, only 9% of the judges who did not use the option said their reason is that house arrest is not clearly allowed by law.

Electronic Monitoring. Electronic monitoring is not specifically authorized by the Revised Code as a sentencing tool. Municipal and county court judges who use it relied on their general discretion to set the parameters of probation. Judges were asked whether they use electronic monitoring in conjunction with intensive supervision or house arrest. Sixteen (11%) of the respondents said they use electronic gadgets in house arrest programs (N=150), while seven (5%) said they use electronics to monitor in intensive probation programs (N=98). The percentage is higher when the use of electronic monitoring is measured only for those judges who use house arrest. Two-thirds of the judges who sometimes use house arrest did so in tandem with electronic monitoring. Seven of the 37 judges who said they use intensive supervision also used electronic supervision.

Among judges not using electronic monitoring, unavailability was again the reason given by the largest number of judges surveyed (55% in context of intensive supervision and 53% in the context of house arrest). Slightly less than half of the judges who reported that electronic monitoring was unavailable said they would use it if available (42% regarding intensive probation; 45% regarding house arrest).

Once again, cost was a common reason for not using the option. Nearly half (49%) of those not using electronic monitoring in the context of intensive supervision and 29% regarding house arrest cited expense. The third most common reason for not using electronic supervision was philosophic opposition (cited by 10% of the respondents regarding intensive probation and by 15% of the judges surveyed concerning house arrest).

ALTERNATIVES NOT INVOLVING SOME INCARCERATION
MUNICIPAL AND COUNTY COURT JUDGES



Commentary. On balance, municipal and county court judges were much more likely to use community corrections alternatives in sentencing misdemeanants than common pleas judges were for felons. With the exception of intensive supervision probation, a higher percentage of municipal and county judges responded that they use each nonincarcerative alternative. For instance, 26% more municipal and county judges said they sometimes use education programs, 23% more said they use community service work, 18% more said residential treatment, 11% more said outpatient treatment, 7% more said house arrest, and 5% more said restitution. The exception is that 14% more common pleas judges said they sometimes use ISP.

The trends were expected. Generally, misdemeanants are less dangerous offenders than felons and have committed less visible crimes. Hence, they are perceived as more amenable to community sanctions. Also, education and treatment percentages are affected by the great number of drunk driving cases heard in municipal and county courts. The statute authorizing community service work only mentions misdemeanants. And, most ISP programs are run by the State for felons only.

In misdemeanor community corrections, the areas with greatest growth potential seem to be house arrest and community service work. Although seldom used now (16%) by responding misdemeanor judges, house arrest may be aided by cost-efficient new technologies. It can be used as a pure alternative, or in conjunction with a split-sentence or the misdemeanor equivalent of shock probation. Only seven of 129 responding municipal and county judges said house arrest is too risky to public safety. A lone judge said significant liability issues are raised by it.

Nearly half of the respondents who do not use house arrest said the option is unavailable to them. Almost one-third said cost was a deterrent to using house arrest. At least 43% of the nonusers indicated they would use house arrest on misdemeanants, if available.

House arrest is no panacea. It has opposition. About 16% of the municipal and county court respondents said they were philosophically opposed to the concept. Thirteen percent, including some of the same judges, said house arrest does not work. As a relatively new and unproven option, house arrest must win converts if it is to be widely accepted. The same is true of house arrest's companion, electronic monitoring. Now may be a good time to review existing house arrest and electronic monitoring programs to learn which are cost-effective and worthy of replicating. Perhaps it would aid the acceptance of house arrest and electronic monitoring if the programs were explicitly authorized by the Legislature in the Revised Code.

Community service work already is a popular sentencing option in misdemeanor cases. Most responding municipal and county court judges said they use the alternative and nearly half of the nonusers noted they would use it if available to them. Jail crowding could be lessened if this popular option were available to more judges.

The recent expansion of the maximum hours of community work that may be mandated (from 80 to 200 hours) indicates a legislative commitment to community service as a viable alternative for misdemeanants. The time may be right for a State study of community service programs. The study could identify what makes programs successful in dealing with liability issues and how their success may be copied by other Ohio jurisdictions.

By statute, community service work must be done under the aegis of a political subdivision or a charitable organization. No political subdivision likes to squander resources on corrections or lose in competition with corrections. Yet, this is happening. Given the expense of building new jails and operating overcrowded ones, perhaps the administrators of more local government agencies could be prevailed upon to sponsor community service programs. Also, local charities could be asked to help provide a private sector response to crowding by creating more opportunities for community work.

Restitution is a popular sentencing alternative for misdemeanor judges, probably because it exacts a tangible penalty. Only six of the 153 municipal and county court judges surveyed indicated philosophic opposition to restitution. One problem with expanding the use of restitution is that the number of property offenders with jobs is limited. Some jurisdictions outside of Ohio are experimenting with mandatory fine and restitution programs even when the offender is indigent. In these programs offenders must pay some of their public assistance income to meet terms of probation. It is not yet clear how well these programs work.

Although statistically more than three times more popular with municipal and county judges than with common pleas judges, the true popularity of education programs is difficult to assess from the surveys. Municipal and county judges often pigeonholed drivers' intervention programs for drunk drivers as "education" programs. The survey did not specifically measure the use of education programs to divert offenders other than drunk drivers. Nevertheless, the anecdotes of responding judges indicate that many have been creative here. Various judges mentioned special programs for theft offenders, including shoplifters, vocational training, et cetera. High school diploma programs seem to be common. Perhaps information on these and other education programs could be shared with other judges in the hope that they become more pervasive when appropriate.

Residential treatment was used by more municipal and county judges than any other community corrections option, according to the surveys. The reason for this somewhat surprising response seems to be that judges often sentence first time drunk drivers to drivers' intervention programs in lieu of jail and the programs are categorized as "residential treatment" by many judges. Drunk driving cases aside, outpatient treatment seems to be the most popular alternative.

When judges were asked a separate question on whether jail crowding affects their sentencing (See EFFECT OF PRISON OR JAIL CROWDING ON SENTENCING, below), three-fourths of the municipal and county judges responding answered in the affirmative. One judge spoke for many when he said, "The drunk driving law is the key factor in jail overcrowding." In particular, many said mandatory jail terms are the problem. The popularity of treatment as a sentencing alternative for intoxicated drivers seems to reflect a consensus among municipal and county court judges that treatment or education is the appropriate disposition for first time drunk drivers.

Treatment--in particular, alcohol and drug treatment--is widely available and used. Other than changes in the drunk driving laws, it does not seem that a great deal more jail crowding could be alleviated by treatment programs. Separately, municipal and county court judges showed little interest in sex offender treatment programs. This is probably because misdemeanor judges sentence relatively few sex offenders other than prostitutes.

Only one-fourth of the misdemeanor judges said they use intensive supervision probation in sentencing. Most respondents said ISP is unavailable to them. Nearly half said it is too expensive. Since the State's ISP program is for felons only, and since many judges and others feel that misdemeanants do not need the rigorous scrutiny associated with ISP, the level of usage actually was higher than anticipated. It is not clear what the criteria for misdemeanor ISP programs are. They exist because of creative local judges and probation officials. It may pay to study these programs to learn whether they are cost efficient for misdemeanants and can be exported to other Ohio jurisdictions.

Conclusion

State law has long ignored community corrections for misdemeanants. Yet, misdemeanants are considered low-risk candidates for diversion from jail. The availability of more jail space could, in turn, afford common pleas judges with more opportunities for split-sentencing felons. Serious debate is needed on whether State intervention and funding for misdemeanor community corrections is in the best interest of Ohio taxpayers. While some construction may be needed to replace antiquated jail facilities, less costly options should be rigorously explored.

Perhaps the State could foster local community corrections boards that are not tied to specific programs. Such a board could serve as a low cost forum for judges, sheriffs, prosecuting attorneys, defense counsel, and community corrections advocates to meet regularly, discuss jail and prison crowding levels, and weigh the merits of alternatives.

New technologies should be systematically explored. These include active and passive electronic monitors for offenders who would not be eligible for less restrictive probation and ignition sobriety devices as alternatives to some jail sentences for certain drunk drivers. (A bill specifically authorizing the use of ignition interlock systems took effect while the surveys were being conducted. No judge mentioned using such devices.)

If more community corrections options were available, they would almost certainly be used by sentencing judges. Many judges would willingly embrace additional options. As elected officials, many would be hard pressed to ignore cost-effective alternatives to incarceration.

EFFECT OF PRISON OR JAIL CROWDING ON SENTENCING

Effect of Prison Crowding on Common Pleas Judges

Common pleas judges were asked whether knowledge of prison crowding affected their sentencing practices. The judges split nearly even, with a small majority answering that crowding does not affect sentencing. Of 105 common pleas judges responding, 49 (47%) answered that prison crowding affects sentencing. Fifty-six (53%) disagreed. There were no significant differences between the judges who responded by telephone and those who replied by mail.

When common pleas judges who said they are not affected by prison crowding discussed their answers, two related themes recurred. One, many said statutory criteria, not prison crowding, determine sentences. Two, several insisted prison crowding is a problem to be addressed by the General Assembly and the Governor, not by the judiciary.

Regarding statutory criteria, the Revised Code sets forth a range of prison terms for each level of felony (Section 2929.11). Judges have discretion to choose the appropriate term from within each range. In making the choice, the Revised Code instructs judges to consider whether the offender is likely to commit another crime, the need to protect the public, the nature and circumstances of the offense, the victim impact statement prepared in the case, and the history, character, and condition of the offender and his need for correctional or rehabilitative treatment (Section 2929.12). The Code also sets forth factors judges may consider in favor of imposing a shorter or longer sentence on the felon. Prison crowding is not listed as a factor that must or may be considered.

Many judges whose sentencing practices have not been altered by prison crowding maintain that the statutes do not allow consideration of crowding in sentencing. For example, one judge stated, "My sentences are based on the ORC. Prison crowding is absolutely not considered." Another said, "We impose sentences according to statutory criteria, not space availability."

Regarding the responsibility of the Legislature, many judges blamed the General Assembly for prison crowding and the Administration for not alleviating it. Prison crowding "is a legislative problem, created by mandatory sentences," said one judge. "A legislative solution is needed," he added. Another stated he has no choice but to swell prison rolls because "mandatory sentences require it." A third felt judges "get a bum rap." "The Legislature and general public want incarceration, so they must pay for it," he added.

The mandatory sentencing troubling many common pleas judges came with the enactment of Amended Substitute Senate Bill 199, which took effect in 1983. The bill requires judges to impose mandatory terms of "actual incarceration" on persons who commit felonies with firearms and on certain repeat felons. The measure also lengthened minimum sentences for many violent felonies. The act limited many felons' candidacy for probation, shock probation, shock parole, furlough, and parole. Judicial discretion was reduced.

Regarding the Governor's role, some judges commented that space must be provided for all persons sentenced to prison. The sentiments of several judges were captured by one who maintained, "It is not my concern whether there is overcrowding; it is the Executive branch's duty to provide the facility."

A sentiment expressed by many judges who said they were affected in sentencing by prison crowding was that crowding makes them view prison space as a scarce resource to be used only for violent and habitual offenders. Some feared the incarceration of many nonviolent convicts could force the release of more troublesome offenders. One judge claimed, "every one we send to prison means the State has to let a violent one go."

A plurality of those affected by prison crowding said they use probation and various community sanctions more often as a result. "If the decision between incarceration and probation is a close one, I opt for probation because of the crowding problem," was a typical response. Also, crowding has encouraged the greater use of shock probation and split-sentencing, according to many judges. These options involve incarceration, but for shorter periods of time. (Judges' sentiments on community corrections are discussed earlier in this tome.)

In addition to considering community punishment rather than imprisonment, many judges mentioned they opt for shorter terms of imprisonment in certain cases because of prison crowding. "We must choose sentence lengths carefully," noted one. However, another judge stated he "inflates" sentences in response to what he perceives as lenient practices by the Adult Parole Authority.

Some judges who acknowledged setting alternative sentences because of crowding were unhappy they felt compelled to do so. "I send only the worst of the worst to prison, but I view this as the State forcing the court to abrogate its responsibility to society, forcing the judicial system to be its accomplice," maintained one judge. Along these lines, a few judges commented that crowding made their sentencing "too lenient". One judge candidly observed, "I believe I gave some people breaks they don't deserve due to prison overcrowding."

A few judges said they consider prison crowding when sentencing because of the effects of crowding on prisoners. One observed, "Prisons don't rehabilitate, generally. It's worse when crowded." Others were concerned with safety when prisons are glutted.

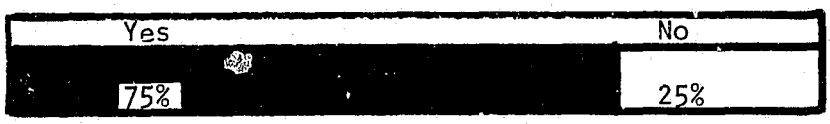
Generally, urban judges were more likely than their rural counterparts to call for the selective use of prisons for violent and repeat offenders. However, one rural county judge, troubled by the number of nonviolent offenders sentenced to prison in some counties, suggested that a "central sentencing authority be created to establish parity." "Local courts would continue to determine guilt, but sentencing would be passed to a sentence court," he explained. Similarly, another judge called for creating a sentencing board that could review sentences for statewide proportionality.

A couple of judges proposed using sentencing guidelines to determine who should be incarcerated. One stated, "I would follow legislatively mandated sentencing guidelines." He added, "the State should handle people who are not appropriate for probation under local criteria."

IS SENTENCING AFFECTED BY PRISON OR JAIL CROWDING?

Common Pleas Court Judges (N=105):

Municipal and County Court Judges (N=145):



Effect of Jail Crowding on Municipal and County Court Judges

Three-fourths of the judges surveyed who have primary authority to sentence misdemeanants to local jails said they were affected by jail crowding in sentencing decisions. Of the 145 municipal and county court judges responding to the question, 108 (75%) said they were affected, while 37 (26%) replied they were not affected (error due to rounding). There were no significant differences between those who answered by telephone and those who responded by mail.

"Overcrowding severely hampers a judge's ability to function properly," summarized the feelings of municipal and county court judges who said their sentences are affected by jail crowding. For many judges, crowding was an "obvious", "absolute", and "daily" concern in sentencing decisions. "Crowding reduces discretion," stated one judge. "I could sentence people to weekends in the past to allow family and job retention." "Now, with more drunk drivers, weekend space is not available," he elaborated.

"I get frustrated when the jail is unavailable in cases in which it is the appropriate penalty," intoned another judge. Still another said crowding "probably resulted in an excessive use of probation." Several judges mentioned that jail crowding forces them to impose lighter or shorter sentences than would otherwise be given. One reported, "With local crowding for men and no facilities for women, extensive man-hours in transporting prisoners has caused a reduction in the number and length of sentences." Another judge said, "certain classifications of offenders cannot be incarcerated at all" because of crowding, citing petty theft and simple assault as examples. Similarly, one judge said he uses little pretrial detention because of jail crowding, "even when a person should be held."

Lack of space for females was a frustration. One judge reflected the comments of many when he said, "We have nowhere to house nonviolent female misdemeanants and they consequently are totally beyond our power to punish." Another commented, "we are unable to put female misdemeanants in jail unless it is a crime of violence or a DWI offense." The latter judge added, "Women and men are treated disparately because of a federal order which mandates a sheriff's release of women, while men may serve" at another facility.

Many judges said they must call the jail to learn if space is available before sentencing an offender to incarceration. "I consult with the jailer as to the availability of space; the sentence is adjusted accordingly," stated one. Another mentioned that the sheriff often calls and asks that no new prisoners be sent.

Numerous judges said they maintain regular, formal contact with jailers to keep track of available space and levels of crowding. Some receive daily head counts from the jail, often computerized in form. Conversely, a couple of judges bemoaned a lack of contact with the jail, stating such contact would help them in sentencing.

Waiting lists as long as 500 inmates and backlogs of from six months to two years were cited. Again, judges noted this forces them to weigh the use of incarceration as a sanction very carefully. Others said that, despite waiting lists, they still sentence offenders to jail time, but must prioritize who serves when. Asserting that immediate punishment is the most effective punishment, a couple of judges complained that waiting lists dilute the penal impact of jail terms.

Many municipal and county court judges said they have granted early releases to inmates to free space in the jail for new prisoners. "I call the jail to release less serious offenders to make space for more serious ones," said one. "Long term prisoners are released earlier than they should be," added another. One judge mentioned the sheriff submits formal early release requests for the judge's review.

Several county jails operate under federal court orders or consent decrees. Often a federal court has mandated a maximum capacity for the jail. The judges and jailers are called upon to release offenders when the maximum is exceeded.

A sore spot for numerous judges was the impact of drunk driving penalties on the jail population. Under the Revised Code, persons found guilty of operating a motor vehicle while under the influence of alcohol or illicit drugs must be sentenced to jail terms. Terms of at least three consecutive days on first offense, 10 consecutive days on second offense, and 30 consecutive days on third violation must be imposed. Longer sentences are available in the judge's discretion. Only the three-day term for first offenders may be suspended by the judge if the offender is, in turn, sentenced to a certified three-day drivers intervention program. (Sections 4511.19 and 4511.99.)

"The drunk driving law is the key factor in jail overcrowding," stated one judge. "Drunks take up too much space," said another. Many other judges expressed similar sentiments. According to one:

> The county jail is constantly filled with D.U.I. offenders [drunk drivers]. On many occasions we must release people, who are not subject to alternative methods of sentencing, to incarcerate D.U.I. offenders with state-mandated time who could be rehabilitated without using the jail.

Several said that minimum security facilities would suffice for drunk drivers. One volunteered an outbuilding on the workhouse grounds for this purpose. Another suggested building Army barracks structures near existing jails for low-security prisoners. Still, another judge suggested making drunk drivers "sleep in a football field for three nights; that's the extent of security needed."

Some judges said flexible solutions to the problems caused by the influx of drunk drivers are limited by the Minimum Standards for Jails in Ohio. Promulgated by the Department of Rehabilitation and Correction under statutory authority (see Revised Code Section 5120.10), the Minimum Standards provide rules relating to security, housing, safety, recreation, conditions of confinement, and other jail matters. Although one judge criticized the Standards as "out of the realm of reality", others who mentioned them were less troubled by the Standards, generally. The judges suggested that the standards be amended to allow low security areas for drunk drivers and other nonviolent offenders. One judge said, "the standards should be changed to permit low cost housing. You don't need fancy locks, just a fence enclosure. Use an adjacent jail for kitchens or secure cells." A few judges said mobile facilities could be used for certain inmates if the standards were modified.

Numerous judges listed alternatives to incarceration that they began to use, or expanded the use of, as a result of jail crowding. One judge said he "developed community service, work release, domestic violence programs, and inpatient and outpatient treatment programs as the direct result of crowding." Another said crowding "forced me to look at other alternatives, such as the house arrest program, public service work, and placing more on probation with suspended sentences." He was also less likely to jail probation violators. (The use of these and other alternatives are discussed earlier in this report.)

Several judges said they have to send inmates out of the county for incarceration. At least one judge mentioned that out-of-state jails are used. One judge from a county that does not have a jail crowding problem said his facility must compete with jails in Indiana for surplus inmates.

Transferring prisoners out-of-county was characterized as "inconvenient" and "expensive" by judges. One commented, "Some prisoners have had to be taken such distances that there is a three to four hour trip in each direction."

Many judges who said they would use more alternatives to incarceration if available complained about a lack of funds for them. Of these, one judge, whose jail operated at nearly twice its designed capacity, also said the lack of money for medical treatment in jail forces early releases. Another judge complained that community options are available, but "the local government is not willing to fund many of these alternatives for the indigent population."

Another problem mentioned by some judges was competition for jail space with the common pleas court. The Revised Code generally requires that felony sentences be served in State prisons (see Revised Code Section 2929.221). However, judges are authorized to suspend a felon's prison sentence and place the offender on probation. One of the terms of probation could be a sentence of up to six months in the county jail (see Revised Code Section 2929.51). As discussed earlier, this is often called "split sentencing". In many counties, split sentencing for felons has further limited jail space for the misdemeanants sentenced by municipal and county courts.

One municipal judge stated, "Crowding is due to common pleas court judges sentencing third and fourth degree felons to jail and drunk driving cases." Another municipal judge said he must negotiate for space not used in the jail by the common pleas court." Coincidentally, several common pleas court judges said their local jails were too crowded for them to use split sentences.

One-fourth of the municipal and county court judges surveyed said they were not affected by jail crowding in sentencing. Many of these judges said they were not affected by crowding because their counties did not have jail crowding problems. In a few instances, the opening of a new jail has alleviated the glut. Some judges remarked they were the beneficiaries of presiding in sparsely-populated counties. And three Ohio counties do not operate county jails; judges from these counties reported no crowding.

In contrast to common pleas judges, only a few judges in the municipal and county court survey indicated that crowding is not a judicial concern. One stated, "The local jail must take prisoners, so it's no concern to me." Another said, "If a person needs jail time, they go." "Crowding and the expense of contracting with other jurisdictions do not dictate sentences," he added. Still another judge said crowding does not affect sentencing, it "only affects the wait for space."

Commentary

Data on the impact of prison and jail crowding on judicial sentencing lend themselves to three key findings. First, municipal and county court judges surveyed tended to be more troubled by local jail crowding than common pleas judges were about prison crowding. In fact, many common pleas judges shared their municipal and county court counterparts' preoccupation with jail crowding. Second, judges believe that mandatory sentences enacted by the General Assembly earlier this decade contribute to jail and prison congestion. Third, judges believe the State has a lead role to play in solving prison and jail crowding.

The nearly even split between common pleas judges who said they are not affected by prison crowding (53%) and those who said they are (47%) reflects divergent philosophies. Many of the judges who indicated they are not affected said statutory criteria, not available space, control their sentencing. Antithetically, many judges who said they are affected found implied permission to weigh prison crowding in the statutes that give judges broad discretion to suspend sentences and grant probation. The former group tended to stress the State's duty to house prisoners. The latter group tended to view prison space as a scarce resource to be allocated parsimoniously. There was more harmony at the municipal and county court level, where 75% of the respondents said they are affected by jail crowding and many of those not affected lived in counties not having crowded jails.

Why do misdemeanor judges feel the effects of jail crowding more than felony judges sense the impact of prison crowding? The comments of many municipal and county court judges demonstrate palpable frustration with jail crowding and a sense of obligation to work with other local officials to manage the county jail population. Perhaps this is because 84 of Ohio's 88 counties operate full service county jails and many municipal and county court judges share courthouses with sheriffs, prosecutors, and county commissioners, facilitating an exchange of

information on jail matters. Municipal and county judges often mentioned they maintain frequent contact with sheriffs regarding space available in the jail. Some receive formal reports daily from sheriffs. Moreover, jail issues are discussed in local newspapers and all of the key actors are local taxpayers and elected officials.

Contrast this with the relationship between the Ohio Department of Rehabilitation and Corrections, which runs the State prison system from Columbus, and the common pleas judges who sit in the 88 counties. Prison crowding and sentencing discussions between State officials and common pleas judges tend to be occasional and anecdotal. The fact of crowded prisons--which operate nearly 40% over capacity at this writing—is known to common pleas judges, but often not felt by them. For some, prison crowding is a cliche. One judge noted, "in my umpteen years on the bench, prisons have had the same problem. I'm not certain what effect, if any, it has anymore." Some common pleas judges said they maintain contact with sheriffs regarding space in local jails for felons given split-sentences. However, none of those surveyed said contact with the DRC is maintained. In short prison crowding does not seem to be perceived as a tangible, quotidian problem for the common pleas court judges surveyed. Even among the substantial minority who said their sentencing was affected by prison crowding, solutions generally were seen as State, not local, matters.

Crowding in distant State prisons is never likely to become as tangible to common pleas jurists as local jail space limitations are to municipal and county court judges. However, there may be simple ways to bring the level of prison crowding home to more judges. One tack could be regular dialog between State officials and common pleas judges. This could involve disseminating information on prison space availability, on how the recipient judge's sentencing practices compare with those of his compatriots, and on community corrections options available through the Department of Rehabilitation and Correction.

Common pleas, municipal, and county court judges harmonized on one key point: mandatory sentences enacted by the General Assembly are in part responsible for prison and jail crowding. "I don't want to sound flip, but crowding is the responsibility of the Legislature," said one judge, reflecting the views of many others.

For many felony judges, the problem is Amended Substitute Senate Bill 199. By lengthening prison terms, Senate Bill 199 places undeniable claims on prison bedspace. This, after all, was the bill's intent. Longer minimum sentences delay parole eligibility dates and subsequent releases. Even where the harsher penalities of S.B. 199 are used as plea bargaining tools, longer minimum sentences seem to result.

What is troublesome in terms of prison bedspace is that the full effect of S.B. 199 has not been felt. S.B. 199 reserved its toughest sanctions for repeat aggravated felons. Remember, the bill took effect in 1983. Many aggravated felons sentenced in the interim received minimum terms ranging from three to ten years. Thus, these offenders only recently have begun to be paroled and, in some cases, to commit other aggravated felonies. Most of these repeat offenders will enter prison with minimum terms of actual incarceration ranging from eight to fifteen years. (In contrast, before the enactment of S.B. 199, the same repeat offenders would have received minimum terms ranging from two to seven years and had some opportunities for earlier release.) The next few years could witness

the incarceration of many offenders whose sentences would more than double in length those available before 1983.

If mandatory sentencing under S.B. 199 is not alone responsible for prison crowding today, what other factors are? Increased intake seems to be one answer. According to the Department of Rehabilitation and Correction, nearly 11,000 people were admitted to Ohio prisons during 1987, the most ever. Figures through October, 1988, indicate that intake is up another 12% over the 1987 record. Part of this may be due to more effective law enforcement and prosecution, as well as the more aggressive pursuit of parole revocations recently. And part may reflect a shortage of community corrections alternatives. However, one can surmise that some of the increased intake results from a greater judicial tendency to incarcerate felons. Moreover, of the 11,000 new inmates entering Ohio prisons in 1987, over half were sentenced for nonviolent low-level felonies. According to research by the D.R.C. these determine sentence inmates typically have one or no prior adult felony convictions. Prison may be the appropriate sanction in many of these cases, however, judges are not mandated to imprison such offenders. In fact, common pleas judges who readily use community corrections said they draw heavily upon the nonviolent low-level felony population.

For misdemeanor judges, the mandatory sentencing nemesis is Senate Bill 432, which took effect in 1982. The bill set mandatory jail terms for persons who operate motor vehicles while intoxicated. Referring to jail congestion, one judge lamented, "drunk drivers are killing us."

Unfortunately, there is little research at the State level that quantifies jail populations Statewide. So the precise impact of S.B. 432 is not known. Research currently undertaken by the Governor's Office of Criminal Justice Services should help fill the void in the short run. Sheriffs in all counties were asked to inventory their jail populations during November, 1988. Preliminary results indicate that nearly half of the sentenced misdemeanants in Ohio's county jails are drunk drivers. Thus, while not the sole cause of jail crowding, mandatory sentences for drunk drivers undeniably contribute significantly to the glut.

The question becomes, how do we balance the legitimate policy concerns that led to the enactment of mandatory jail terms for drunk drivers against the expensive crowding caused in jails by the influx of drunk drivers? A compromise may lie in continuing mandatory incarceration while permitting the housing of drunk drivers (and perhaps other nonviolent misdemeanants) in less secure facilities.

Many people feel drunk drivers do not need the same level of security while incarcerated as many other criminals housed in county jails. There is a direct correlation between the level of security and a jail's cost. Thus, less secure jails for some offenders would be cheaper. Perhaps unused school buildings could be purchased and renovated as minimum security jails. Cafeteria and restroom facilities are in place already. Other possibilities abound. Traditional jails would be maintained for persons accused of felonies who are unable to obtain bail and for other misdemeanants.

Tough decisions would have to be made at the State level concerning many issues, including whether the Minimum Standards for Jails in Ohio should be amended to allow for nontraditional jail facilities for drunk drivers and others.

Would less strict standards for drunk driver facilities make jurisdictions more vulnerable to litigation? Would such facilities be viewed as less penal than jails and undermine the intent of mandatory sentencing? Would the administration of dual facilities be a headache for sheriffs? Should the State target jail construction money to build or renovate minimum security jails?

Conclusion

Judges' responses to the surveys should be instructive to the State. On the felony level, many common pleas judges are receptive to community corrections options, especially where a structured program exists. The State could play a key role here by expanding its present efforts pertaining to community-based correctional facilities, the Community Corrections Act, and Pilot Probation. Moreover, attempts could be made to encourage more common pleas judges to view prison space as precious. Beginning formal dialogue between State officials and common pleas judges may help. Perhaps new concepts such as electronic monitoring of shock probationers or "boot camps" for healthy young offenders should be contemplated.

A word of caution seems apropos. When the H.B. 530 prison construction program began in 1984, crowded Ohio prisons had 6,000 surplus inmates. When the half-billion dollar program ends in 1992, the State is projected to have 8,000 surplus inmates. Ohio is not likely to build its way out of its prison crowding problems.

Regarding jails, drunk driver issues must be addressed. Also, the State should weigh whether its community corrections laws should cover misdemeanants. Some jail construction seems inevitable. Otherwise, Ohio will enter the 21st Century with nearly half of its counties operating 19th Century jails. However, systematic new alternatives also may be worth considering including house arrest, bail supervision funds, jail good time, and formal shock probation for misdemeanants.