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GUIDELINES
COMMISSION

Booth Gardner, Governor

Washington State Sentencing Guidelines Commission

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List of Charts

The best way to predict the future is to invent it.

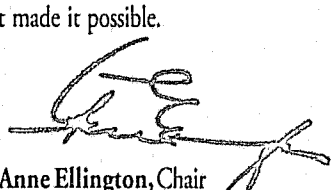
WASHINGTON'S SENTENCING REFORM ACT, adopted in 1981, was considered a model for the nation and has been widely studied and, in some cases, imitated. The law has changed, and so has Washington. It is time, after a decade of experience, to examine the life of the law to see if it can serve the public effectively in the 1990s.

This report is the product of ten months of intensive work by the Sentencing Guidelines Commission. It is the distillation of an enormous effort. Its size does not reflect the magnitude of the task. No readable document could contain all the work contributed — in, literally, thousands of hours — by dedicated men and women across the state of Washington, and beyond.

The members of the Sentencing Guidelines Commission endured, without compensation, a grueling meeting schedule. Nothing since the creation of the Guidelines a decade ago has demanded so much, in so little time. Our staff, as usual, have given more than can reasonably be expected. They continue to do more, faster, and better work than larger and more generously funded operations in other jurisdictions with sentencing guidelines.

The Commission could not have accomplished its objectives in isolation. From the beginning, our strategy was to involve others in the process. These included citizen representatives, treatment providers, legislators and their staff, prosecuting attorneys and the defense bar, researchers, teachers and others. We appreciate their willingness to share their knowledge, skills and time.

Finally, the Commission thanks Governor Booth Gardner, whose leadership prompted this effort and whose continued support made it possible.



Judge Anne Ellington, Chair
Sentencing Guidelines Commission

With apologies for the inevitable omissions, on behalf of the Commission I want to express our gratitude to the following

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The Sentencing Reform Act over the past decade

DURING 1991 THE SENTENCING GUIDELINES COMMISSION conducted an evaluation of the Sentencing Reform Act (SRA) and its impact over the past decade. The Commission reviewed data on sentencing trends, prison and jail populations, the views of criminal justice professionals, the approaches of other states, and recent research on drug treatment.

Findings

- There has been a dramatic increase in felony sentences — particularly drug-related sentences — over the past five years.
- There are few intermediate punishment options for nonviolent offenders, and non-confinement sentences are largely nonexistent.
- Ten years ago more than one-fourth of convicted felons received no incarceration; today that figure is only seven percent.
- Although the law mentions alternatives to total confinement in several places, the sentencing grid itself refers only to incarceration.
- While overall crime rates have changed little since the SRA's passage, sentences to jail and prison have increased markedly. Incarceration has become the state's dominant response to crime.
- Many offenders are drug- and/or alcohol-dependent; while drug use is clearly associated with crime, treatment for this population is inadequate or unavailable.
- Treatment can be effective, both in prison and the community, whether or not the offender "volunteers", and can reduce criminal behavior.

Conclusions

The Commission found that the original purposes of the Sentencing Reform Act remain appropriate and that most have been fulfilled, with several exceptions.

- Opportunities for offenders to improve themselves are extremely limited and are used less and less by the courts.
- Frugal use of state resources has not been realized. Frugal use of local resources should also be a priority.
- Alternatives to total confinement for nonviolent offenders have received inadequate attention.

Recommendations

The Commission makes several recommendations to enhance compliance with legislative intent and proposes two new sentencing options to address the absence of treatment programs and other alternatives.

Nonviolent Offender Option. This option will permit the court to impose treatment, program, and affirmative conduct requirements on certain nonviolent offenders who would benefit from community-based punishments. The Department of Corrections will provide treatment for indigent offenders; all others will pay for their treatment.

Drug-Offender Treatment Option. This option addresses drug-dependent offenders who are convicted of less serious offenses and incorporates treatment into their prison sentences. Each offender will follow an individualized treatment program in stages throughout confinement, transition, and a post-confinement period.

The Commission's 1992 workplan will include continuing review of the proportionality of criminal sentences under current law.

Acting on a request from the Governor

ON MARCH 4, 1991, GOVERNOR BOOTH GARDNER asked the Sentencing Guidelines Commission to recommend initiatives dealing with sentencing policy for adult felons. The Governor specified a renewed emphasis on alternatives to total confinement for nonviolent offenders, with special attention to those who are chemically dependent.

In response to this request, the Commission sought to re-evaluate the Sentencing Reform Act (SRA) of 1981. Three workgroups were formed to approach this task.

- The SRA Assessment Workgroup evaluated the performance of the statute against its stated objectives.
- The Drug-Related Offender Options Workgroup examined the changing patterns of drug crime, the impact of changes in drug laws, and the characteristics of the population affected by them.
- The Sentencing Options Workgroup explored alternatives to total confinement for nonviolent offenders.

Each workgroup conducted research in its area and developed proposals which were debated and refined by the Commission as a whole.

Participants

The Sentencing Guidelines Commission by statute comprises a cross-section of criminal justice professionals, legislators, and citizens. For this ten-month assessment, participation was extended to many other concerned parties, including victim-interest groups and treatment providers.

Technical Background

To gain broad, technical background on the issues and the experiences of other states, the Commission co-sponsored two seminars with the Washington State Institute for Public Policy—one on punishment options and one on chemically dependent offenders, featuring experts from across the country.[1]

Information Sources

The Commission's own database on all SRA sentences since January 1985, was used to analyze sentencing trends, the use of alternatives, and other impacts of the Act. The Office of Financial Management provided data on crimes, arrests, filings, and felony convictions. The Department of Corrections contributed data on compliance with court-imposed sanctions, violations, and treatment. Numerous judges, prosecutors, defense attorneys, and community corrections officers responded to an informal survey questionnaire on the use of sentencing alternatives. The commission also reviewed determinate sentencing in several other states.

This report presents a summary of the available data and an evaluation of the SRA's impact on relevant aspects of the state's criminal justice system over the past decade. It concludes with recommendations for future policy directions and two specific proposals for legislation to enhance compliance with the Act.

What motivated the change?

FOR 75 YEARS WASHINGTON CRIMINAL LAW RELIED UPON indeterminate sentencing, with maximum sentences specified for all felony offenses. Its major objective was rehabilitation. The length of imprisonment and other sentence conditions were determined individually, and sentences were adjusted frequently according to the offender's progress. The Board of Prison Terms and Paroles, not the judge, determined how much time the offender actually spent in prison.

During the 1970s and early 1980s indeterminate sentencing came under criticism in Washington and across the country when its assumptions, practice, and outcomes were questioned. Numerous shortcomings were cited.

- Rehabilitative programs for offenders had shown little success.
- Punishment should be the primary objective of sentences.
- Persons with similar backgrounds convicted of the same crime often received widely differing sentences.
- Sentences imposed by judges rarely bore any relationship to the amount of time actually served.
- After sentencing, judges and parole boards had extensive and essentially unreviewable discretion.

One consequence of these conditions was that the legislature was unable to predict and control the use of state resources at a time of overcrowding in prisons.

The Legislature's Intent

After more than five years of deliberation, the Washington Legislature adopted the Sentencing Reform Act of 1981, to apply to all felonies committed after June 30, 1984. The Act was a reform in two important respects: It clearly articulated the purposes for punishment; and it established precisely defined sentences.

The first section of the statute states that "The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences...." The enabling legislation (RCW 9.94A.010) named six explicit objectives for the new penal policy. The revised code should:

- ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- promote respect for the law by providing punishment which is just;
- be commensurate with the punishment imposed on others committing similar offenses;
- protect the public;
- offer the offender an opportunity to improve him or herself; and
- make frugal use of the state's resources.

The Sentencing Reform Act clearly articulated the purposes for punishment, and it established precisely defined sentences

Role of the Sentencing Guidelines Commission

The Sentencing Guidelines Commission[2], established by the Act, was directed to create a sentencing structure that would fulfill the above purposes and that would "...emphasize confinement for the violent offender and alternatives to total confinement for the nonviolent offender" [RCW 9.94A.040(5)]. The Commission developed the new sentencing structure over a period of two years,[3] and the legislature adopted the recommendations in 1983 and 1984.

The Commission's ongoing role includes monitoring sentencing under the Act and advising the executive and legislative branches of state government on sentencing policy for adult felons. Further, if an emergency occurs in prison or county jail populations, the governor may call the Commission into session to address the situation (RCW 9.94A.160 and 165). This provision has not been used.

The most profound change....

What is Different About the Guidelines?

Sentencing under the new law is intended to be based on the nature of the criminal act, in conjunction with the offender's criminal history. Those with similar crimes and histories are to be sentenced similarly. The prescribed sentence dictated by the guidelines is said to be "determinate," as it represents "real time" served. Accordingly, the SRA eliminated traditional parole, probation, and the power to suspend or defer sentences. Standard sentences may not be appealed. The system, however, allows for departures and judicial discretion.

The Geometry of Guidelines: The Grid

The most profound change made by the SRA was to give the legislature control over the penalties imposed for felonies. The tool for achieving this under the guidelines is the "grid"—a matrix of 150 cells, each representing the intersection of one of fifteen levels of *offense seriousness* with one of ten *offender scores.*[4] Each cell states a precise range of sentences in terms of incarceration time, within which the judge sets a specific sentence for a particular offense and offender.

Seriousness Levels. All crimes are assigned to a level and ranked in increasing order of seriousness ranging from Level I (the least serious felonies) to Level XV (the single crime of aggravated murder).

Offender Scores. Each offender's score is based on the number and type of prior convictions and current felony counts.

Components of Standard Sentences

"Good Time". Most offenders are eligible for earned early release, or a "good time" reduction, of up to one-third of their sentences[5]. The guidelines retained this traditional adjustment as an incentive for offenders to cooperate and participate in prison programs.

Community Supervision. Offenders convicted of lesser felonies and sentenced to confinement terms of one year or less may be ordered to up to a year of community supervision. Such supervision may not include treatment requirements. There are sanctions for violation.

Community Placement or Community Custody. This is a form of post-prison supervision for up to two years for certain serious and violent offenders. It involves supervised living in the community with sanctions for noncriminal misbehavior.

Exceptions and Alternatives to Standard Sentences

Exceptional Sentences. Judges may depart from the standard sentence in any case if there are substantial and compelling reasons for sentencing above (aggravated) or below (mitigated) the presumptive term. The reasons for the departure must be stated in writing, and the sentence may be appealed.

First-time Offender Waiver (FTOW). The FTOW may be applied to any offender whose current conviction does not involve narcotics dealing, violence, or sex offenses and who has no prior felony convictions. In lieu of the standard sentence, the judge may impose up to 90 days of confinement, community supervision, treatment, community service, or other conditions.

Special Sex Offender Sentencing Alternative (SSOSA). The SSOSA may be applied for sex offenses other than First or Second Degree Rape, if there are no prior sex convictions, and if the offender is amenable to treatment, provided the standard sentence is less than eight years. A standard sentence is imposed and then suspended. The offender may receive up to six months in jail, three years of treatment, and community supervision. The suspended sentence may be revoked.

Other Options. Up to 30 days of certain jail sentences may be converted to **community service**, and all jail time may be served in **partial confinement**—such as work release—if so ordered. **Work crews** and **home detention** are other alternatives to jail for some offenders.

How has the Act been amended?

THE LEGISLATURE HAS AMENDED THE SRA NEARLY EVERY YEAR since enactment.[6] Most amendments made one of four general types of changes.

- Raised the seriousness level of certain crimes, such as drug, sex, and burglary offenses.
- Raised offender scores for certain prior convictions, giving greater weight to criminal history in the determination of sentencing.
- Enhanced sentences for certain crimes, such as dealing drugs near schools.
- Changed or added sentencing options and conversions, including restrictions on the use of the First-time Offender Waiver for drug dealers and the addition of home detention, work crew, and post-release supervision.

How Have Amendments Affected Populations?

The effect of these amendments has been to increase sentence lengths for a number of offenses, resulting in a cumulative increase in the state prison population . It is anticipated that these amendments will require more than 2,000 additional prison beds by the end of Fiscal Year 1992 and nearly 4,000 additional beds by the close of Fiscal Year 1997.

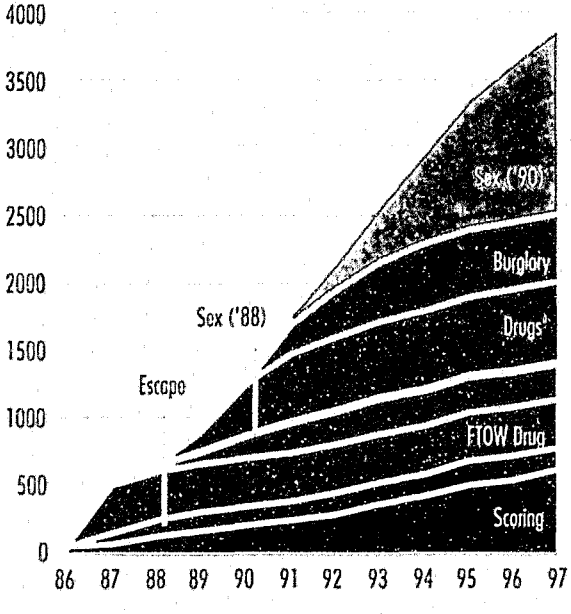
The effect of state legislative amendments on county jail populations is more difficult to assess. When penalties for nonviolent crimes are increased, the length of jail sentences is also increased. However, the jail impact of these changes is sometimes offset by the fact that more offenders go to prison because they receive sentences longer than 12 months. The amendment eliminating the First-time Offender Waiver for drug dealers also has resulted in fewer offenders receiving local jail sentences.

Many county jails have experienced large population increases over the last several years. This, however, is primarily the result of increasing felony convictions and decreasing use of alternative sentences provided by the SRA.[7]

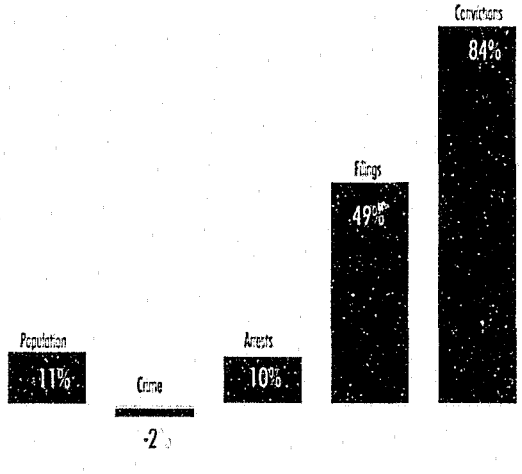
What Else Affects Imprisonment Rates?

Growth in the at-risk population and in crime and arrest rates might be expected to explain increases in imprisonment. However, the total non-drug-related crime rate has remained essentially unchanged over the past decade[8]. The at-risk population[9] and arrest rates have not risen greatly in absolute terms during this period, but their growth is significant compared with the crime rate.

Cumulative Effects on Prison Population



Changes In At-Risk Population and Non-Drug Crimes



Sentencing trends over the last five years

These factors do not explain the increase in non-drug felony filings, which in turn does not fully explain the increase in convictions.

Since 1980, there has been an apparent increase in the percentage of felony filings that result in convictions. One reason for this may be the emphasis that the SRA places on criminal conviction history. Police and prosecutors are motivated to obtain convictions so that recidivists can be identified clearly and receive sentences that reflect their criminal histories. Technological advances — in communications, fingerprint identification, forensics, and data analysis, for example — have improved the performance of law enforcement agencies. Public concern about crime and prosecution also may have contributed to the increase in convictions.

For drug-related felonies, half the filings in 1980 resulted in convictions. This rose to 75 percent in 1990, also reflecting increased prosecutorial efforts.

Judicial Decisions

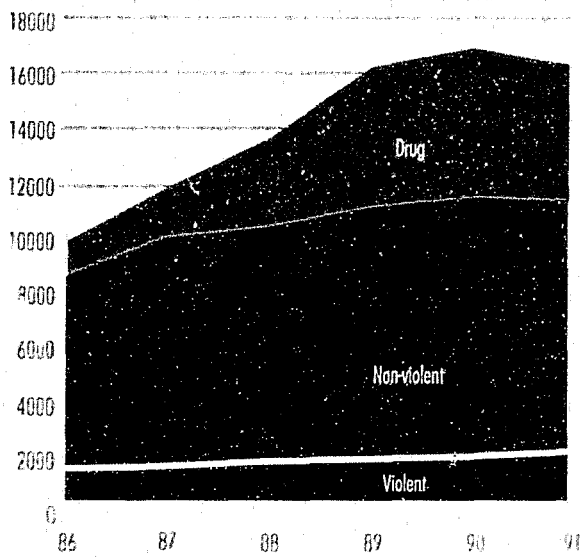
A number of state Supreme Court decisions[10] affecting the length of confinement (mostly for those sentenced under the old indeterminate sentencing system) have caused temporary declines in the prison population, but their overall impact has not been significant compared with the steady growth in prison admissions.

Sentencing Trends

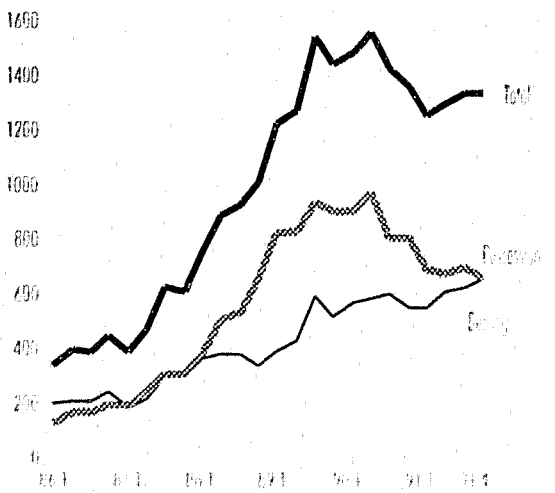
A number of different factors interact to determine overall sentencing trends in the state. These include changes in prison and jail sentences, changes in sentencing for different kinds of offenses, and variations in the use of sentencing options. The following section summarizes these individual trends, which may result in increases or decreases in prison and jail populations.

Total felonies and drug-related sentences. The most dramatic trend over the past five years has been the growth in total felony sentences—a 64 percent increase between 1986 and 1991. A 235 percent increase in drug-related sentences accounted for much of this growth, with smaller but significant increases in violent offenses (46%) and nonviolent, non-drug offenses (31%). The drop in total SRA felony sentences in FY 1991 can be attributed to several factors: a 21 percent **decline in drug-possession sentences** and a 2 percent **decline in other nonviolent-offense sentences.** These reductions are partially offset by continuing **increases in sentences for drug dealing and violent offenses.**

Total SRA Adult Felony Sentences 1986-1991



SRA Drug Sentences 1986-1991



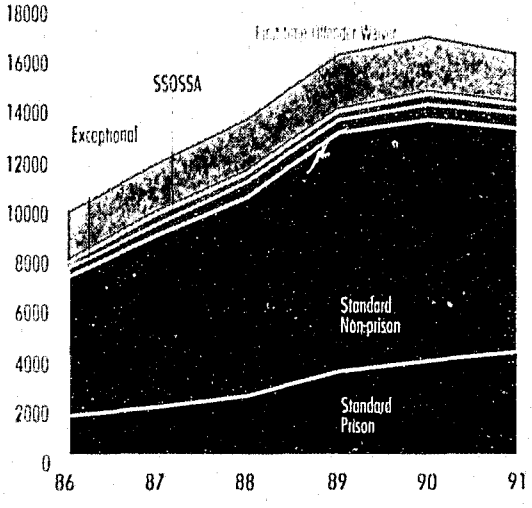
Jail and Prison Sentences. Despite the overall drop in SRA sentences in FY 1991, the number of prison sentences increased over the previous year while jail sentences declined. **Compared with FY 1987, prison sentences are up 106 percent and jail sentences are up 26 percent.**[11]

The average prison sentence length dropped for several years after implementation of the SRA. It has risen steadily since 1989. The average prison sentence in 1991, 42.2 months, was six percent greater than 1990 and the highest ever under the SRA. While jail sentences have remained about the same—2.81 months—they account for 92 percent of all nonprison dispositions in FY 1991, up from 87 percent in FY 1986 and 70 percent before the SRA was enacted. **A decade ago more than one-fourth of convicted felons received no incarceration; today it is only 7 percent.**

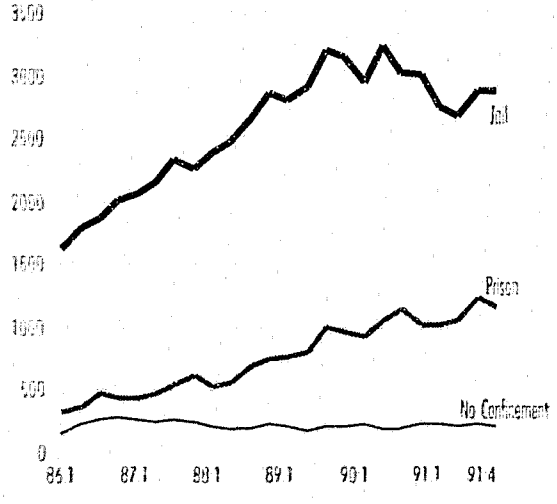
Exceptional Sentences. There clearly has been a high degree of compliance with the Sentencing Reform Act guidelines. Fewer than 4 percent of all sentences are exceptional sentences. The rest are standard sentences or standard alternative sentences.

Special Sex Offender Sentencing Alternative (SSOSA). The SSOSA offers a clear alternative to lengthy prison terms for most eligible sex offenders. Since 1987 about 400 offenders per year have received SSOSA. While there is evidence that it is an effective alternative for some sex offenders[12], the proportion of eligible offenders who are given SSOSA sentences has declined steadily. Those who do receive SSOSA are increasingly likely to receive jail sentences as well—from 79 percent in 1987 to 91 percent in 1991.

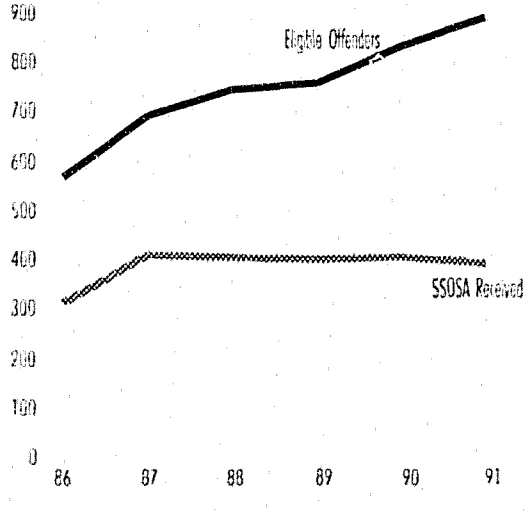
Standard and Exceptional SRA Sentences 1986-1991



Types of SRA Sentences 1986-1991



Special Sex Offender Sentencing1986-1991



First-time Offender Waiver sentencing analysis

In summary, **While the First-time Offender Waiver has succeeded in providing an avenue for treatment and supervision, it has failed as an alternative to incarceration.**

Over 2,000 offenders are sentenced under the First-time Offender Waiver (FTOW) each year. (Narcotics dealers are not eligible for the FTOW.) An analysis of FTOW sentences imposed in FY 1990[13] showed the following.

- Only 12 percent of the FTOW sentences in FY 1990 were below the standard range.
- Three-fourths of those eligible for the FTOW had a standard sentence of 0-60 or 0-90 days. Since 0 days, or no confinement, was within their sentence range anyway, the purpose of imposing the FTOW was not mitigation. Still, 35 percent of them received the FTOW.
- Only 130 offenders with a presumptive prison sentence were eligible for the FTOW. About one-third of them received it and remained in the community. The FTOW appears to offer a successful alternative for this small class of offenders.
- Not all eligible offenders receive the FTOW. For those having a presumptive non-prison sentence of 90 days or less, **there was no difference in the frequency (85 percent) or average length (one month) of jail sentences between those who received the FTOW and those who did not.** Compared to eligible offenders who did not receive the waiver, those who did: were less likely to have served presentence jail time and more likely to serve postsentence jail time; were more likely to have orders for community service and longer periods of community service; had more frequent and longer (two years versus one year) community supervision; and received treatment conditions over half the time.
- Of those FTOW-eligible offenders with presumptive non-prison sentences greater than 90 days, only 18 percent received FTOW. They were almost as likely to receive a jail sentence (86 percent) as were FTOW-eligible offenders who received a standard sentence (96 percent). **The average jail sentence for FTOW offenders was only one month less than that of those receiving a standard sentence.** Those receiving FTOW were, however, more likely to have community service orders, had more frequent and longer community supervision, and received treatment conditions over half the time.

In summary, while the First-time Offender Waiver has succeeded in providing an avenue for treatment and supervision, it has failed as an alternative to incarceration.

Community Service. In Fiscal Year 1991, 31 percent of non-prison sentences included community service, although relatively few hours were imposed. About one-third of offenders receiving community service were sentenced under the FTOW. For them this service was an addition to the jail time imposed rather than an alternative, as it was for those receiving a standard sentence. Moreover, any reduction in jail time created by community service is offset by jail time imposed for violation. Community service offers a valuable tool but does not serve as an alternative to incarceration.

Drug Offenses

Washington, like most other states, has experienced an explosion in drug-related convictions over the past decade. This has placed tremendous stress on every aspect of the state's criminal justice system, straining law enforcement, judicial, and correctional resources.

- Violations of the Uniform Controlled Substances Act (VUCSA) numbered 1582 and constituted 16 percent of all felony sentences in Washington in 1986. By 1990 the number had grown to 5758, or 34 percent of felony sentences.
- Convictions for drug offenses increased 226 percent between 1986 and 1991. All other types of felony convictions increased 34 percent.
- Jail terms for drug crimes have doubled since 1986. Since 1986 the number of drug dealers sentenced to prison has increased 839 percent, and these sentences have lengthened 52 percent from an average of 21.9 months to 33.9 months.
- Nonconfinement dispositions for drug crime convictions dropped from 2.1 percent in 1986 to 1.4 percent in 1990.
- Drug treatment programs have been made available to more prison inmates recently, but these programs are brief and voluntary. In any event, more drug offenders go to jail, and for them no drug treatment is available.

Has the SRA Achieved its Objectives?

Has the Sentencing Reform Act Achieved its Objectives? The Sentencing Guidelines Commission considered whether each of the original legislative mandates of the SRA remains appropriate, whether each has been satisfied, and whether additional purposes should be declared.

The SRA was confined to felonies. There are indications that sentences for gross misdemeanors exceed — in some cases, significantly — sentences for technically more serious crimes. It is possible that structuring penalties for felonies while leaving full discretion for misdemeanors may have created a new form of inequality. Little systematically gathered information on this issue exists.

The Commission unanimously endorsed all of the original legislative purposes as still appropriate and concluded that, with one exception (see "Make frugal use of the state's resources," page 13), no other purposes need be added. The following section describes the Commission's conclusions regarding each of the Act's purposes, makes several recommendations for improvement, and identifies those issues addressed by the proposed legislative initiatives.

With three exceptions, the objectives of the Act have been achieved. The commission offers recommendations and proposals

▪ Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history.

Proportionality is expressed in the sentencing grid. The grid reflects the legislature's perception of the relative seriousness of particular offenses. It also prescribes longer sentences for offenders who commit more severe crimes and who have more extensive criminal histories. High compliance with the presumptive sentence ranges has resulted in punishment that reflects the proportionality principal.

Proportionality within the grid can be affected, however, when the seriousness level of an offense is changed, as in amendments to the SRA for sex, drug, and burglary offenses. These amendments have modified the relationships among penalties for these and other offenses, indicating a shift in the public perception of the gravity of these offenses.

The relative seriousness of crimes will always be the subject of vigorous community debate. It is the function of the Sentencing Guidelines Commission to review the rankings of offenses objectively to foster community participation, and to contribute to legislative debate.

Conclusion: This objective has been achieved.

Recommendation: Proportionality could be further protected by a specific protocol to ensure that lawmakers consider the effects of legislation on proportionality as part of the legislative process. The relationship between penalties for lesser felonies and gross misdemeanors should also be studied to ensure that proportionality is reflected throughout the criminal law.

▪ Promote respect for the law by providing punishment which is just.

Punishment under the SRA is just to the extent that it is **proportionate and is applied without discrimination.** The options of standard alternatives and exceptional sentences allow for the recognition of individual differences among similar offenders and offenses within the standard ranges. The Act promotes respect for the law by providing a public forum for debate over the appropriate sentence range for a particular crime.

Truth in sentencing also fosters respect for the law. Under the SRA, the public and the offender are assured that the entire sentence imposed will be served—with the single, limited exception of earned early release for good behavior.

Conclusion: This objective has been achieved.

■ **Be commensurate with the punishment imposed on others committing similar offenses.**

The high degree of **compliance with sentencing guidelines has reduced variability** in sentencing among counties and among judges.[14] Moreover, the great majority of sentences fall within the standard ranges, and they tend to be gender - and ethnicity-neutral.[15] There have been, however, **significant gender and ethnic differences in the application of options such as the FTOW and the SSOSA.**[16] When offenders must pay for services, socioeconomic differences may affect the use of sentencing options.

This is a complex question and an area of continuing concern and investigation for the Commission. The proposals made in this report include treatment options to be provided at public expense for those who cannot afford them. Insofar as they result from socioeconomic differences, sentencing disparities are not expected to occur under the proposed system.

Conclusion: This objective has been achieved.

Recommendation: The Commission should undertake appropriate research to resolve questions of gender and ethnic equity in sentencing. Such research will require funding.

■ **Protect the public.**

The provisions of the SRA protect the public by ensuring more severe penalties for violent offenses and for repeat offenders. **The imprisonment rate for violent offenders has increased** from 49 percent pre-SRA to 68 percent in 1991. Violent criminals are now more likely to go to prison, and they spend more time there than they did prior to the SRA.

Is the public protected by the deterrent value and treatment effects of non-custodial sanctions? This is difficult to measure, but there are encouraging signs. A recent study showed that first-time sex offenders who received a treatment alternative instead of prison had significant decreases in later criminal activity.[17] The Commission will continue its investigation of non-custodial sentences that protect the public.

Conclusion: This objective has been achieved.

■ **Offer the offender an opportunity to improve him or herself.** The SRA offers several avenues for offender self-improvement:

The First-time Offender Waiver (FTOW) and the Special Sex Offender Sentencing Alternative (SSOSA) are limited to a select group of offenders. These options are being used less frequently and often are used to impose more rather than less punishment.

Non-prison sentences for nonviolent offenders were intended to avoid the costs and acknowledged criminogenic effects of imprisonment for these offenders, most of whom had been convicted of drug and property offenses. Today some of these offenses are regarded as more serious, and legislative amendments are bringing more prison sentences, leaving fewer nonviolent offenders available for other dispositions.

Some **in-prison treatment programs** are offered, but the demand for them far exceeds resources. The new proposals would provide treatment both in and out of prison, as well as incentive for the creation of community-based alternatives to incarceration.

Conclusion: Opportunities for offenders to improve themselves are extremely limited and are used less and less by the courts. This objective has not been achieved.

Recommendation: The legislature should adopt the Commission's proposed new sentencing options which would both offer offenders opportunities to improve themselves and reduce criminal behavior through intervention.

■ **Make frugal use of the state's resources.**

The SRA was initially successful in fulfilling this objective by reducing prison sentences for nonviolent offenders and reducing terms for some others, thereby more effectively using prison space for serious and violent offenders. In more recent years, increased prison sentences for sex, property, and drug crimes have reversed that trend.

The SRA also may have affected local jail crowding. While the Act did not divert more offenders from prison to jails, the jails are receiving more offenders who in the past would not have been incarcerated at all.[18]

The Department of Corrections recently conducted a study of current and planned correctional capacity. According to a survey of Washington counties included in that study, local governments will require an additional $47,448,686 to meet projected demand for offender placements in 1996.[19]

Conclusion: This objective has not been achieved.

Recommendation: The legislature should state clearly its intent to make frugal use of **local** resources as well as those of the state. The Sentencing Guidelines Commission should continue to monitor the impact of the SRA on state and local resources.

■ **Emphasize confinement for the violent offender and alternatives to total confinement for the nonviolent offender.**

As previously noted, violent offenders are being incarcerated at a higher rate now and are serving longer sentences than before the SRA was implemented. However, nonviolent offenders also are being incarcerated more often, as a result of amendments to the Act as well as the failure of the FTOW to reduce jail time.

Conclusion: The SRA clearly has emphasized confinement for violent offenders but not alternatives to confinement for nonviolent offenders. This objective has not been achieved.

The innovations of three states...

AS PART OF ITS ORIGINAL DEVELOPMENT PROCESS FOR THE SRA in 1981, the Sentencing Guidelines Commission considered the efforts of other states to reform sentencing policy. In evaluating the SRA's performance during its first decade, the Commission again examined the experience of other states. The innovations of three states in particular—Minnesota, Oregon, and Delaware—influenced the proposals presented in this report. These states have presumptive sentencing systems comparable to that of Washington. All have a body outside the legislature to recommend and guide policy, and none has a separate release authority. The following section presents abbreviated descriptions of these states' systems. Further details are available from the Washington Sentencing Guidelines Commission.

Minnesota

Minnesota has presumptive prison sentences for all felonies. The state uses a smaller sentencing grid than that of Washington, with narrower ranges for executed sentences. Other features include:

- a single presumptive term for suspended sentences, with no jail guidelines;
- no special sentencing alternatives for first-time offenders;
- mandatory minimum terms for offenses involving weapons; and
- up to 12 months of jail for those not receiving prison sentences.

Minnesota's Experience with Sentencing Guidelines

- The imprisonment rate has been relatively stable over the past 10 years (from 20.4 to 22 percent), while Washington's has risen annually since 1986 (from 17.3 to 27.3 percent).
- Felony convictions grew 45 percent in eight years (Washington's grew 61 percent in five years).
- There is a relatively high rate of exceptional sentencing, primarily because Minnesota has no statutory treatment sentence for sex offenders. These exceptions include suspensions (10.5 percent of all sentences in 1989, mostly mitigating) and sentencing beyond the standard range (25 percent of executed prison sentences, mostly mitigating).
- Prison sentences for nonviolent offenders have increased. To address this, the state recently revised the criminal history scoring system to produce lower scores for nonviolent offenders and higher scores for violent offenders.
- Drug sentences grew 48 percent over a three-year period. Drug offenses were 20 percent of all felonies in 1989 (32.9 percent in Washington), and 13.7 percent of drug offenders received prison sentences (21 percent in Washington).
- In an attempt to deal with the increase in drug crimes, Minnesota's legislature classified "rock" cocaine at a higher seriousness level than powdered cocaine. In December 1991, the Minnesota Supreme Court struck down this approach as unconstitutional.
- Minnesota is developing two intermediate punishment sanctions—day fines and intensive community supervision—and is reviewing its seriousness level rankings for offenses.

Oregon

Oregon's two-year-old presumptive sentencing system utilizes a grid that specifies **presumptive probationary sentences** as well as prison sentences. The conditions of probation are structured by "custody units" based on the seriousness of the crime. The number of custody units which may be imposed as jail time is limited. Other options include substance-abuse and sex-offender treatment, restitution, probation, work release, community service, and house arrest. Use of custodial conditions other than jail is dependent on the offender's eligibility and space in the appropriate program. Sanctions for probation violations can include jail and prison terms.

Delaware

Delaware uses a sentencing system based on a **five-level continuum of sanctions** ranging from unsupervised probation to prison. Offenders may be sentenced to one or a combination of levels based on their criminal histories, the severity of the crimes, and certain aggravating or mitigating factors. At any level the court can impose conditions such as treatment, employment training, restitution, or community service. Sentencing patterns in Delaware have changed dramatically under the new system.

- Mid-level sanctions are being utilized fully, particularly for nonviolent offenders.
- Violent offenders are being incarcerated more often, for longer periods, and they account for a greater proportion of the prison population.
- A greater percentage of sentences involve no incarceration.
- Offender-specific sentences, combining levels of supervision with various conditions, are now common.
- Sentences often are structured to allow greater degrees of freedom as the offender succeeds in the community.

While the Delaware guidelines are voluntary, 90 percent of felony sentences are within the standards.[20]

Most SRA objectives have been met... however, there is still more to be done

In general, the Sentencing Reform Act is working as was intended ten years ago. Its stated objectives still serve as appropriate guiding principles for a structured sentencing system based on fairness, equality, truthfulness, economy, and realistic expectations. Most of those objectives have been advanced under the Act, but several of them have not been well served.

- **Opportunities for offenders to improve themselves** are extremely limited and are used less and less by the courts.
- In terms of its impact on prison and jail populations, the SRA has not furthered **frugal use of the state's resources.**
- There has not been adequate emphasis on **alternatives to total confinement** for nonviolent offenders. Under the Sentencing Reform Act incarceration has become the state's dominant response to crime—even nonviolent crime. Alternatives to confinement are used less often than they were in the years before the Act. The reasons for this are complex and difficult to distinguish, but some problems are very evident.
- There is a lack of intermediate punishments for felonies that do not merit confinement, and those that exist are limited in scope. The SRA does not specifically mandate development of the necessary programs, and responsibility for this has never been fixed.
- The explosion of drug crimes since the inception of the SRA and the response of the criminal justice system have resulted in a much higher proportion of drug-affected offenders in the state's prisons and jails. The needs of this population differ from those of other offenders and present a great challenge to the system. The problems are exacerbated by the shortage of drug treatment programs both in and outside of prisons.
- The language of the sentencing grid itself may be acting as a disincentive for nonconfinement sanctions. Within each cell of the grid, the presumptive standard range for sentences is stated in terms of incarceration time. **Only three cells out of 150 offer "0," or no incarceration, as even the bottom of a sentencing range.** While minimizing unnecessary incarceration may be one of the intentions of the SRA, the sentencing grid is the instrument used to implement those intentions. It must be designed to facilitate the court's access to all approaches to sentencing. Presently, incarceration is the "currency" by which the grid expresses legislative intent. The Commission's proposals for change, by offering expanded sentencing options, represent a first step toward a broader expression of that intent.

In summary, the Sentencing Reform Act offers an effective foundation for achieving Washington's criminal justice objectives, and needs no fundamental revision. The specific shortcomings described above, however, must be addressed.

Moving Toward Solutions

One straightforward response to population problems would be simply to return drug penalties to the pre-1988 level and restore the First-time Offender Waiver for drug dealers. Likewise, minor nonviolent offenders might be kept out of jail and prison by giving judges full discretion in those cases.

The Commission considered those alternatives but recommended instead a more comprehensive approach that combines strong penalties with credible interventions that will better protect public safety in the long run.

Accordingly, the proposed new initiatives directly address two primary problems identified by the assessment: **1. the flood of convicted drug offenders; and 2. the lack of alternatives to total confinement for nonviolent offenders.**

In formulating these proposals the Commission was influenced by the innovations of other states, as well as the views expressed in an informal survey of members of the Washington criminal justice community. These respondents generally felt that the First-time Offender Waiver was not working as intended, but was being used as a "hammer" rather

than an alternative. They also believed that other alternatives to incarceration are not truly available in a meaningful way and that there are insufficient treatment alternatives.

The proposed new sentencing options represent the Commission's assessment of what approaches will work best for Washington's circumstances and will further the intent of the Sentencing Reform Act of 1981.

Proposals for two new sentencing options

THE SENTENCING GUIDELINES COMMISSION'S PROPOSALS create two new sentencing options for the court. The first permits a treatment-oriented sentence for certain nonviolent offenders who would benefit from community-based punishments. The second option addresses certain drug offenders sentenced to prison and incorporates treatment into their prison sentences.

Nonviolent Offender Option

The Sentencing Options Workgroup explored a wide range of sentencing alternatives for nonviolent offenders, reviewing data on outcomes as well as expert opinions. In developing this option the group was influenced particularly by the innovations of Oregon and Delaware. Oregon's concept of custody units is reflected in the proposal's use of punishment units to structure determinate sentences under the new option. The proposal also borrows from the levels of supervision available under Delaware's system. This option responds to the expressed need for new sentencing alternatives, particularly those allowing for treatment.

Purpose

This option will permit the court to impose treatment, program, and affirmative conduct requirements on eligible offenders who would benefit from community-based punishments. This option will limit the use of total confinement, expand the "menu" of community-based punishment options available, allow increased levels of supervision and monitoring to maximize offender compliance and accountability, and establish swift and effective sanctions for violations.

Who is Eligible?

This option is restricted to those offenders convicted of nonviolent felonies (excluding sex offenders) who have a standard sentence range of 0-12 months, and have no prior convictions for violent felony offenses or sex offenses.

Sentence Framework

The Nonviolent Offender Option (NVOO) is a determinate sentence imposed by the court in the form of "punishment units." Suspended or deferred sentences are prohibited.

The NVOO permits the court to design a sentence based upon the punishment deserved for a particular offense (punishment units), as well as upon the needs of the offenders, victims, and communities.

The NVOO sentence consists of a distinct package of punishment units imposed in some combination of total confinement, work release, home confinement, work crew, community service, treatment, training and rehabilitation programs, intensive supervision, and/or day supervision.

What Type of Sentence Alternatives Are Allowed?

All alternatives to total confinement available under the standard sentencing scheme are also available under this option, including:

- work release;
- home confinement/electronic monitoring;
- work crew; and
- community service.

In addition, several alternatives to total confinement would be available only under this option, including:

- outpatient, inpatient, or residential treatment intended to remedy medical, mental, or substance abuse problems that are related to the offender's criminal behavior;
- participation in programs to improve the offender, such as vocational training, literacy classes, employment readiness, etc.;
- intensive supervision (defined as 3 to 6 face-to-face contacts per month with a community corrections officer); and
- day supervision (defined as daily face-to-face contact with a community corrections officer or designee).

Offenders are expected to pay...

A New Concept: Punishment Units

A new sentencing grid for eligible offenders is created.[21] Each grid cell contains the total number of punishment units available for each seriousness level and offender score. The maximum number of punishment units in a cell always corresponds to the number of days of total confinement that could be imposed under the standard sentencing scheme. For unranked crimes, punishment units are determined as follows.

- For offenders who meet the definition of First-time Offender, the maximum is 60 units.
- For others, the maximum is 180 units.

For attempts, conspiracies, and solicitations under RCW 9A.28, the punishment units will be 75 percent of the units assigned for completed offenses.

"Good time" is limited to its application under existing law. No good time is applied to outpatient treatment, school requirements, community service, and so forth.

How Will Punishment Units Be Measured?

The following punishment unit equivalencies are proposed.

1 unit = *1 day total confinement*

1 unit = *1 day work release*
1 day home detention/electronic monitoring
8 hours community service
7 hours work crew

15 units = *1 month day supervision*
2 months intensive supervision

30 units = *1 completed outpatient or inpatient treatment program for medical, mental, or substance abuse problems*
1 completed educational, vocational, or employment-related program

60 units = *1 completed residential treatment program, including after-care requirements*

Who Will Supervise These Offenders?

Offenders sentenced under the nonviolent offender option would be on community custody status (or an equivalent status) under the jurisdiction of the Department of Corrections until the completion of their NVOO sentence requirements, or until they are returned to the jurisdiction of the court for alleged serious violations.

At minimum, all persons sentenced under the NVOO will be placed on community supervision until all court-ordered conditions are met. Higher levels of supervision (intensive or day supervision) can be imposed in the form of punishment units to maximize offenders' compliance with sentencing requirements. Any enhanced form of supervision that earns punishment units is concurrent with community supervision.

Treatment Cost: Who Pays?

Offenders are expected to pay for all or part of any required treatment unless deemed indigent by the Department of Corrections. If offenders are found to be indigent, the Department will provide or purchase the required treatment. Failure to provide all eligible offenders with equal access to treatment alternatives is likely to result in disparate sentences based on race, gender, and income.

What Happens When Violations Occur?

Alleged violations of sentence conditions are handled administratively by the Department of Corrections in accordance with its community custody policies, including due process hearing and the use of a "sanction grid" to impose punishments.

Sanctions imposed by the Department of Corrections may not exceed the difference between the number of punishment units already completed by the offender and the number of units imposed by the court.

Sanctions beyond the court-ordered punishment units, not to exceed the upper limit of the standard range, must be imposed by the court.

Once an offender has completed the punishment units and the period of community supervision, violations of any remaining legal financial obligations are handled in the normal fashion under RCW 9.94A.200.

How Does This Option Compare to the Standard Range?

A new optional sentencing grid is proposed for nonviolent offenders with standard sentence ranges from 0 to 12 months.[22] The new grid attempts to maintain the proportionality of the underlying standard sentencing grid by establishing the following values.

Standard range (days or months)	Nonviolent option range (punishment units)
0-60 days	*60*
0-90 days	*60*
1-3 months	*75*
2-5 months	*90*
2-6 months	*90*
3-8 months	*120*
3-9 months	*120*
4-12 months	*150*
6-12 months	*180*
9-12 months	*270*
First-time offender sentence over 12 months	*180*

Drug Offender Treatment Option

The Drug-Related Offender Options Workgroup first studied the literature on drug dependency and treatment, particularly research which incorporated a criminal justice perspective. The workgroup drew heavily on the expertise of Professor M. Doug Anglin of the Neuropsychiatric Institute at UCLA. Based on his work and that of other experts, the Commission concluded that drug treatment can work, but not quickly and not without setbacks. Most importantly, treatment works even when the offender must be coerced to participate; it is not necessary to await the offender's realization of a need for treatment and a motivation for change. The experts recommend community-based treatment with close monitoring and long periods of supervision. The proposed option relies on community-based treatment, close supervision, and a graduated system of sanctions. The option is designed to address recidivism by diverting drug-dependent offenders from the behavior patterns that led to their offenses.

Purpose

This sentencing option addresses drug offenders whose addiction is the primary reason for their criminal activity. Its purpose is to allow the state to intervene effectively and to break the cycle of drug dependency and criminal action. Under this option, the **state's control over an offender is extended** to allow sufficient time for treatment, as well as for close monitoring following release from prison.

Who Is Eligible?

Offenders convicted of certain drug offenses[23] who have a standard range of 12 to 60 months in prison can be considered.

Sentence Framework

The judge selects this sentencing option on the basis of legal eligibility and recommendations, including an evaluation by a drug specialist.

- For sentences of less than 36 months, the offender must serve at least 6 months in total confinement, with at least 90 days of total confinement in a Department of Corrections facility.
- For sentences of 36 months or longer, but not more than 60 months, the offender must serve at least one year in total confinement, with at least six months in a Department of Corrections facility.

For these offenders, the Department of Corrections can determine the type of treatment and the level of confinement. All earned early release time will be converted to community custody. In addition, another year of community custody is added to the sentence.

What Kind of Treatment Will Occur?

A presentence investigation will be mandatory for all eligible offenders in addition to a drug/alcohol assessment to be conducted by the Department of Corrections. In addition to chemical dependency, the offender's health and mental health problems, education, and job skill deficits will be examined at the reception center and an individualized treatment plan developed.

The program will rely on a case management model. Treatment will begin on an inpatient basis in prison, in a separate drug-free environment, then modified and continued through the duration of incarceration. This will be followed by residence in a transitional unit (prerelease or work release). Treatment will continue after release.

Who Will Supervise These Offenders?

Offenders will be monitored by the Department of Corrections following release from total confinement. Noncompliance with program conditions will be met with a range of graduated sanctions providing a quick response to misconduct.

Setting the agenda for the future

THE LEGISLATIVE PROPOSALS presented here address some, if not all, of the recommendations that the Commission made as a result of its assessment of the SRA (see "Has the Sentencing Reform Act Achieved its Objectives?"). Recommendations not addressed by the legislative proposals (such as developing legislative protocols regarding **proportionality and local fiscal impact**) will be included in the workplan for the Sentencing Guidelines Commission for 1992. The Commission's agenda for the future certainly includes continuing **review of the sentencing grid.** The law of criminal sentencing is dynamic. Seriousness level rankings for all crimes require routine scrutiny due to legislatively-directed policy changes. It is important also to **examine experience with the law** as resources, public attitudes and leadership changes add their influence to the course set by law.

Should the legislature expand the Commission's mandate to include **misdemeanors**, new challenges emerge. The lower courts are many offenders' port-of-entry into the criminal justice system. Extending the principles and values of the Sentencing Reform Act into this large and significant arena would require careful thought and work.

In any case, Washington is fortunate and unique among all states. Although it was not an explicit objective of the Act, a comprehensive and responsive information system on criminal sentencing has been developed by the Sentencing Guidelines Commission. Combined with the diverse experience of individual Commissioners, it creates a potent force for helping to invent the future of sentencing policy.

1 "Punishment Options Conference Summary", Washington State Institute for Public Policy, September 1991.

2 The Commission, by law, consists of 15 voting and 4 nonvoting members: the Secretary of Corrections (ex-officio); the Chair of the Indeterminate Sentence Review Board (ex-officio); the Director of Financial Management (ex-officio); four Superior Court judges; one city or county chief law enforcement officer; two prosecuting attorneys; two defense attorneys; three citizens (excluding attorneys, judges, and police); and two state senators and two state representatives, one from each caucus (nonvoting).

3 This process is described in several Commission publications.
Sentencing Guidelines Commission,
Report to the Legislature, January 1983.
Sentencing Guidelines Commission,
Report to the Legislature, February 1984.

4 See Appendix 2.

5 Reduction is limited to 15 percent of sentences for Serious Violent offenses or Class A sex offenses — Murder 1 and 2, Assault 1, Rape 1, Rape of a Child 1 or 2, Child Molestation 1, Kidnapping 1, and Homicide by Abuse — or any Class A offense with a sexual motivation finding.

6 See Appendix 3.

7 Merlyn M. Bell and David L. Fallen, Changes in Jail Felony Populations Comparing 1982 to 1988, Sentencing Guidelines Commission, State of Washington, 1990.

8 Data in this section were extracted from Washington State Criminal Justice Databook, Felony Sentencing 1971 to 1991.
Office of Financial Management, May 1991.

9 The male population under the age of 40 is used as an index of at-risk population because it accounts for 75 percent of adult felony convictions in Washington.

10 See Appendix 4.

11 FY was not used as the base year because many pre-SRA sentences were imposed that year.

12 Lucy Berliner, Lisa Lynn Miller, Donna Schram, Cheryl Darling Milloy, The Special Sex Offender Sentencing Alternative: A Study of Decision-making and Recidivism, Report to the Legislature, Harborview Sexual Assault Center/ Urban Policy Research, June 1991.

13 David L. Fallen, "Sentencing Trends Under the Sentencing Reform Act," Sentencing Guidelines Commission, January 20, 1992.

14 David L. Fallen, Statistical Summary, 198", Sentencing Guidelines Commission, State of Washington, undated.

15 Ibid.

16 Ibid.

17 Berliner et al., op. cit.

18 Bell and Fallen, op. cit.

19 Department of Corrections, "Offender Placements in Washington State," Report Overview for House Judiciary Committee, January 28, 1992.

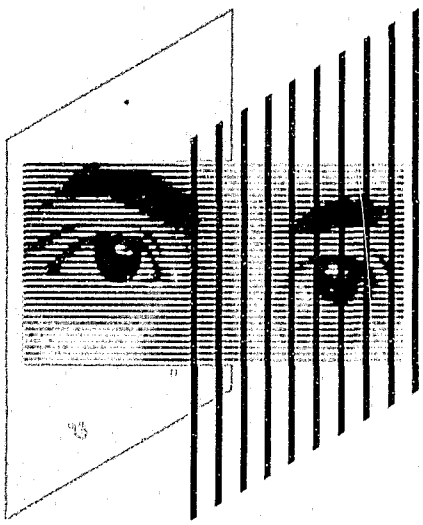
20 See Appendix 1, "Punishment Options Conference Summary," for further description of Delaware's sentencing system.

21 See Appendix 6.

22 Offenders convicted of the following are not eligible: Controlled Substance Homicide; Delivery of an Imitation Controlled Substance by a Person 18 or Over to a Person Under 18; Involving a Minor in Drug Dealing, Over 18 and Deliver Heroin or Narcotic from Schedule I or II to Someone Under 18; Over 18 and Deliver Narcotic from Schedule III, IV, or V or a Nonnarcotic from Schedule I-V to Someone Under 18 and 3 Years Junior; Selling for Profit (Controlled or Counterfeit) any Controlled Substance; Dispensing Violations; Maintaining a Place for Drugs; Using a Building for Drugs; a Finding of Fact for Weapon Usage; or a Finding of Fact for a Protected Zone Violation.

Punishment Options

September 1991



Conference Summary

Crime and its consequences have been major policy interests for the Washington State Legislature over the past decade. The state's landmark Sentencing Reform Act of 1981 set the stage for a determinate sentencing system that links punishment directly to the seriousness of offenses and to the criminal history of offenders. Recent legislation such as the Burglary Act of 1989, the Omnibus Drug Act of 1989, and the Community Protection Act of 1990 has strengthened the link between criminal behavior and appropriate punishment.

Other states have considered policy options for criminal sentencing. The Washington State Institute for Public Policy brought together a wide range of individuals on June 5, 1991, for a conference on "Punishment Options," where national experts could present their recommendations to Washington policymakers. Approximately 150 people attended the conference, including state legislators and legislative staff, and representatives from the fields of adult corrections, law enforcement, victim and offender treatment, research and policy, and citizen organizations.

Key Findings

- Washington has experienced a great increase in its prison, jail, and community supervision populations over the last decade.
- While the population under punishment for crime has increased, *overall crime rates have remained flat* over the same decade.
- Overcrowded prison and jail conditions are driving the search for punishment options and alternatives in many states, including Washington.
- Drug-related convictions and probation revocations have significantly impacted the populations of corrections systems, especially in the past three years.
- Alternative sentencing practices and intermediate sanctions are means of appropriately punishing offenders, while providing retribution and public safety to the community.

Conference Participants

Norval Morris,
University of Chicago

Dale Parent,
Abt Associates

Richard Gebelein,
Delaware Superior Court Judge

Judith Greene,
Vera Institute of Justice

Michael Tonry,
University of Minnesota Law School

Robert Lasnik,
King County Superior Court Judge

Charles Z. Smith,
Washington State Supreme Court Justice

Representative Marlin Appelwick,
House Judiciary Committee Chair

Norm Maleng,
King County Prosecutor

Senator Gary Nelson,
Senate Law and Justice Committee Chair

Steven R. Tomson,
Whitman County Sheriff

Presented by the
Washington State Institute for Public Policy

and co-sponsored by the
House Judiciary Committee
Senate Law and Justice Committee
Office of Financial Management
Sentencing Guidelines Commission

Overview

The American Punishment System

Chase Riveland, Secretary of the Washington State Department of Corrections, introduced Norval Morris, the Julius Kreeger Professor of Law and Criminology at the University of Chicago. He is a member of the Research Advisory Board for the Federal Bureau of Prisons, and Chairman of the Board of the National Institute of Corrections. Morris co-authored *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System* (1990), and has authored many other criminology publications.

The Current Picture

In 1987, about 750,000 people were housed in U.S. jails and prisons and about 2.5 million were under correctional control. By the end of 1990, more than 1.1 million were imprisoned and over 4 million were under correctional control—more than a 50 percent increase in just three years. Over the past decade both prison and probation/parole populations have more than doubled.

During this same time, the nation's crime rates have remained relatively stable. The increases have been in drug dealing, family and sexual violence, and homicide. Increases in the first two areas are clearly a product of rising public and police concern. The homicide increase appears to be related to the increased fire power of weapons and increased drug dealing.

Comparisons with other industrial nations show dramatic differences.

Incarceration rates per 100,000 people:

Holland	36
Sweden	61
United Kingdom	98
Canada	108
United States	426

These differences cannot be explained by varying crime rates. Moreover, our prison population is disproportionately black, Hispanic, and poor.

The current situation is expensive. The present rate of prison population increase is 13 percent per year. To stay exactly where we are in terms of crowding, we would have to build 250 new cells per day at a cost of $12.5 million per day.

Why the Crisis?

We have watched policymakers over the past decade increase the penalties for crime, especially drug offenses, in the interest of crime reduction. A popular, deeply ingrained, and false belief exists in the United States that imprisonment is punishment while everything else is not. What we often forget is that the duration of imprisonment is somewhat arbitrary and unrelated to the severity of the crime. However, once duration and severity are linked, and if imprisonment is the only punishment, then increased duration of imprisonment is inevitable.

Will Alternatives Save Money?

We cannot save money and have a decent criminal justice system. To realize any savings, we must take the alternatives seriously and invest resources in them. Marginal savings will be inconsequential if we affect only a few people. In the long run, a developed system that makes proper use of alternative punishments will be cheaper than one confined to prisons and probation. But policymakers are not always attentive to the long run.

"We cannot save money and have a decent criminal justice system."
—Norval Morris

Alternatives to imprisonment could result in widening the net: intermediate punishments tend to draw on populations that otherwise would be on probation rather than incarcerated. It is hard to make these options truly alternative. They are often additional and tend to draw from the lower end of the punishment spectrum. Also, if we put people who would otherwise not be in prison on intermediate punishment, and then revoke them if they fail to meet all the sentence conditions, prison populations could actually *increase*. In some states, more people are entering prison from revocation of probation than from new convictions.

Research shows that alternative punishments may not necessarily reduce crime rates or recidivism.

Norval Morris

The Prospects

Even if we will not save money in the short run, we still will have to fund prisons. If recidivism will not necessarily be reduced, why should we even be talking about alternative punishments? The justifications are those of justice, not utility. They should be based on minimum decencies in human situations.

A developed punishment system should be a graduated system that makes less use of both probation and incarceration. We should use incarceration as parsimoniously as possible in the middle levels of punishment, recognizing that we cannot draw a line of severity above which we use prison and below which we do not.

What haunts this whole field is the belief that somehow we are going to cure crime and better protect citizens. The criminal justice system has a deterrent effect on crime, but we cannot measure the effects of relatively small changes in police, prosecutorial, sentencing, or correctional practices.

Finally, if crime reduction is your goal, then you should get out of criminal justice and enter the fields of public health, education, employment, or housing. If you really care about crime reduction, the only years in the life of the criminal that matter are shortly before birth through the first five years.

Punishment Options
A National View

Delaware:
A Punishment Continuum

Michael Tonry, of the University of Minnesota Law School, co-authored *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System.* He introduced the topic of intermediate sanctions, and moderated the discussion of models that have been developed in other states.

Michael Tonry

The Honorable Richard Gebelein, Superior Court Judge and former Attorney General in Delaware, chairs Delaware's Sentencing Accountability Commission. Although it is a small state, Delaware's range of sentencing options is instructive for other states considering sentencing reforms.

Delaware's Sentencing Reform Goals

Delaware's first Sentencing Reform Commission arose from its correctional crisis in the late 1970s. Its goals were to incapacitate violent offenders, restore victims, impose alternative sanctions for property and minor crimes, and potentially change the behavior of offenders.

The permanent commission, created in 1984, developed a five-level continuum of sentencing options, ranging from unsupervised probation to incarceration. Guidelines were adopted and implemented in 1987 as a voluntary system of standards expressing presumptive sentences. However, these guidelines also have required the courts to consider the least restrictive and least costly method of custody. For most nonviolent offenses, intermediate sanctions are considered appropriate. Although the guidelines are voluntary, judges have been required to document their reasons for deviating from these standards.

In 1990, Delaware adopted a determinate sentencing system.

How the System Works

Standards and sentencing options are based on factors that have always motivated sentencing: severity of the crime and characteristics of the offender. The sentence is directed to one or more of five general levels of punishment and supervision *(see chart on page 5)*. In addition to the level of the sanction, Delaware courts can order conditions, such as treatment, employment, education, or community service, as part of the sentence at any one of the levels.

Under the Delaware laws, the court assumes a more creative role in sentencing. Sentences can, and do, reflect a combination of supervision levels; the court must plan their entire progression at the time of sentencing. For example, a felon may be sentenced to four years in prison, one year in work release, one year in intensive supervision, and one year under regular supervision--thus moving through several levels of supervision under a single seven-year sentence.

"Under the Delaware laws, the court assumes a more creative role in sentencing."
—Judge Richard Gebelein

Results of the Delaware Model

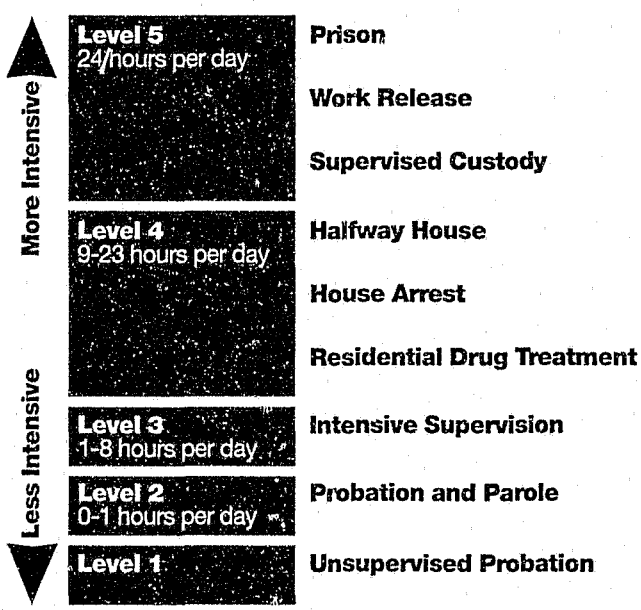
Sentencing patterns have changed dramatically in Delaware since adoption of this five-level system. Offender-specific sentencing, combining many levels of supervision, is now the rule. Sentences are structured on stepwise movement at the lower levels, offering the offender greater freedom as he or she succeeds in the community. A social contract is developed between the offender and the public. Success is rewarded with greater freedom, while failure results in increased supervision and control.

In the past three years, 90 percent of the sentences in Delaware have been within the voluntary standards. The prison population mix has changed: the proportion of violent felons has increased, while the share of nonviolent felons has decreased significantly. Incarceration has decreased as a percentage of sentences imposed. Semi-incarceration in halfway houses, drug rehabilitation centers, or home confinement via electronic monitoring has increased, as has intensive supervision.

Is Delaware widening the net, or has unsupervised probation grown substantially? The number of probation violations has increased, but the Delaware system guides discretion regarding the appropriate solution for these violations. Incarceration is not the only option for probation violation; instead, a period of intensive supervision may be imposed. Failure of intensive supervision could mean movement into a situation of semi-incarceration, and so forth, as the system responds appropriately to the level of the offender's violation.

Richard Gebelein

Levels of Supervision
Delaware Sentencing Accountability Commission



Day Fines

Experiences in New York and Arizona

Judith Greene is Director of Court Programs at the Vera Institute of Justice in New York, an innovator in criminal justice programs throughout the country. The Vera Institute is involved in experimental day fine programs in several states. Greene has also served as Associace Director of the National Institute on Sentencing Alternatives.

Day Fines as Part of Intermediate Sanctions

Fines are already a useful tool in our system, but are primarily used for petty offenses; superior courts use them sparingly. In the United States, the usual criticism of fines as penalties for felonies is that they cannot be imposed in large enough amounts to be more than nominal penalties for affluent offenders. Critics also argue that a system of financial penalties discriminates against poor offenders.

A system of day fines tries to meet both areas of criticism. Day fines can be calibrated to *both* the severity of the crime and the economic circumstances of the offender. Day fines are a technique for structuring the criminal fine to be a more equitable and broadly useful sentence.

Fines are now *the* sentence for criminal offenses in European nations, and incarceration is the alternative. In Germany, 85 to 95 percent of all criminal sentences are fines. Two-thirds of all assault convictions and three-fourths of all property offenses in that country result in fines.

The United States is a puzzling contrast. We have perhaps the most highly developed consumer economy in the world, where many economic incentives are employed to adjust, modify, and change human behavior. Yet we seem reluctant to exploit the punishment utility of monetary sanctions for felony behavior. The punitive impact of a fine is unmistakable: The offender literally pays his or her debt to society.

There is evidence that fines, unlike imprisonment, do not encourage further criminal behavior. Fines may deter further crime better than probation. A system of fines is relatively inexpensive to administer, and it produces revenue. Day fines can be incorporated easily into American sentencing practices. The question may be: Why have they not been incorporated? Let's explore how they operate.

Staten Island, New York: Day Fines for Misdemeanor Offenses

The first day fines in the United States were imposed in Staten Island, New York, in 1988. The Vera Institute worked with a planning group of judges, prosecutors, and attorneys to construct a scale of penalty units for misdemeanor offenses. After considering family size, income, and support requirements, from one-third to one-half of an offender's income can be removed from the day fine calculation. For example:

Fine amounts in the Staten Island court could range from a low of $25 for a welfare recipient with three children who was convicted of the least serious offense in the court's jurisdiction, to $4000 for a single offender with no dependents and a gross annual income of $35,000 who was convicted of the most serious misdemeanor offense.

The effect is to equate penalties among offenders of differing income scales to replace flat fines which represent the "going rate" for a crime. The day fine gives a presumptive number of units scaled according to a share of daily income. This results in an appropriate amount for each offender, whether he or she is a welfare recipient, a truck driver, or an investment banker.

"The U.S. has perhaps the most highly developed consumer economy in the world, yet we seem reluctant to exploit the punishment utility of monetary sanctions."
—Judith Greene

During the first year of use in New York, judges found the system relatively easy to apply, and fine use increased somewhat. Revenues increased by 18 percent. Old fine structures began to dissolve, with a much more individualized use of fines. Roughly 80 percent of the dollars assessed were collected.

Judith Greene

Phoenix, Arizona: The Day Fine Experience with Felonies

The Vera Institute also began working with Phoenix, Arizona, which had already been using monetary penalties heavily. The traditional criminal fine was replaced several years ago by a proliferation of monetary penalties: restitution, surcharges on fines, mandatory drug fines, victim compensation payments, anti-racketeering fund assessments, probation service fees, and others.

The Vera Institute helped the Phoenix court system refocus attention on appropriate and proportional uses of monetary penalties. According to Greene, "We introduced to the pre-sentence investigation the idea of a unit penalty, taking into account offender means, to create an appropriate monetary penalty—a kind of money pie. The court has developed penalty units for felony offenses ranging up to $360."

Phoenix is building a continuum of intermediate penalties to reduce probation caseloads, and has incorporated day fines as part of the effort. This system of monetary penalties targets offenders who would otherwise receive traditional straight probation, and who are at low risk of violating probation. When the law requires some kind of restitution or victim compensation, it is carved out of the day fine. The Phoenix system has just begun, but appears to be working.

Greene noted, "We are looking for ways to explore the day fine concept further. We are confident that it can be done, can produce sentences that are more equitable, may have some deterrent value, and can be acceptable to the public."

Day Reporting Centers

Dale Parent is Senior Social Scientist at Abt Associates in Cambridge, Massachusetts, where he specializes in sentencing and community correctional policy. Parent is a former director of the Minnesota Sentencing Guidelines Commission, which devised the nation's first presumptive guidelines for felony sentencing. He has conducted a number of national surveys on community sentencing issues, as well as research on boot camps, parole and probation revocation, and day reporting centers.

The Breakdown of Community Supervision

According to Parent, "When we look at the sudden, massive increase in prison populations in the past two years, we do not discover that crimes and convictions have increased, but instead that revocations have increased."

Studies by the Rand Corporation found that probation systems were in shambles and had no credibility. As a result of that finding, probation tried to reassert itself with an emphasis on control and surveillance. The credo of probation and parole became: "trail 'em, nail 'em, and jail 'em." That was easy to do. As revocations increased, so did the prison population. Sentencing reform efforts typically did not address this phenomenon.

Criminal justice officials are recognizing that the community supervision system is breaking down. They are seeking to reestablish a balance in dealing with punishment, deterrence, and treatment, in ways that make sense. Parent observed, "I think that treatment is going to become respectable again, and we will see systematic efforts to control revocation decisions through rational policy."

Origins of Day Reporting

Day reporting centers originated in Great Britain during the 1970s out of a need to clear the jails of chronic, nuisance offenders. These centers were set up to structure offenders' time and reduce their opportunity to commit further crimes. Many centers had a short-term treatment component to improve living, social, and job seeking skills.

During 1985, Connecticut and Massachusetts looked to day reporting as a way to alleviate crowding in prisons. An example from Massachusetts shows how the system can work:

Bill lives with his mother in Framingham, about 30 miles southwest of Billerica. It takes him 45 minutes to drive to Billerica, where he reports to the Metropolitan Day Reporting Center office located in the work release unit, a residential facility outside the prison's security perimeter. After checking in with the Center staff, he fills out an itinerary, showing where he will be each moment of the next day, and gives phone numbers where he can be reached at each location.

After Bill gives a urine specimen for drug testing, he and his counselor spend 15 minutes planning Bill's budget for the coming month. He then goes to work at a metal fabrication plant, a job he got through Comprehensive Offender Employment Resources, a community program. He calls Center staff once at noon, and gets two additional calls at random times during the day from Center staff. After work, Bill returns to Metro Center offices to attend a group drug use counseling session. He then goes home. During the evening and early morning hours, he gets two random calls to assure he is complying with curfew requirements. Last week, Bill had 42 in-person and telephone contacts with Center staff.

"Day reporting centers are a model in search of a mission."
—Dale Parent

Unlike other forms of intensive supervision, these centers tend to be privately operated, often linked to residential facilities. Massachusetts has 6 centers and Connecticut 15. A number of other states have day reporting programs, and there is increasing interest in them nationwide.

Goals of Day Reporting

The Massachusetts and Connecticut programs are designed to reduce crowding in prisons and jails. In Massachusetts, clients come from county jails to the centers as an alternative to prison. All those eligible are offered the chance to participate six months before their parole date. In Connecticut, of those in day reporting, about one-third come from supervised home release, one-third are those who were denied parole, and one-third have a day reporting sentence option in lieu of prison.

A variety of day reporting models exist:

- A post-confinement model used in Massachusetts and Connecticut in which offenders enter day reporting following confinement.
- A "last-gasp model" and transition program used in Canada for prisoners who have been denied parole, and who would otherwise serve out their terms in prison.
- An intensive treatment program for particular target groups, as used in Milwaukee to stabilize mentally ill offenders.
- An accompaniment to a residential treatment program, as used in Minnesota.
- A pre-trial diversion model, like the Miami Drug Court's year-long program including daily reporting and drug testing, counseling, acupuncture, living skills, and training. If an offender completes it, the charges are dropped.
- Part of a revitalized, decentralized neighborhood probation system, as used in Chicago.

Day reporting can be regarded as a "model in search of a mission." Although this option is being used extensively, there is little coordinated vision of what it might be. Any jurisdiction that develops a day reporting program needs a clear understanding of its purposes, and of the link between the design and the intended outcome.

Dale Parent

Parent offers these suggestions: "You need to define the target population and determine whether you have the kinds of offenders that will support the purposes of a day reporting option. It is also very important to define what to do when people fail, and as you increase supervision, people will fail more. For example: if you intend to treat drug-involved offenders—a promising use of the model—you must expect some relapse, and you can't just automatically lock up everyone who relapses."

Questions from the Audience

Question: *There seems to be increasing national interest in rehabilitation programs for offenders—particularly drug offenders—and in tailoring particular sentences to individual offenders. What is the future of determinate sentencing systems, like the one in Washington State?*

Norval Morris: There is an assumption that determinate sentencing precludes treatment. This is not true. Instead, determinate sentencing limits punishment and defines what would be unfair. It is clear from our experience worldwide that people favor a combination of support and control during the period of reintegration to society. I think that all of our treatment programs are likely to have that concept. I don't see why we can't do treatment just as well with determinate sentencing, with some modulation.

Dale Parent: We are going to have a strong resurgence of interest in treatment as a sentencing goal as well as in a more rational system, in which "what is just" is used to set the parameters of sanctions. Within this, other purposes such as treatment will be structured in ways that don't interfere with the larger purposes. There is a tension between treatment and punishment; treatment speaks to individualization, and punishment speaks to uniformity. That tension is not going to disappear.

We need to rebuild the capacity of corrections to deliver treatment. We have concentrated so much on control and surveillance that probation and parole staff see treatment as something that can be achieved only by referring people somewhere else. Probation and parole officers used to be social workers. Now most are not equipped or motivated to deal with changing human behavior.

Judge Gebelein: I don't believe treatment and determinate sentencing are mutually inconsistent ideas. In Delaware, determinate sentencing was enacted after the continuum of sanctions was adopted. Treatment is one of the alternatives, one of the goals of the sentencing process. This mandates that Delaware is going to have individualized sentencing orders, each one somewhat different from the others, with the goal of rehabilitation when possible. Where rehabilitation is successful, it is obviously the cheapest and most effective way to go.

Question: *How does the day fine system differ from the practice in Washington's superior courts—and other states' courts—other than by linking penalties to ability to pay?*

Judith Greene: It isn't very different and it can be incorporated easily into present fine systems and sentencing guidelines. The difference is that it is grounded in a penalty unit. The number of units imposed is scaled to the severity of the crime. And the dollar amount assessed for each unit is scaled to the offender's income.

Question: *Almost all of the prison population increase in Washington since 1986 is drug dealers. What special problems and opportunities do drug dealers present for alternative punishment options such as day fines, which cannot realistically factor in actual income from drug dealing, and day center reporting, where drug dealing can still occur at the offender's home?*

Norval Morris: Fairly low-level drug dealers and users are flooding the federal and state prisons. The task that corrections administrators face is developing alternative techniques of control and treatment. We are shooting ourselves in the foot with our current drug policies. We should turn away from moralistic posturing and allocate resources only towards those aspects of the drug scene that injure us: sales to children, the link between high crime rates and high drug use, and the destruction of neighborhoods. As for arresting users, it will fail.

I am skeptical about boot camps, but as a *preamble* to community-based drug treatment and control programs, they would have high promise, might be politically acceptable, and would be socially advantageous.

Punishment Options

The Outlook for Washington State

The Honorable Robert Lasnik, King County Superior Court Judge and member of the Washington Sentencing Guidelines Commission, moderated a discussion among public officials on the outlook for punishment options in Washington.

Panelists included The Honorable Charles Z. Smith, Justice of the Washington State Supreme Court; Representative Marlin Appelwick, House Judiciary Committee Chair; The Honorable Norm Maleng, King County Prosecutor; Senator Gary Nelson, Senate Law and Justice Committee Chair; and Steven R. Tomson, Whitman County Sheriff.

Judge Lasnik: *Where do the panelists think Washington State is in terms of considering punishment options?*

Norm Maleng: I think the public may be more ready for sentencing options than the experts are. When people say "lock 'em up," they are talking about the most serious offenses—rapes, robberies, and murders. For lesser offenses, the idea that really grabs people is work. Day reporting centers can be a vehicle for such work alternatives, or work alternatives combined with programs such as drug treatment.

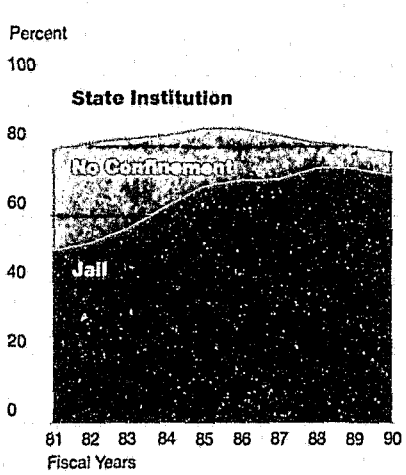
Senator Nelson: The public wants offenders in prison, and this is the very basic public perception that must be faced squarely when we consider punishment options.

Representative Appelwick: Some of the public is willing to give offenders a second chance, but the dominant attitude is "lock 'em up." The public has to be persuaded that there will be a net gain from alternatives before it will pay for them. The public is not yet well educated about alternatives.

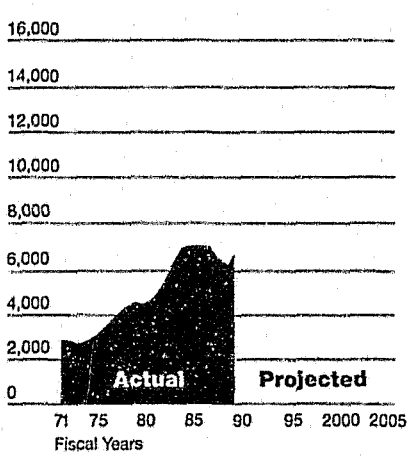
Justice Smith: I am pleased to see that we have not completely abandoned the concept of rehabilitation. The "just deserts" approach to sentencing works only if all of us—legislative, administrative, and judicial—work cooperatively in the public interest. But it will work only if it is constantly examined and intelligently administered by judges.

I hope we can revise what we have and remain a forward-looking state in sentencing reform. Innovation is good, and all of the new approaches have some possibility of success, but sometimes we predict unrealistically. Some offenders will never be changed and no program will make a difference, but we must be able to distinguish between this group and those with a possibility of redemption. I hope we can make changes that will maintain the dignity of those who come before the criminal justice system but also fully preserve the public interest.

Distribution of Felony Sentences in Washington State
Source: Office of Financial Management



Inmate Population in Washington State
Source: Office of Financial Management



"Some offenders will never be changed and no program will make a difference, but we must be able to distinguish between this group and those with a possibility of redemption."
—Justice Charles Z. Smith

The panelists for the discussion on Washington State were (left to right): **Norm Maleng, Senator Gary Nelson, Steven Tomson, Charles Z. Smith, Representative Marlin Appelwick,** and **Robert Lasnik.**

Judge Lasnik: *We have seen a dramatic reduction of drug cases in Yakima County, and elsewhere, as a result of a vigorous enforcement effort and prosecution. Sheriff Tomson, do you see a need to do anything, or is the war on drugs being won at the street level?*

Sheriff Tomson: If the war on drugs is ever won, it will be won through demand reduction, not solely through the efforts of law enforcement. We can have limited effects through vigorous and aggressive street-level operations and can fill the jails with drug dealers, but that's always a temporary thing.

Punishment options should attend not just to the crime but to the offender. We should save jail and prison space for career criminals—the small number of offenders who are responsible for a large number of crimes. We should look at alternatives for those who can be rehabilitated, including certain substance abusers. We are putting too many drug users in jail. I think they should be held accountable, but I'm interested in very structured programs that blend rehabilitation and punishment.

Judge Lasnik: *What is the role of punitive law enforcement in a three-pronged approach to the drug problem—treatment, education, and punishment?*

Norm Maleng: I agree that we have a secondary role in fighting drugs—the prime role being education and treatment—but we play an important part in reinforcing public attitudes. There is an appropriate role for sentencing options in drug offenses, and I would distinguish between drug dealing and possession cases. For drug dealers, prison is appropriate. But we have thousands of people in jails and prisons on lesser possession charges for whom alternative programs could have a substantial impact.

"If you have a limited menu of sentencing options, it will have a disparate impact on ethnic minorities."
—Norm Maleng

Representative Appelwick: With the Omnibus Drug Act of 1989 we were trying to balance the criminal justice component with an intervention and treatment program, as well as an education component. Dealing with all those elements together is really our hope. If we are going to be overt about sentencing options, we may be getting tougher in some areas, easier in others.

Judge Lasnik: *One of the strong attitudes that created the climate for sentencing reform was that sentencing options were granted to those offenders most like those who made the decisions. We discovered that mostly white, middle-class offenders tended to get breaks from decision makers, who are also mostly white and middle-class.*

Justice Smith: We need to be aware of the impact of alternatives on ethnic minorities. Are they being given the option to participate? The Sentencing Guidelines Commission had some very telling findings on this question. We cannot pursue any creative approach to disposition without openly, objectively, and affirmatively taking into consideration the consequential discrimination against persons of color.

Norm Maleng: If you have a limited menu of sentencing options, it will have a disparate impact on ethnic minorities. Minorities might have fewer job opportunities and less ability to pay fines or pay for treatment. Expanding the options can dramatically reduce that disparity. For example, if we had day reporting, one person might have a job, another person without a job would go to a work crew, and a third might do community service or undergo treatment. This could reduce the disparity we have now. If we can have community sanctions that are more structured, they will be more meaningful to the offender, more acceptable to the public, and more equitable for the criminal justice system.

Judge Lasnik: *What the public seems to fear are alternative sentences that exist only to divert people from jail or prison, and will leave them out in the streets without supervision or meaningful treatment. What is the connection between sentencing alternatives and budgetary allocations?*

Representative Appelwick: That's the problem: Can you fund your promises? The advantage of the Omnibus Drug Act of 1989 is that it was bipartisan and there were many things people wanted, but the tax increase that went with it was difficult to pass. We need to be candid if we are going to enact sentencing alternatives. The public thinks alternatives are a shell game about letting people out of prison.

Fiscal reality tells us we have to use more than one strategy to deal with the increasing number of convicted felons. We need a consensus rather than fighting among various factions. And we need to tell the public that this is a comprehensive program, even if it costs more money.

Senator Nelson: In the Sentencing Guidelines Commission's current evaluation of the impact of the Sentencing Reform Act, we have an opportunity to extend the menu of options available to punish offenders. For example, I would support something like the day fine system discussed today. This, as well as other alternatives, must be presented accurately to the public. We also need to show that these options can work—by both appropriately punishing offenders and adequately protecting the public.

For Further Reading

Morris, N. and Tonry, M. (1990). *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System.* New York and Oxford: Oxford University Press.

Parent, D.G. (1989). *Shock Incarceration: An Overview of Existing Programs.* Washington, DC: National Institute of Justice.

Parent, D.G. (1990). *Day Reporting Centers for Criminal Offenders: A Descriptive Analysis of Existing Programs.* Washington, DC: National Institute of Justice.

Definitions

Day Reporting Centers:
The typical day reporting center provides increased supervision and monitoring, as well as short-term treatment for offenders in a community setting. The concept was first developed as a way to clear jails and prisons of chronic, less serious offenders. In a typical day reporting center, the offender may be tested for drugs before going to work, return for drug counseling before going home at night, and maintain telephone contact with a supervisor throughout the day.

Day Fines:
Day fines are an effort to impose equitable fines based both on the seriousness of the crime and the economic circumstances of the offender. A certain number of penalty units are assigned to each offense, with the dollar amount assigned to each unit determined by the offender's ability to pay.

Shock Incarceration or "Boot Camps":
Patterned after the military boot camp, shock incarceration is an intensive, short-term prison sentence designed as an intermediate sanction for young offenders. The programs are residential, lasting 90-120 days, and incorporate highly regimented activities with strict discipline and physical training. Boot camp programs are operating in a dozen states. Evaluations are under way to determine the utility of this model in corrections.

Washington State Institute for Public Policy

The mission of the Washington State Institute for Public Policy is to assist policymakers, particularly those in the legislature, in making informed judgments about the most important, long-term issues facing Washington State.

The Institute assists policymakers by conducting research projects and studies on issues of major importance to the state using academic specialists from universities in Washington State. Staff of the Institute work closely with legislators and legislative, executive, and agency staff to define long-term issue areas that can benefit from academic involvement; new activities are initiated at the request of the legislature or executive branch agencies. A Board of Directors governs the Institute and approves each new project.

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Sentencing Grid

Note: Sentences in months unless indicated otherwise

Offender Score	0	1	2	3	4	5	6	7	8	9 or more
XV	Life Sentence without Parole, or Death Penalty									
XIV	240 - 320	250 - 333	261 - 347	271 - 361	281 - 374	291 - 388	312 - 416	338 - 450	370 - 493	411 - 548
XIII	123 - 164	134 - 178	144 - 192	154 - 205	165 - 219	175 - 233	195 - 260	216 - 288	257 - 342	298 - 397
XII	93 - 123	102 - 136	111 - 147	120 - 160	129 - 171	138 - 184	162 - 216	178 - 236	209 - 277	240 - 318
XI	78 - 102	86 - 114	95 - 125	102 - 136	111 - 147	120 - 158	146 - 194	159 - 211	185 - 245	210 - 280
X	51 - 68	57 - 75	62 - 82	67 - 89	72 - 96	77 - 102	98 - 130	108 - 144	129 - 171	149 - 198
IX	31 - 41	36 - 48	41 - 54	46 - 61	51 - 68	57 - 75	77 - 102	87 - 116	108 - 144	129 - 171
VIII	21 - 27	26 - 34	31 - 41	36 - 48	41 - 54	46 - 61	67 - 89	77 - 102	87 - 116	108 - 144
VII	15 - 20	21 - 27	26 - 34	31 - 41	36 - 48	41 - 54	57 - 75	67 - 89	77 - 102	87 - 116
VI	12+ - 14	15 - 20	21 - 27	26 - 34	31 - 41	36 - 48	46 - 61	57 - 75	67 - 89	77 - 102
V	6 - 12	12+ - 14	13 - 17	15 - 20	22 - 29	33 - 43	41 - 54	51 - 68	62 - 82	72 - 96
IV	3 - 9	6 - 12	12+ -14	13 - 17	15 - 20	22 - 29	33 - 43	43 - 57	53 - 70	63 - 84
III	1 - 3	3 - 8	4 - 12	9 - 12	12+ - 16	17 - 22	22 - 29	33 - 43	43 - 57	51 - 68
II	0 - 90 days	2 - 6	3 - 9	4 - 12	12+ - 14	14 - 18	17 - 22	22 - 29	33 - 43	43 - 57
I	0 - 60 days	0 - 90 days	2 - 5	2 - 6	3 - 8	4 - 12	12+ - 14	14 - 18	17 - 22	22 - 29
Unranked	0 - 12	0 - 12	0 - 12	0 - 12	0 - 12	0 - 12	0 - 12	0 - 12	0 - 12	0 - 12

Thirteen major bills amending the SRA since its implementation

SHB 1399 (1986)

- All adult priors are included in the offender score (previously, prior offenses served concurrently counted as one offense).
- Juvenile Class A adjudications are always counted.
- Attempted offenses are counted the same as completed offenses.

SHB 1598 (1986)

- Transferred the sex offender treatment program from DSHS to DOC (Did not change sentences, but transferred offenders to prison).

SHB 684 (1987)

- All prior felonies are included in the scoring for escape convictions (previously, only prior escapes were counted).

HB 1228 (1987)

- The First-time Offender Waiver option was eliminated for persons convicted of drug dealing. The waiver allows a treatment sentence in the community, with a jail sentence of up to 90 days.

SHB 1333 (1988)

- Some sex offenses involving child victims were reclassified, some of the penalties for these offenses increased, and two new crimes involving older teenage victims were created.

SHB 1424 (1988)

- Post-release supervision was created for certain offenders sentenced to prison.

SHB 1429 (1988)

- Home detention was authorized for certain offenders.

SHB 1793 (1989)

- The seriousness ranking for dealing heroin or cocaine was increased.
- For drug offenses, the scores for prior drug convictions were increased.
- A 24-month enhancement was added for dealing narcotics in a school zone.

SB 5040 (1989)

- Sentence enhancements were added for certain drug offenses committed in a prison or jail facility.

SB 5233 (1989)

- The penalties for residential and non-residential burglary were increased.

SSB 6259 (1990)

- The sentencing grid was expanded to 15 levels.
- The Seriousness Level for Assault 1 and various sex offenses was raised.
- The maximum good time for serious violent and Class A sex offenders was reduced from 33 percent to 15 percent of the sentence.
- For sex offenses, the scores for prior sex offenses were increased.
- Offenders convicted of two or more serious violent offenses must serve the sentences consecutively (one sentence following the other).
- The mandatory minimum term for Rape 1 was increased.
- All juvenile sex offenses must be counted in the offender score.
- Prior violent juvenile offenses adjudicated on the same date now count separately if the offenses involved different victims.
- A sexual motivation finding can be filed on non-sex offenses.
- A process for civil commitment of certain sexual predators was created.

SHB 1780 (1991)

- Work Crews were authorized as an alternative form of punishment.

HB 2073 (1991)

- The penalties for the sale of Schedule 1 substances for profit were increased.

Superior Court decisions affecting length of confinement

In *Re Addleman 1986* required that the Indeterminate Sentence Review Board (ISRB) recompute the minimum terms of inmates who were sentenced before the implementation of the SRA.

In *Re Meyers 1986* required that the ISRB recompute the minimum terms of inmates who committed offenses before the implementation of the SRA, but were sentenced after that date. A 1986 Bill (SSB 1400) specified how the SRA would be applied to pre-SRA offenders. This initiated a review of pre-SRA cases by the ISRB, which resulted in an earlier release for 1,700 inmates starting in 1985 and ending in 1988. These releases resulted in a decline in the total inmate population in Fiscal Years 1986 through 1988, even though admissions to prison continued to increase.

State v. Phelan 1983 the Court required that time served in jail prior to sentencing for a given conviction be credited to the minimum prison term for that conviction.

State v. Knapp 1984 required that time spent in a mental institution or hospital prior to a prison admission be credited to an inmate's prison term.

Re Mota 1990 required DOC to recalculate earned good time based on time spent in jail and prison, rather than time in prison only.

The largest impact of these Supreme Court decisions resulted from the Addleman and Meyers decisions. However, the impact of these decisions was temporary because the accelerated releases from 1986 through 1988 were simply borrowed from the future. The recent explosion in state prison population is partially the result of declining releases of offenders as the impact of Meyers and Addleman wears off.

This summary is extracted from the
Washington State Criminal Justice Databook,
Felony Sentencing 1971 to 1991,
Office of Financial Management, May 1991.

Sentencing Grid for the nonviolent offender option

Seriousness Level	Offender Score					
	0	1	2	3	4	5
Standard Range V	6-12					
Maximum Punishment Units	**180**					
IV	3 - 9	6-12				
	120	**180**				
III	1-3	3-8	4-12	9-12		
	75	**120**	**150**	**270**		
II	0-90 Days	2-6	3-9	4-12		
	60	**90**	**120**	**150**		
I	0-60 Days	0-90 Days	2-5	2-6	3-8	4-12
	60	**60**	**90**	**90**	**120**	**150**
Attempts	75% of completed offense 75% of punishment units for completed offense					
Unranked	0-12 60 punishment units for First-time Offender 120 for others					