

Impact Analysis of Sentencing System Proposed by the Texas Punishment Standards Commission

Report 6



December 16, 1992

Criminal Justice Policy Council
P.O. Box 13332
Austin, Texas 78711
(512) 463-1810

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Note From the Director

This is the sixth report of a series specifically designed to help the Texas Punishment Standards Commission (TPSC) in their policy development. The Commission requested that the Criminal Justice Policy Council (CJPC) provide an impact analysis of the draft recommendations of the Commission's proposal for sentencing reform. This report provides this analysis based on the scientifically collected data from the Sentencing Dynamics Study and based on the JUSTICE II model, a new version of the CJPC computerized simulation model specifically designed to meet the needs of the commission.

The analysis shows that the commission's recommendation to create a Fourth Degree felony will divert to community corrections punishments about 36% of the offenders presently sentenced to prison. The offenses of about another 7% of the offenders presently sentenced to prison will be classified as misdemeanors under the proposed recommendations. On the other hand, the parole release system will be abolished. Offenders will serve 80% of their sentence in new revised punishment ranges. The analysis show that those offenders that do go to prison will serve longer in prison than under the present system.

The proposed recommendations will have an immediate effect in reducing the backlog of state inmates in county jails. The proposed system will be implemented January 1, 1994. The projected jail backlog under the new system by August 1995 is 2,158 compared to 19,237 under status quo. This short-term effect is caused by the interaction of two factors: the large number of correctional beds becoming operational in fiscal years 1994 and 1995 (over 26,000) and the sudden decrease in the prison admission pressure resulting from the massive diversions created by the new sentencing system. However, by August 1998 the jail backlog is projected to increase to 31,653 (compared to 35,123 under status quo). Two long-term factors affect this increase: the large decline in prison releases resulting from more calendar time being served by those offenders sentenced to prison under the new system and the "looping" effect of Fourth Degree recidivist offenders who must serve 80% of a prison sentence once they have 3 prior felonies. It is important to note that the assumptions made for the projection are conservative. For example, the projection assumes that those sentenced to prison under the new system will serve an average equivalent to the midpoint in their sentencing range. If the average is higher, the projected backlog would also be higher.

The new system will increase the number of felony offenders on probation supervision (280,507 vs. 227,547) while decreasing the number of offenders on parole supervision (27,524 vs. 90,394). The proposals assume the need for 13,274 beds in state jails (funded by the state) to deal with recidivist offenders on community corrections supervision. If the number of offenders at the end of fiscal year 1998 in state jails, in the jail backlog, in prison and in substance abuse facilities is added up, more offenders will be incarcerated under the proposal than in status quo (133,310 vs. 123,506).

Tony Fabelo, Ph.D.
Executive Director

Acknowledgments

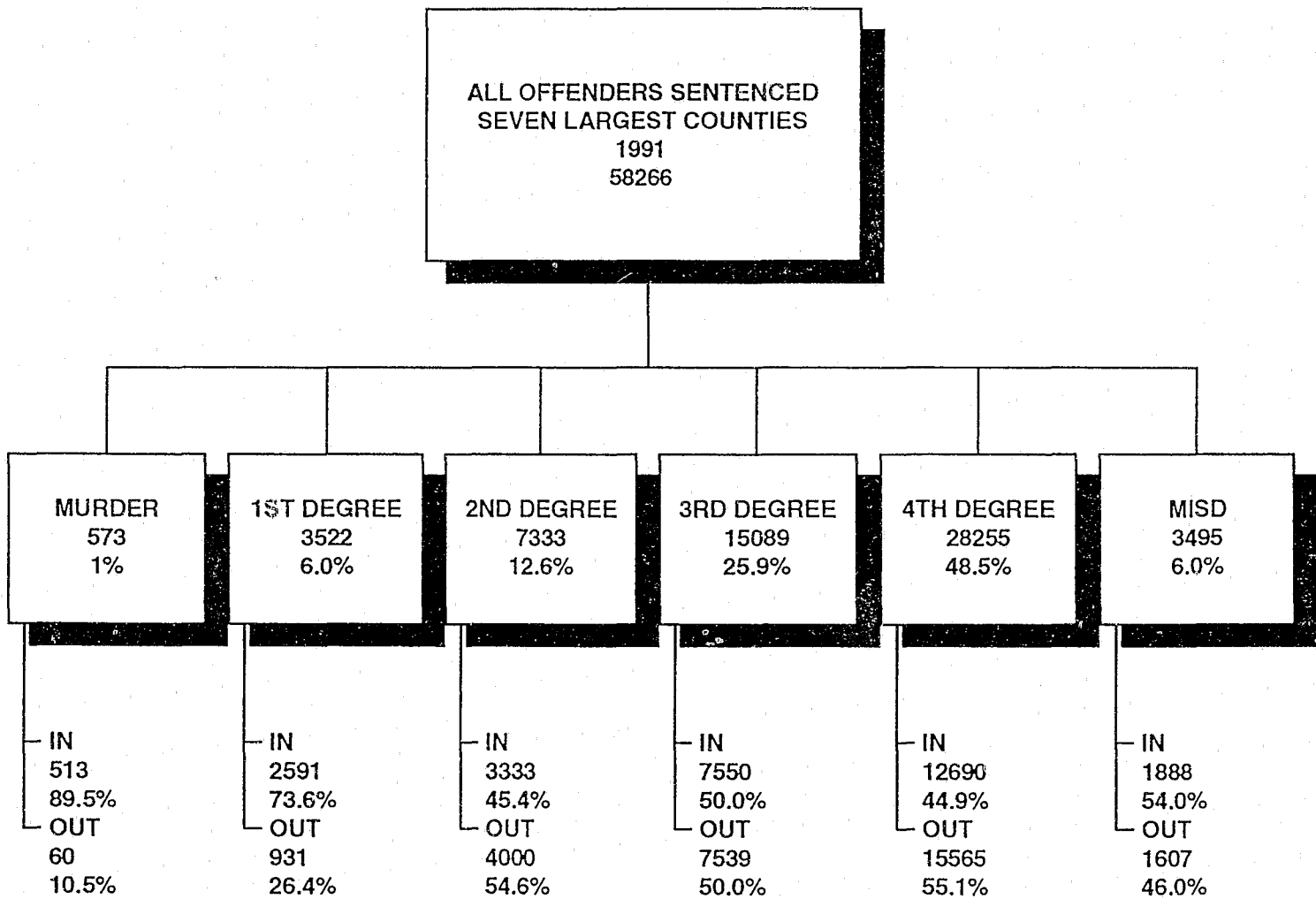
I want to thank all outside the agency who have contributed to the success of the Criminal Justice Policy Council in completing in record time Phase I and Phase II of the largest sentencing study in the nation while maintaining the highest standard of scientific quality. To the agency's research team, the best in the country, many thanks for maintaining the quality of research under tremendous time pressure.

--- Tony F. ---

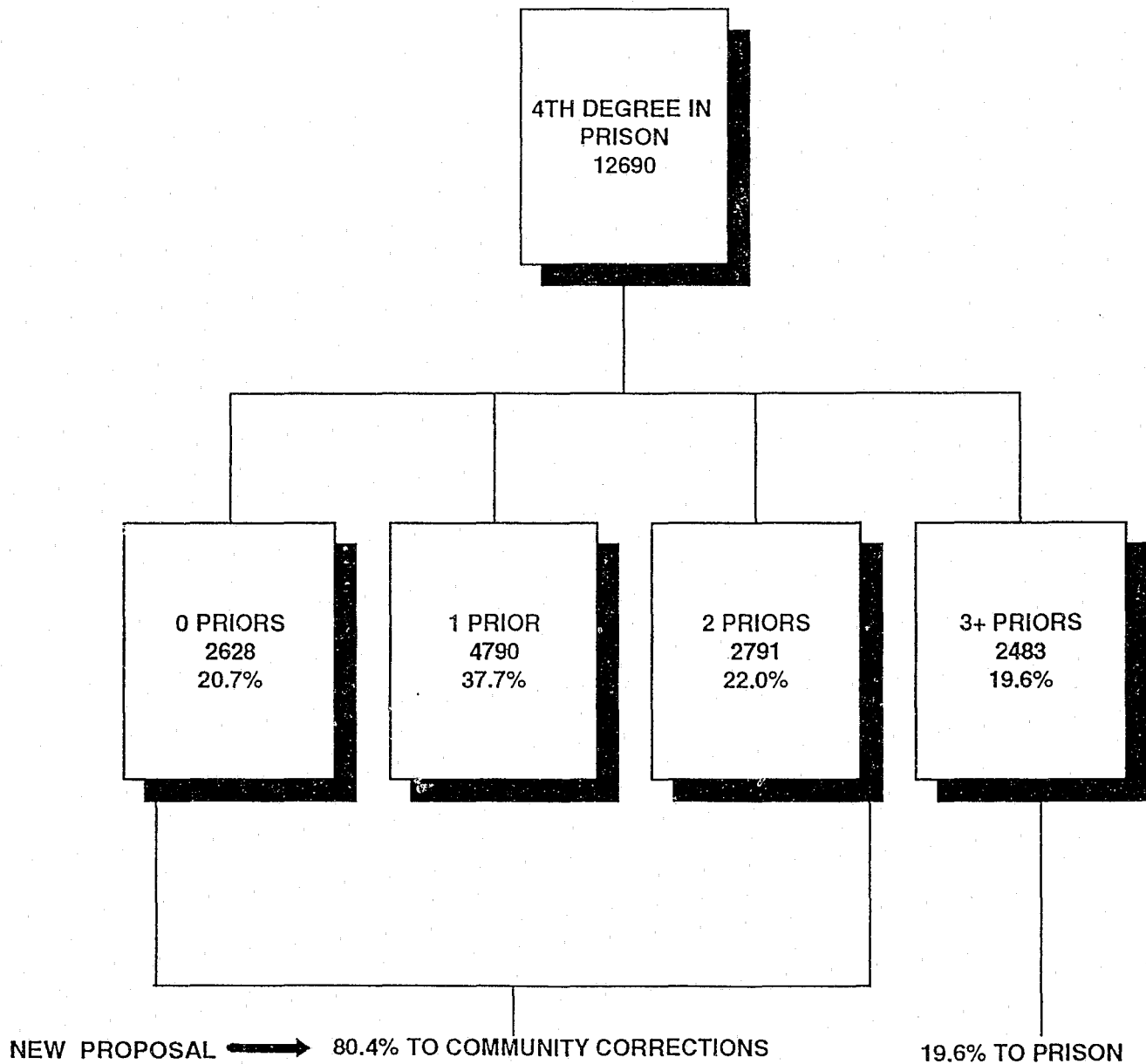
PART I

ANALYTICAL OVERVIEW OF NEW SENTENCING PROPOSAL

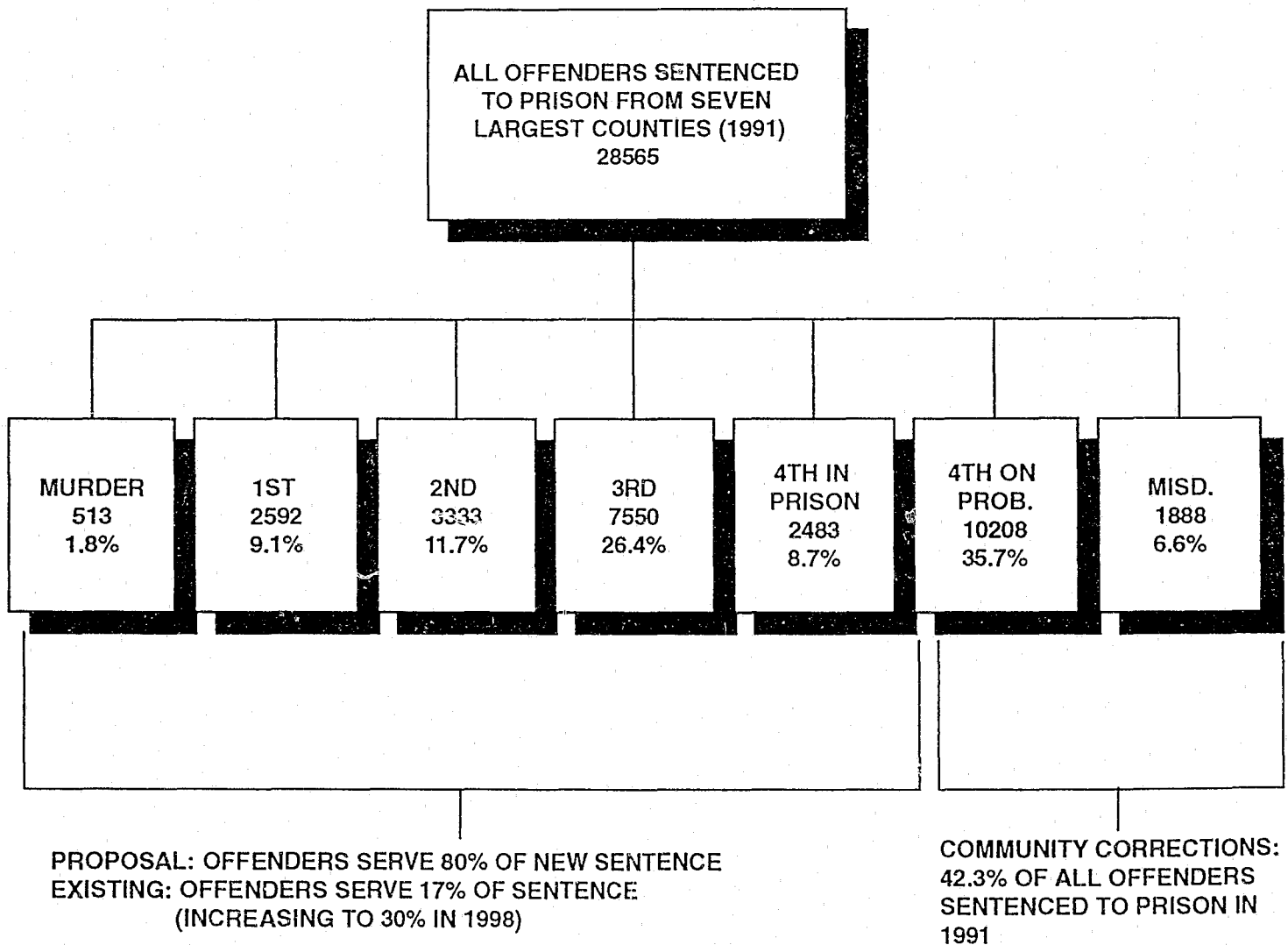
Sentencing Proposal Applied to 1991 Sentencing Dynamics Data



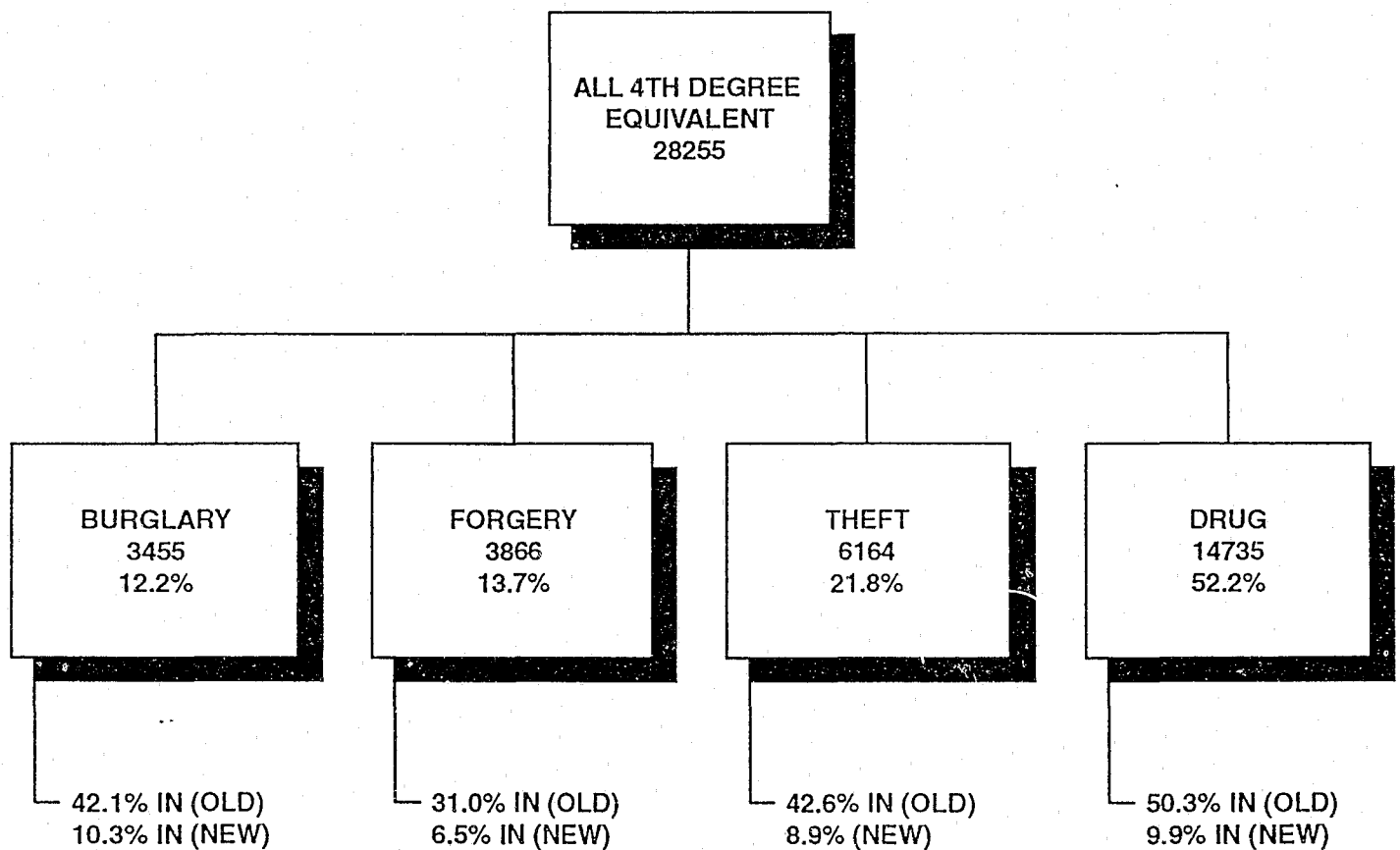
Number of Prior Felony Sentencing Events for Those 4th Degree Equivalent Offenders Currently Sentenced to Prison



Texas Offenders Sentenced to Prison: New Degree Levels

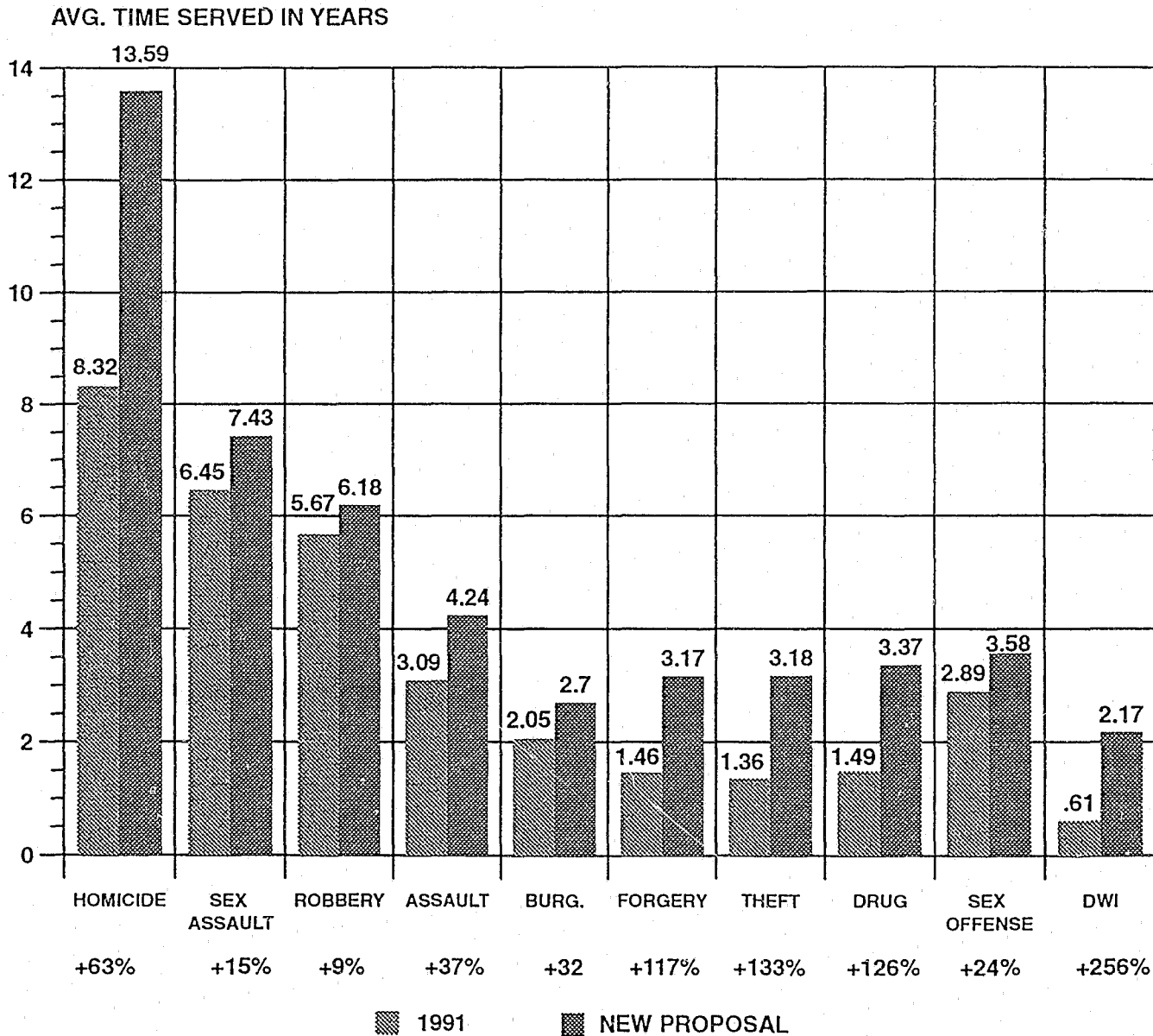


4TH Degree Offenders by Offense Type and Percent Sentenced to Prison



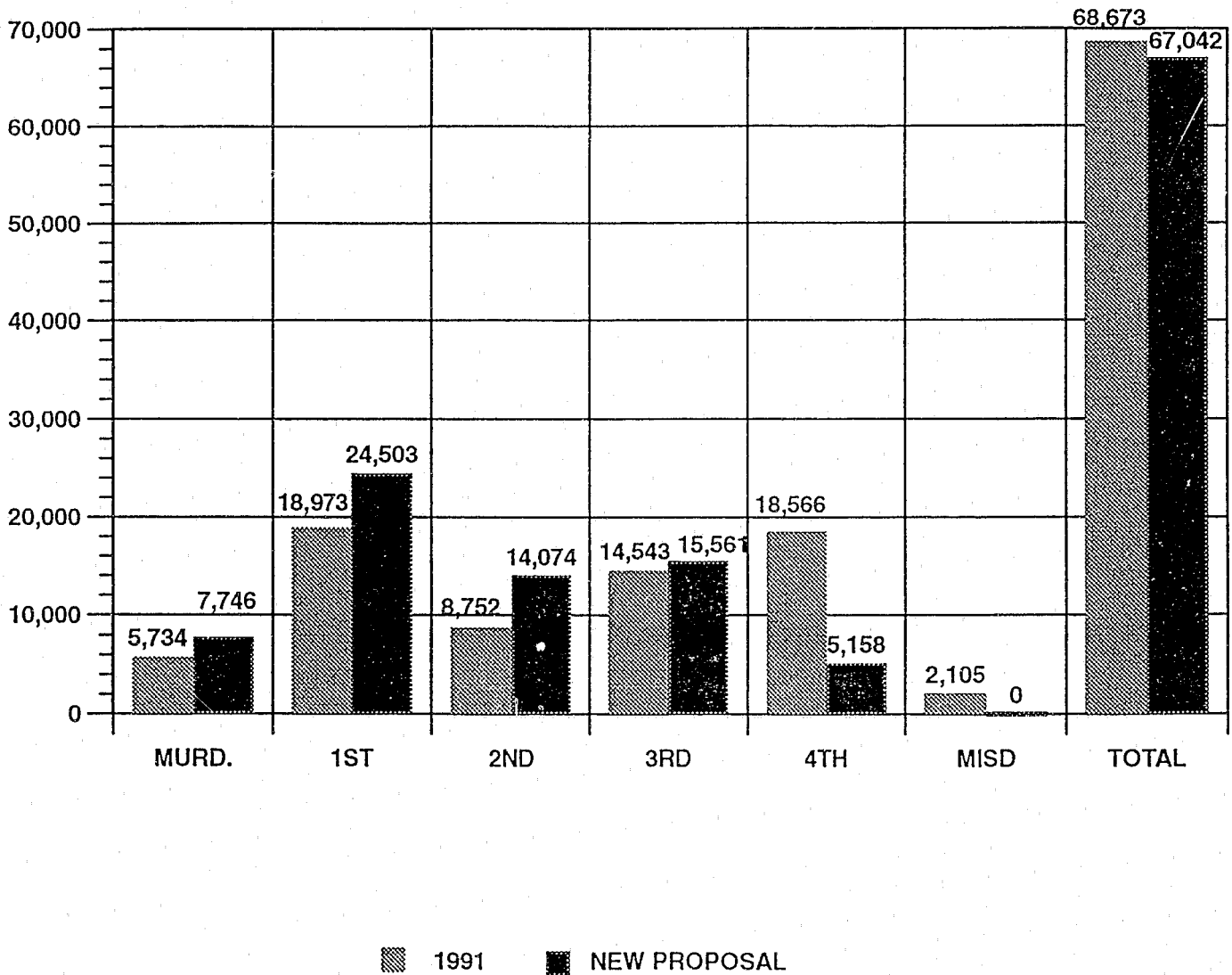
Note: Fourth degree equivalent with 3 or more prior felony convictions will be sentenced to prison under new proposal
Note: 35(.1%) of 4th Degree Equivalent offenders fell into other offense categories

Comparison of Estimated Prison Time Served by Offense: 1991 and New Sentencing Proposal



Note: Midpoint of sentence range in new proposal is assumed as average sentence, offenders will serve 80% of this average

Comparison of Total Estimated Time Served In Years: 1991 and New Sentencing Proposal



Movement Table of Texas Offenders Sentenced to Prison:

Comparison of 1991 and New Proposal

		MURDER/ 1ST	2ND	3RD	4TH	MISD.
HOMICIDE	EXISTING	557	250	86	0	0
	PROPOSED	750	143	0	0	0
SEXUAL ASSAULT	EXISTING	558	294	36	0	0
	PROPOSED	558	294	36	0	0
ROBBERY	EXISTING	1494	1286	0	0	0
	PROPOSED	1494	0	1286	0	0
ASSAULT	EXISTING	59	10	1108	0	0
	PROPOSED	49	1033	95	0	0
BURGLARY	EXISTING	2250	1946	1391	0	0
	PROPOSED	82	47	4003	1455	0
FORGERY	EXISTING	7	36	1188	0	0
	PROPOSED	0	7	36	1188	0
THEFT	EXISTING	0	31	4511	0	0
	PROPOSED	0	0	31	2623	1888
DRUG	EXISTING	3942	5972	512	0	0
	PROPOSED	178	1608	1232	7408	0
SEX OFFENSE	EXISTING	0	191	67	0	0
	PROPOSED	0	191	67	0	0
DWI	EXISTING	0	0	784	0	0
	PROPOSED	0	7	777	0	0

PART II

SYSTEM DYNAMICS: PROJECTED POPULATION IMPACT

Assumptions to Test Impact of New Sentencing Scheme

- Note on Assumptions
 - The assumptions made to test the impact of the new sentencing system were made based on:
 - Scientific information derived from the CJPC Sentencing Dynamics Study (Study)
 - Directions from the Texas Punishment Standards Commission staff (Commission)
 - Prior work from the Criminal Justice Policy Council staff (CJPC)
 - The source of each assumption is noted in parenthesis below
- Implementation timeline
 - The new sentencing system will become effective on January 1, 1994 (Commission)
 - Until December 31, 1992 the present sentencing patterns will stay the same
 - Assumptions concerning the operation of current system will be those made by the CJPC for the baseline projection of October 30, 1992
 - 117 releases per day
 - 5.5% of backlog released on Parole-in-Absentia
 - Schedule does not include potential additional capacity gained by the settlement of the Ruiz litigation (approximately 2,150 beds) or include state jail backlog beds
- Diversion population
 - Approximately 35.7% of the offenders presently sentenced to prison will be diverted to community corrections as a Fourth Degree offender (Study)
 - Fourth Degree offenders will be sentenced to community corrections for four years (Commission)
 - Fourth Degree offenders under community supervision will serve an average of three months in a state jail (Commission)
 - Another 6.6% of offenders presently sentenced to prison will be diverted to prison by categorizing their crimes as misdemeanors (Study)

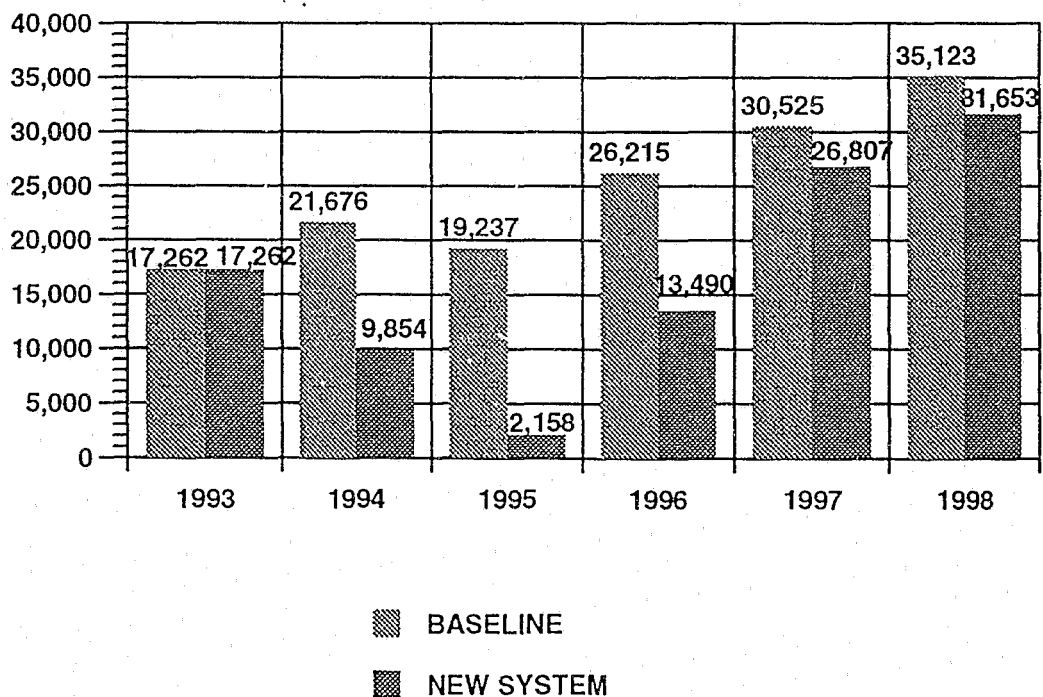
Assumptions (continued)

- Population sentenced to prison
 - Those sentenced to prison will serve 80% of their sentence as established by the new system (Commission)
 - The average sentence in the new system will be the midpoint of the new sentence ranges (see Appendix B) (Commission)
 - Offenders will be released to mandatory supervision to serve the balance of their sentence (20%)(Commission)
 - Parole-in-Absentia from jails will be abolished, although it is assumed that offenders who complete 80% of their sentence in the jail backlog will be released on mandatory released to supervision (Commission)
- Recidivism
 - The Five year recidivism rate for those sentence to prison will be one-third lower than the baseline (CJPC)
 - The assumption is that longer periods of incapacitation and shorter periods under supervision will lead to lower recidivism rates
 - Fourth Degree offenders under community supervision who commit a third Fourth Degree felony offense will be sentenced to prison for four years (Commission)
 - Fourth Degree offenders that commit a non-Fourth degree felony offense while under supervision will be sentenced to prison and will be given a sentence based on their new felony (Commission)
- Substance Abuse Facilities
 - Most Fourth Degree offenders who are eligible for substance abuse treatment will be assigned to a Substance Abuse Facility as a condition of their supervision (Commission)
 - Other non-Fourth Degree offenders who would have been sentenced to prison as well as other offenders granted probation will also be assigned to these facilities as space is available (CJPC)
 - Approximately 95% of the offenders placed in the facilities will complete the drug treatment program successfully (CJPC)
 - All those completing the program successfully will be ordered by the court to complete their sentences on probation (CJPC)
 - These offenders will have a recidivism rate that is 10% lower than the regular probation recidivism rate (CJPC)
 - All those not completing the program successfully will be ordered by the court to complete their sentences in prison (CJPC)

Projected Jail Backlog Under New System Compared to Baseline

- The projected jail backlog under the new system is substantially lower than under baseline by August of 1995 due to the interaction of two factors
 - The impact of increased correctional capacity becoming operational during 1994 and 1995 (over 26,000)
 - The impact of a sudden decrease in the prison admission pressure due to the massive diversions created by the new sentencing system
- By August 1998, the jail backlog is projected to be slightly lower than baseline
 - A substantial decline in prison releases due to increasing calendar time served will increase the jail backlog after 1995
 - Fourth Degree recidivist offenders who continue to "loop" within the criminal justice system will start receiving prison sentences and impacting the jail backlog during the later years of the projection

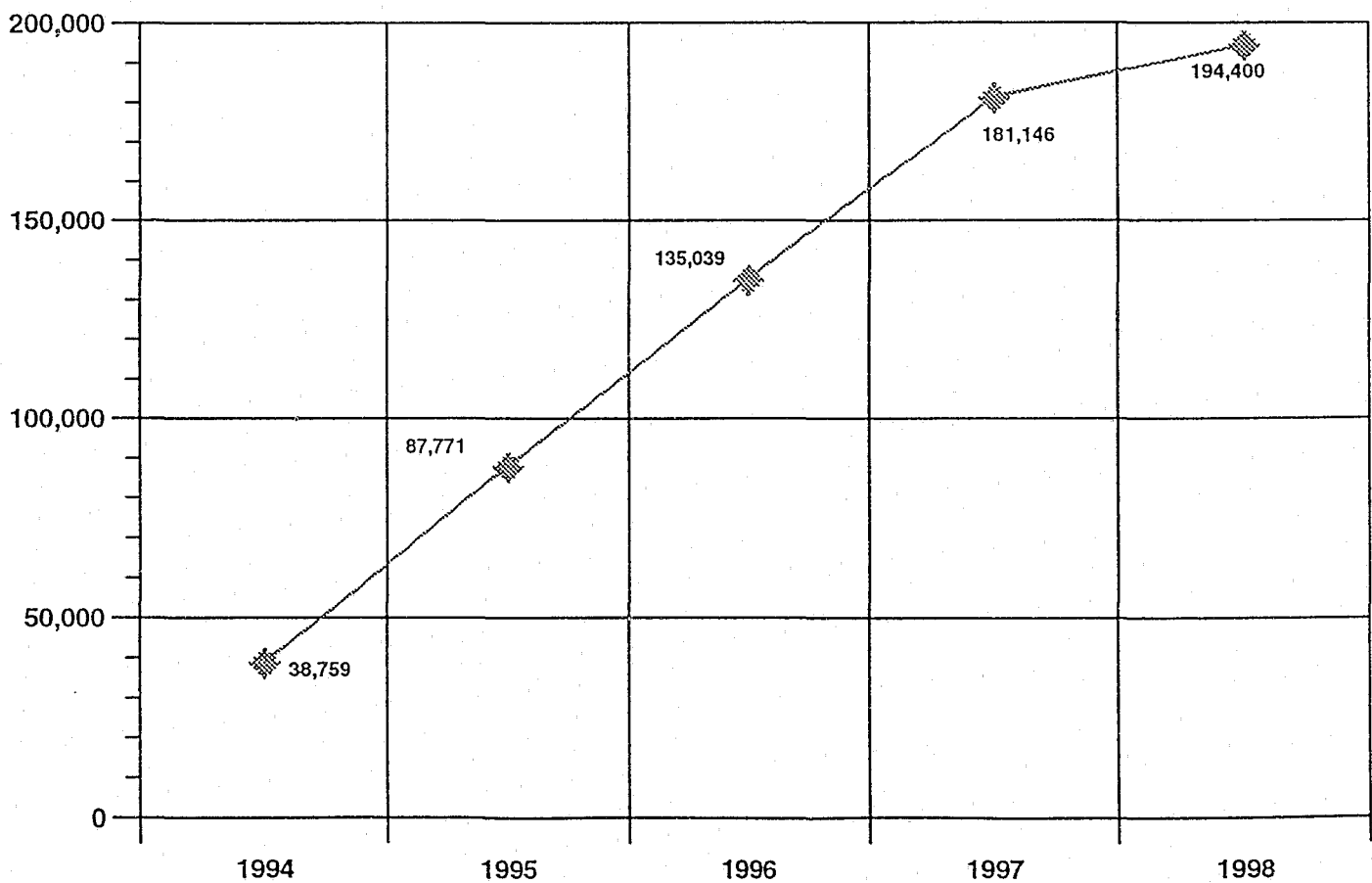
Projected Jail Backlog Under Existing and New System
Chart 1



Projected Population Under Fourth Degree Community Supervision

- The Texas Punishment Standards Commission requested the Criminal Justice Policy Council to assume that:
 - Fourth Degree offenders will receive an average sentence of four years in community corrections

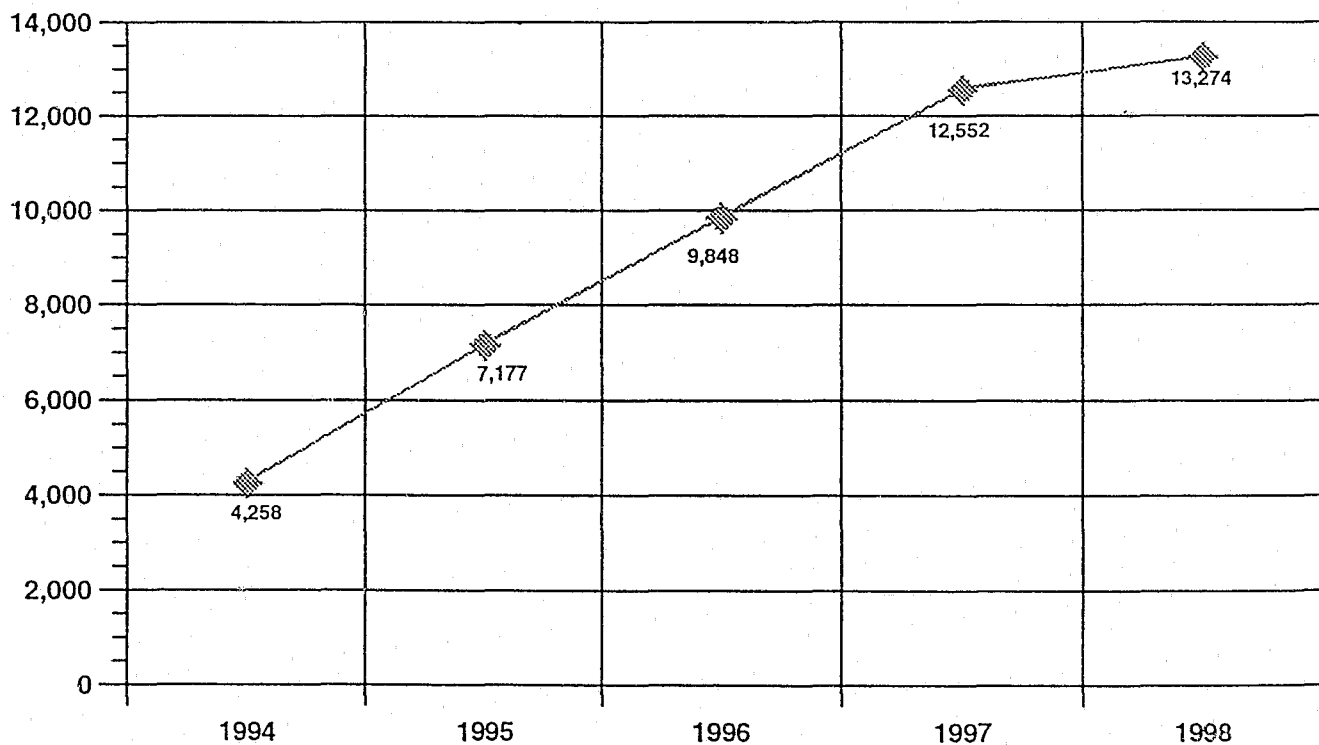
Projected Populations Under 4th Degree Community Supervision
FY 1994-1998
Chart 2



Projected Population Incarcerated in State Jails

- Fourth Degree offenders under community supervision will serve an average of three months of their sentence in a state jail
 - Based on this assumption it is projected that approximately 7% of the offenders under Fourth Degree community supervision will be serving time in state jails

Projected Population Incarcerated in State Jails FY 1994-1998
Chart 3



Summary Table: Baseline and New System FY 1998

- By 1998, the new system will divert a large number of offenders to community corrections, this diversion will increase the percentage of the state felony population under probation
- The population under post-prison release supervision will decline substantially due to the much smaller percentage of sentence being served under post-prison release (20%)
- The proposals assume the need for 13,274 beds in state jails (funded by the state) to deal with recidivist offenders on community corrections supervision
- If the number of offenders at the end of fiscal year 1998 in state jails, in the jail backlog, in prison, and in substance abuse facilities is added up, more offenders will be incarcerated under the proposal than in status quo

		BASELINE	NEW SYSTEM
COMMUNITY SUPERVISION		239,547	305,781
	PROBATION	227,547	280,507
	SUBSTANCE ABUSE	12,000	12,000
	STATE JAILS	0	13,274
PRISON		76,383	76,383
JAIL BACKLOG		35,123	31,653
PAROLE/MS		90,394	27,524
TOTAL		441,447	441,341
TOTAL INCARCERATED		123,506	133,310
	% INCARCERATED	27.9%	30.2%

APPENDIX A

FELONY RANKING STRUCTURE

	PERSON CRIMES	DRUG CRIMES	PUBLIC SAFETY CRIMES	PUBLIC TRUST & AUTHORITY CRIMES	PROPERTY CRIMES	DECENCY & MORALS CRIMES
	Capital Murder					
	Murder					
1	Agg. Sexual Assault Injury to Child (involuntary - SBI) 1st* Agg. Kidnap. Agg. Robbery 1st* Arson (BI) 1st* Burglary (BI or attempted BI) 1st* Agg. Assault (SBI of public servant)	Deliv. Grp I, 400+ g Deliv/Poss. Mch. 2000+ lb Illegal Export/Import.				
2	Vol. Manslaughter (negligent murder) Invol. Manslaughter "Intentional" Manslaughter Sexual Assault 2nd* Agg. Kidnap. (safe release) 2nd* Burglary (occupant or weapon) Tampering w/ Product (injury) Arson (injury) 2nd* Agg. Assault (SBI or no injury but weapon against public servant) Injury to Child (rock/loss - SBI) 2nd* Indecency w/ Child (touching) 2nd* Abandoning Child (serious danger) Sex. Perform. by Child Compelling Prostitution	Deliv. Grp I, 4-400 g Poss. Grp I, 4+ g Deliv/Poss. Grp II, 4+ g Deliv/Poss. Grp III/IV, 36+ g Deliv/Poss. Mch. 10-2000 lb Deliv to Minor	2nd* Escape (w/ deadly weapon) 2nd* Implements for Escape (deadly weapon) 2nd* Arson 2nd* Facilitating Escape	Bribery 2nd* Official Oppression (actual coercion) 2nd* (> \$100,000) "Abuse of Official Capacity" (Official Misconduct)	2nd* (> \$100,000) Misapplication of Fiduciary Property, Theft, Theft of Service, Criminal Mischief	
3	Kidnapping Robbery "Intentional Assault" (DWI causing SBI) 3rd* Agg. Assault (weapon but no injury) 3rd* Burglary 3rd* Injury to Child (involuntary - BI) 3rd* Abandoning Child (w/o intent to return) "Prohibited Sexual Conduct" (Incest) Sale of Child 3rd* Indecency with Child (exposing) 3rd* Fel. Solicitation of Child	Deliv/Poss. Grp I-II, 1-4 g Deliv/Poss. Grp III/IV, 28-56 g Deliv/Poss. Mch. 5-10 lb	Unlawful Possession of Firearm by Felon 3rd* Unlawful Carrying of Weapon (bars) Possess Weapon Prohibited Deadly Weapon in Penal Institution 3rd* Evading Arrest (officer suffers SBI) Fel. Resisting Arrest (deadly weapon) 3rd* Tampering w/ Product (threat) Terroristic Threat (ability impairment) 3rd* Felony DWI (1 or more priors)	3rd* (> \$20,000) Abuse of Official Capacity 3rd* Misuse of Official Information Agg. Perjury Tampering w/ Evidence Fel. Coercion of Public Official (threat to commit felony) Retaliation Fel. Hindering Tampering w/ Witness Prohibited Substance in Correctional Facility	3rd* Forgery 3rd* (> \$20,000) Misapplication, Theft, Theft of Service, Criminal Mischief, Fraudulent Transfer of Motor Vehicle, Harmful Computer Access	Child Pornography Fel. Sale...of Material Harmful to Minor Agg. Promotion of Prostitution
4	Negligent Homicide 4th* Injury to Child (rock/loss - BI, or negligent - SBI) 4th* Abandoning Child Fel. Aiding Suicide Interference w/ Child Agreement to Abduct Fel. False Imprisonment	Deliv/Poss. Grp I-II, under 1g Deliv. Mch. 1/4 or - 5 lb Poss. Mch. 4 or - 5 lb Deliv. Possess Form or Schedule II Possess Deliv. Grp III/IV, under 28 g Deliv. Possess, to Minor Repeat Deliv/Poss. Possess Unlawful Disclosure of Info Poss. Possess Form or Schedule III-V Possess Diversion of Controlled Substance Property or Poss Deliv of Simulated Controlled Substance Deliv/Misuse of Dangerous Drug	4th* Unlawful Carrying of Weapon Prohibited Weapon Components of Explosives 4th* Escape (felony, pre conviction) 4th* Facilitating Escape 4th* Implements of Escape 4th* Evading Arrest (in motor vehicle)	4th* (> \$1,500) Abuse of Official Capacity 4th* Misuse of Official Information Fel. False Alarm or Report Fel. Ball Jumping Fel. Unlawful Use of Criminal Instrument (tampering) Unlawful Interception, Use, or Disclosure of Wire, Oral, or Electronic Communications Unlawful Use of Pen Register or Trap & Trace Device Unlawful Access to Stored Communications Illegal Divulgence of Public Communications	4th* Burglary - Bldg UNLV Commercial Bribery Fel. Hindering Secured Creditors Credit/Debit Card Abuse Credit Card Laundering 4th* Forgery Securing Exoneration of Documents Fraudulent Destruction Criminal Nonreport 4th* (> \$1,500) Misapplication, Theft, Theft of Service, Criminal Mischief, Fraudulent Transfer, Harmful Computer Access	Fel. Obscenity Fel. Distribution of Vaccinated Object (disease or pre-v) Fel. Dog Fighting (pecuniary benefit)

APPENDIX B

SENTENCE RANGES AND MIDPOINTS FOR NEW SENTENCING PROPOSAL

		MURDER**	1ST	2ND	3RD	4TH
0 PRIORS	SENTENCE RANGE IN YRS	2-35	2-20	1-8	1-4	1-4
	MID-POINT	18.5	11	4.5	2.5	(4)*
1 PRIOR	SENTENCE IN YRS	3-35	3-20	2-8	1-4	1-4
	MIDPOINT	19	11.5	5	2.5	(4)*
2 PRIORS	SENTENCE IN YRS	4-35	4-20	3-8	1-4	1-4
	MIDPOINT	19.5	12	5.5	2.5	(4)*
3+ PRIORS	SENTENCE IN YRS	5-35	5-25	4-10	2-6	1-4
	MIDPOINT	20	15	7	4	(4)*

** Capital crimes would have a sentence of life w/o parole, life w/parole, or death

*It was assumed that the average sentence length for Fourth Degree felons would be 4 years