

✓ VIOLENT ATTACKS AND CHRONIC OFFENDERS:

A PROPOSAL FOR CONCENTRATING THE RESOURCES OF NEW YORK'S CRIMINAL
JUSTICE SYSTEM ON THE "HARD CORE" OF THE CRIME PROBLEM

PREPARED BY

MARK H. MOORE
JAMES Q. WILSON
RALPH GANTS

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This report was prepared by MARK H. MOORE, JAMES Q. WILSON and RALPH GANTS.

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ACQUISITIONS

I. PREFACE: THE LIMITATIONS OF OUR ASSIGNMENT

In September, the New York State Commission on Management and Productivity in the Public Sector on behalf of the New York State Assembly invited us to develop proposals for legislation that could ameliorate the "crime problem" in New York State. For a while we were reluctant to undertake the assignment. We knew that available social science knowledge about the nature of the crime problem and the efficacy of particular policy instruments were insufficient to permit confident calculations about the likely effects of any particular policy. We also knew that useful advice about specific legislation required much more comprehensive and detailed knowledge of existing policies and procedures of the New York Criminal Justice System than we possessed or could hope to gather in the limited time available. In short, we felt unqualified to be useful.

Still, we recognized an obligation to be helpful. Hence, we eventually did agree to develop some proposals for the Assembly to consider during its 1978 session. In agreeing to develop these proposals, however, we insisted that they be seen as the product of a sharply limited effort. The limitations are the following.

First, because we were working for the New York Assembly, we have concentrated on proposals where new state legislation or appropriations would be appropriate. This meant that we paid relatively little attention to improving police efforts to make

arrests or to the potential impact of pursuing national policies that might reduce youth unemployment.

Second, we have devoted something less than 20 man-days to this effort. While the value of this time was enormously multiplied by the exceptional expertise and cooperation of people knowledgeable about the Criminal Justice System in New York, it is still a very small amount of time to grapple with the problem facing New York.*

Thus, this report should be seen not as the result of an extensive, systematic study, but rather as the result of doggedly pursuing a simple idea: we should concentrate our criminal justice resources on serious offenses and chronic offenders during their peak levels of activity. Our effort was designed to learn how well New York's current policies, programs and practices measured up to this simple idea. We think the results are interesting and important despite the limitations of the assignment.

*The group of people with whom we consulted in the course of our review seemed to us to be exceptionally talented and knowledgeable. Even at the risk of accidentally omitting some people with whom we talked, it seems worth it to us to name specific individuals who helped us in the review. In the Division for Youth, we were influenced by conversations with Phillip Gartenberg, Pat Lynch, Thomas Mullen, Martin Roysner, and Fred Bedell. Also at an early stage of our study, we were put on the right track by exceptionally knowledgeable staff men

within the Assembly - specifically Doug McCuen, Frank Mauro, and Rick Blume. In the Department of Correctional Services we were assisted by Henry Donnelly and Floss Frucher. In the Probation Department, Les Cohen and Michael O'Connell were extremely helpful. In the New York City Police Department, we were educated by Captain Daley and Lieutenant Newborn of the Youth Division. In the Division of Criminal Justice Services we were aided by the broad perspective and detailed knowledge of Henry Dogin, William Bonacum, and Mo Silver. In addition, Adam D'Allessandro and his staff provided us with special data that we requested on short notice. We had an excellent conversation just before Christmas with Judges David Ross and Richard J. Bartlett. The Vera Institute, as usual, was a gold-mine of expertise and data. We took advantage of the extensive knowledge and work of Michael Smith, Sherri Faber, Lucy Friedman and Bob Davis. Finally, we would like to acknowledge the contribution of Sandy Frucher and Kathy Lacey who offered us the assignment, and provided the administrative support that made our work proceed quickly and easily. While all the conclusions we state in this report are entirely our own, we are grateful for the time these individuals generously provided, and impressed by their expertise.

II. WHAT IS THE "CRIME PROBLEM"?

Many acts are prohibited and punished by criminal sanctions. Many different kinds of people become entangled in the New York Criminal Justice System. However, all of this comprises the "crime problem". For most citizens of New York, the crime problem is a subset of these acts: it is violent, unprovoked attacks by strangers in public locations, or (to a lesser degree) rude intrusions into their homes.

It is easy to see why these incidents become the focus of public concern. Even at low rates of occurrence, these incidents devastate our communal sense of security and well-being. At a minimum, victims lose property. In many cases, victims are injured, perhaps maimed or killed. In virtually every incident, the victim experiences the indignity of having something done to him which he has a right to expect will not happen, but occurs despite societal assurances and the frail defenses hastily erected at the moment of attack. Viewed from the victim's perspective, the promise of security becomes a cruel hoax.

Perhaps more important than these immediate effects on victims is the more pervasive and durable fears that these incidents provoke. To safeguard against victimization, both victims and those who fear they will become victims take elaborate, expensive and inconvenient security precautions. It is difficult to defend oneself against random irrational acts. All security arrangements seem too frail, too spotty, or too slow to offer reliable protection against the threat of these attacks. As

a result, we live not only with the expense and inconvenience of elaborate security arrangements, but also with a heightened sense of our vulnerability.

With the fears and the sense of vulnerability comes a hatred and distrust of the offenders who perpetrate the incidents. These acts reveal unrestrained individuals who seem unimpressed even by the threat of criminal sanctions and disregard the abstract emotional regard for the fellow citizens. With such people in our midst, we came to suspect and fear strangers whether criminal or not.

Thus, it is both particular kinds of offenses and specific kinds of offenders that constitute the public conception of the "crime problem" in New York. It is the image of a predator unleashed among wary, but ultimately defenseless victims. No wonder we are furious.

It is important to understand that the "crime problem" does exist in precisely this form. Violent, unprovoked attacks do occur. Not all offenders are either psychopathic or desperate about their social position. Many are simply callous and violent. Moreover such people are likely to commit future offenses. Thus, the image of the "crime problem" does reflect real events in the world.

It is also important to understand that the vast majority of the incidents and offenders handled by the criminal justice system are not of this type. Our courtrooms and jails are

filled with incidents that are more ambiguous or less serious, and with offenders who are less determined, callous, or experienced than we usually imagine.¹ A large amount of ordinary human misery and anger as well as rare but unmistakable viciousness becomes enmeshed in our criminal courts. It would be foolish and unjust to treat all offenses reaching the criminal justice system as unprovoked violent attacks, and all offenders as callous, chronic criminals. The reality is much different.

These observations imply that a crucial part of our criminal justice system must be a "triage" system: we must be able to discern when we are dealing with serious offenses and chronic offenders and when we are not. Moreover, for the different kinds of offenses and offenders, we may want different kinds of processing and different kinds of dispositions. Specifically, we may want to focus much of our attention and concern on the relatively small number of cases that involve serious, unprovoked attacks on strangers committed by people who are chronic offenders. Such cases should be processed quickly, and in cases where guilt is established beyond a reasonable doubt, the dispositions should be designed to incapacitate and deter within the bounds of just desserts. This does not preclude the pursuing of rehabilitation objectives within this framework. However, we are not optimistic that we can rehabilitate any large portion of the violent offender group by means that are consistent with our standards of justice and humanity.

This general perspective establishes a context for reviewing New York State's effort to ameliorate their "crime problem". Within our limited assignment, we have probed for major weaknesses in the laws, institutions and procedures that constitute New York State's response to violent crime and chronic offenders. Specifically, we have concentrated on the following issues:

- How significant are incidents of violent unprovoked attacks among all the incidents handled by the criminal justice system? In what categories of offenses do most of these incidents occur?
- Is there a group of chronic offenders who are much more likely than others to commit criminal offenses? If so, what are their characteristics? Are they the source of a large fraction of the kinds of offenses that most concern us?
- How are courts and prosecutors organized to handle serious criminal incidents and chronic offenders? Do they have any way of knowing when they are dealing with a chronic offender? Does a special procedure exist (on a formal or informal basis) for processing these cases quickly and aggressively? If a special procedure exists, is it in fact directed at the appropriate kinds of offenses and offenders?

- How are the probations and corrections departments organized to supervise offenders committed to their care? Do their programs and facilities provide many different levels of supervision? Is there sufficient capacity at each level of security to accommodate the offenders for whom a given level of security is appropriate? If so, are judges making suitable decisions about dispositions?

Obviously, we cannot provide definitive, "scientific" answers to these questions. The available information is too scanty and our time too limited to make confident, precise empirical estimates of several factors which are crucial to the analysis. Indeed, we have been forced to piece our analysis together with bits of data from other parts of the country and prior years in New York State as well as from current New York data. Moreover, even if more information had been available, significant differences of opinion exist about what constitutes "serious" offenses, "chronic" offenders, "suitable" conviction rates, or "appropriate" levels of security. These differences are large enough to allow different conclusions to be drawn about the right way to adjust New York's criminal justice policies. While we think our views in this area are far from idiosyncratic, we cannot claim that they are based on a "scientifically" established perspective. Still, we can present our findings and offer our advice, and that is what we intend to do.

III. SOME FINDINGS ABOUT THE NATURE AND MAGNITUDE OF THE
SERIOUS CRIME PROBLEM IN NEW YORK

A. Violent, unprovoked attacks in New York's Criminal Justice System.

The criminal justice system of New York City records approximately 500,000 felony offenses each year. About 100,000 felony arrests occur each year.² Approximately 5,000 people are sentenced to more than one year in jail.³

If one assumed that each of the recorded offenses involved a violent, unprovoked attack by a chronic offender, he would properly be horrified by the volume of the offenses, and the failure of the criminal justice system to arrest, prosecute and incarcerate a large fraction of the offenders. However, the fact of the matter is that even though all these offenses are felonies, only a relatively small fraction of them involve violent, unprovoked attacks by strangers or significant intrusions into one's home. Among felony offenses, only homicides, rapes, robberies, assaults, and burglaries have these frightening characteristics. Drug offenses, auto theft, larceny, forgery, gambling and weapons offenses ordinarily do not involve violent attacks or significant intrusions. Thus, the 500,000 felonies are reduced to approximately 300,000 offenses that involve violent attacks or intrusions, and 180,000 of these offenses involve only intrusions. Similarly, not all felony offenses have a high degree of seriousness. While virtually all reported homicides and rapes are serious, and most robberies

involve serious attacks, a reasonably large proportion of the assaults and burglaries that are reported as felonies involve incidents that do not result in great losses or damage the victims. Even some reported robberies are no more serious than schoolyard bullying. Finally, not all the felony offenses that do involve attacks or intrusions and are serious involve strangers.

Table 1 makes a rough calculation (based on data collected by the Vera Institute) of the share of serious attacks and intrusions involving strangers in the overall volume of felony offenses in New York City. While the calculation is extremely crude, it illustrates two important points about the crime problem in New York.

First, serious violent attacks by strangers constitute only a small fraction of felony offenses occurring in New York State. This fact, along with our judgment that such attacks constitute the most important part of the crime problem suggest the crucial need for a "triage" or "screening" process that allows us to concentrate our criminal justice system on these few cases.

Second, we see that robbery is by far the most important offense. If we think that violent attacks are much more serious than intrusions, and if we recall that about 26 percent of the homicides whose circumstances were known occurred during robberies, then robbery constitutes most of the serious crime problem in New York State.⁴

Thus, the strategic problem for New York's criminal justice system is to focus its resources on the relatively small number of incidents that involve violent attacks among strangers in public areas. In practice this means finding a way to control serious robbery incidents.

Table 1

Serious Violent Attacks and Intrusions Involving Strangers Among All Felony Offenses Recorded by New York's Criminal Justice System

All Felonies Reported to New York's Criminal Justice System

	510,000			
<u>Offenses</u>	↓ <u>Homicides & Rapes</u>	↓ <u>Robberies</u>	↓ <u>Assaults</u>	↓ <u>Burglaries</u>
Total Incidents of This Type	3,900	89,000	20,000	180,000
Percent of Reported Total Felony Offenses	(0.7%)	(17%)	(3.9%)	(35%)
<u>Seriousness</u>	↓ <u>A,B,C, Felonies</u>	↓ <u>A,B,C, Felonies</u>	↓ <u>A,B,C, Felonies</u>	↓ <u>A,B,C, Felonies</u>
Total Incidents of This Type	3,100	75,000	6,600	36,000
Percent of Reported Total Felony Offenses	(0.6%)	(15%)	(1.3%)	(7.0%)
<u>Stranger Involvement</u>	↓ <u>Involving Strangers</u>	↓ <u>Involving Strangers</u>	↓ <u>Involving Strangers</u>	↓ <u>Involving Strangers</u>
Total Incidents of This Type	1,200	34,000	1,500	21,000
Percent of Reported Total Felony Offenses	(0.2%)	(6.7%)	(0.3%)	(4.1%)
Percent of Incidents That Involve Serious, Violent Attacks or Intrusions Among Strangers	(2.1%)	(59%)	(2.6%)	(36%)

Source: "A Criminal Justice System Under Stress" Vera Institute of Justice, New York, N.Y. 1975.

B. Chronic Offenders

If our major objective is to reduce violent attacks on strangers (that is, to focus criminal justice resources on a relatively small number of offense categories, and a relatively small number of offenses within those categories), then it becomes relevant to know something about the people who commit such offenses. Are they young or old? Are they habitual or accidental offenders? Are a large fraction of the offenses committed by a small fraction of the offenders, or are these offenses committed about equally frequently by all offenders. The answers to these questions will tell us whether our response to the violent crime problem requires action by both the adult and the juvenile justice system or only one, and whether it makes sense to concentrate not only on a small class of offenses, but also on a small class of offenders.

Table 2 presents data on the age distribution of people arrested for offenses that are of primary concern. Of course, the characteristics of those arrested for an offense need not be identical to the characteristics of those who commit the offenses. However, even if we assume a significant bias in the arrest process, the figures in Table 2 may be sufficient to draw an important conclusion: juveniles and youthful offenders account for noticeable fractions of the crimes of primary concern. In fact, more than half of those arrested for robbery are either juveniles or youthful offenders.

The significance of this finding could be discounted by arguing either that young offenders were arrested much more frequently than old, or that their arrests were for less serious offenses than older offenders. In fact, neither of these propositions seem truthful.

Joan Petersilia at RAND interviewed 49 serious adult criminals then serving prison terms in California for armed robbery. She found that for felonies other than selling drugs, the chances of being arrested after committing a crime were least when the offenders were young and greatest when they were older: for a given self-reported offense, a juvenile had three chances in 100 for being arrested while an adult had 20 chances in 100.⁵ An adult was twice as likely to get arrested for a robbery as a juvenile. Seemingly, the police under-arrest young persons. If we applied a correction to the New York crime data to take this factor into account, the proportion of serious crimes committed by young persons would be even higher than it now appears.

Table 2

Age of Persons Arrested for Specific Offenses

Age Type of Crime	< 16 Years Old	16 - 19 Years Old	20 - 29 Years Old	30 - 39 Years Old	40 or More Years Old	Total
Homicide	14%	14%	35%	23%	14%	100%
Rape	20%	16%	53%	6%	5%	100%
Robbery	24%	27%	39%	7%	3%	100%
Assault	8%	10%	39%	27%	16%	100%
Burglary	22%	26%	41%	8%	2%	100%
Total Offenses	12%	19%	46%	16%	7%	100%

Source: "A Criminal Justice System Under Stress:
Vera Institute of Justice, N.Y., 1975, p. 56

Similarly, an examination of robbery indictments for specific age groups in New York State indicates that young offenders commit serious crimes almost as frequently as those of older offenders. Table 3 presents data on the distribution of robbery indictments across degrees for all offenders of a specific age processed by New York State criminal courts in 1976. As one can see, the older offenders are only slightly more likely to be indicted for first degree robbery than the younger offenders.⁶

If it is true that the offenses that concern us span the age distribution of offenders, the clear implication is that an adequate response to serious offenses must be developed within both the juvenile and the adult criminal justice system. To be sure, we may want the responses to be different to reflect our view that youthfulness mitigates culpability and indicates a larger rehabilitation potential. However, we cannot comfortably assume that the offenders who commit dangerous offenses are always hardened, cynical adults whom it is relatively easy to punish. Often, we must deal with relatively sympathetic young offenders. Hence, we must decide what kind of court processing, and what kind of punishment, supervision or treatment is appropriate for this population. Two additional facts about this population lend particular urgency to this discussion.

First, evidence from both national and New York sources indicate that the serious offenses are committed by a relatively small

number of "chronic" offenders and that these "chronic offenders" commit serious offenses much more frequently than other offenders. Table 4 presents data on the contribution "chronic offenders" make to the total number of offenses known to the police for a single cohort of young men born in Philadelphia and observed through age 30?⁷ Chronic offenders are defined as those who committed more than five offenses over the period in which they were followed. Recidivists are those who committed two-four offenses. It is evident that the chronic offenders were much more likely than the other offenders to commit all kinds of offenses. However, while they were only 3.2 times as likely as "recidivists" to commit non-index offenses, they were 9.2 times as likely to commit personal index offenses, and 9.6 times as likely to commit an offense with a weapon. In effect, their level of serious criminal activity was over nine times as high as the recidivists, and over 30 times as high as the one time offenders.

Table 3
 Seriousness of Robbery Indictments By
 Age for All New York State
 Robbery Indictments: 1976

Seriousness of Robbery Charge	Age	16	17	18	19	20	21	22
		(N=379)	(N=563)	(N=587)	(N=504)	(N=454)	(N=364)	(N=369)
1 ^o Robbery		63%	67%	64%	69%	74%	75%	78%
2 ^o Robbery		33%	29%	29%	23%	22%	21%	18%
3 ^o Robbery		4%	4%	7%	8%	4%	4%	4%
Total		100%	100%	100%	100%	100%	100%	100%

Source: Division of Criminal Justice Services,
 Special Tabulation

Table 4

Contribution of Chronic Offenders to Total Arrests
for a Single Age-Cohort Followed to Age 30

Type of Offender	Kinds of Offenses Total (N=2249)	Charge			Ingredients of Offenses			
		Non-Index Offenses (N=1496)	Property Offenses (N=534)	Personal Offenses (N=219)	Property Damage (N=185)	Theft (N=508)	Weapon (N=116)	Injury (N=204)
Chronic Offenders (N=144)	74.3%	69.6%	82.0%	87.7%	80.1%	82.9%	88.5%	80.0%
Recidivists (N=160)	18.8%	22.0%	13.7%	9.5%	13.0%	12.9%	9.2%	16.1%
One Time Offenders (N=155)	6.9%	8.4%	4.3%	2.7%	6.9%	4.2%	2.3%	3.9%

Source: Marvin E. Wolfgang and James J. Collins, Jr. "Offender Careers
and Restraints: Probabilities and Policy Implications"
pp. 17-20 February, 1978.

Similar results can be derived from data for juveniles arrested for serious personal offenses in New York City over the period July 1, 1973 - June 30, 1974.⁸ This data base differs from the one above in that it is restricted to juveniles arrested on serious charges within a given year. But it serves to make the same points that serious offenses are concentrated within a relatively small proportion of the offenders, and that these chronic offenders maintain a very high level of criminal activity. Analysis of this data revealed that 12.9 percent of the offenders accounted for 25.5 percent of the serious charges filed in that year.⁹ Figure 1 shows the conditional probability that a given offender will commit at least one additional offense within the year in which he is arrested given that he has committed a certain number of offenses already. Given that time is limited in a year, and that institutionalization will reduce time still further for serious offenders, we know that this curve eventually has to fall to zero. Once one has committed five to six offenses, there may not be enough time within the year to do much more. Given this fact, what is surprising about the curve is how rapidly and for how long it increases despite the fact that it eventually must drop to zero. If we could compute a rate of criminal activity during uninstitutionalized periods, we would find what we observed in the Philadelphia cohort: a very high level of criminal activity sustained by a relatively small number of

offenders which accounts for a very large fraction of the total criminal activity of this active group of offenders.

Thus, a relatively small number of offenders account for a large proportion of all serious offenses. The implication is that if we wish to limit serious offenses there may be some advantage to concentrating on chronic offenders. Because chronic offenders account for a large fraction of serious offenses, to some extent this emphasis will occur naturally as a result of concentrating on serious offenses. However, since chronic offenders also occasionally commit lesser offenses, we may want to know something about the criminal records of even minor offenders to assist the judge in choosing a proper disposition. In effect, we want to concentrate on both serious offenses and chronic offenders.

The second important fact about the offender population is that rates of offending for chronic offenders appears to peak during their younger years. In the study of the Philadelphia age cohort, the chronic offenders reported committing more than four index crimes per year by the time they turned 22.¹⁰ The same pattern was found by Joan Petersilia and her colleagues at RAND. She interviewed intensively 49 serious adult criminals in California, who were serving prison terms for armed robbery and who had served at least one prior prison term. These 49 men reported having committed over 10,500 major crimes in their careers, or about 20 crimes a year while on the street. However, the rate at which they broke the law declines with age: as a juvenile, they committed more than

three serious crimes per month of freedom; as adults they committed only one serious crime every other month while free.¹¹

The fact that offending peaks during relatively young years makes intervention at this stage particularly important. Whether one is counting on deterrence or incapacitation to produce the effects, if much of the crime that concerns us is being committed by chronic offenders during their young years, it makes a great deal of sense to intervene effectively against that population, at that point in their career.

The third important fact about the offender population is that the tendency to commit serious criminal offenses at relatively high rates is predictable from observing actual rates and kinds of offending during the years 14-16. (See Figure 1) The implication of this fact is that it is important that the courts possess knowledge of the serious criminal history of the offenders that appear before them.

Finally, young offenders are less likely than older ones to be punished for their offenses, despite the fact that, on the average, young offenders break the law more frequently than older ones. In the Philadelphia study, an offender between the ages of 14 and 17 had only three chances in 100 of being convicted of a serious crime he had in fact committed; an offender age 21 or over had five chances in 100 of being convicted.¹² In California, the RAND study showed the same

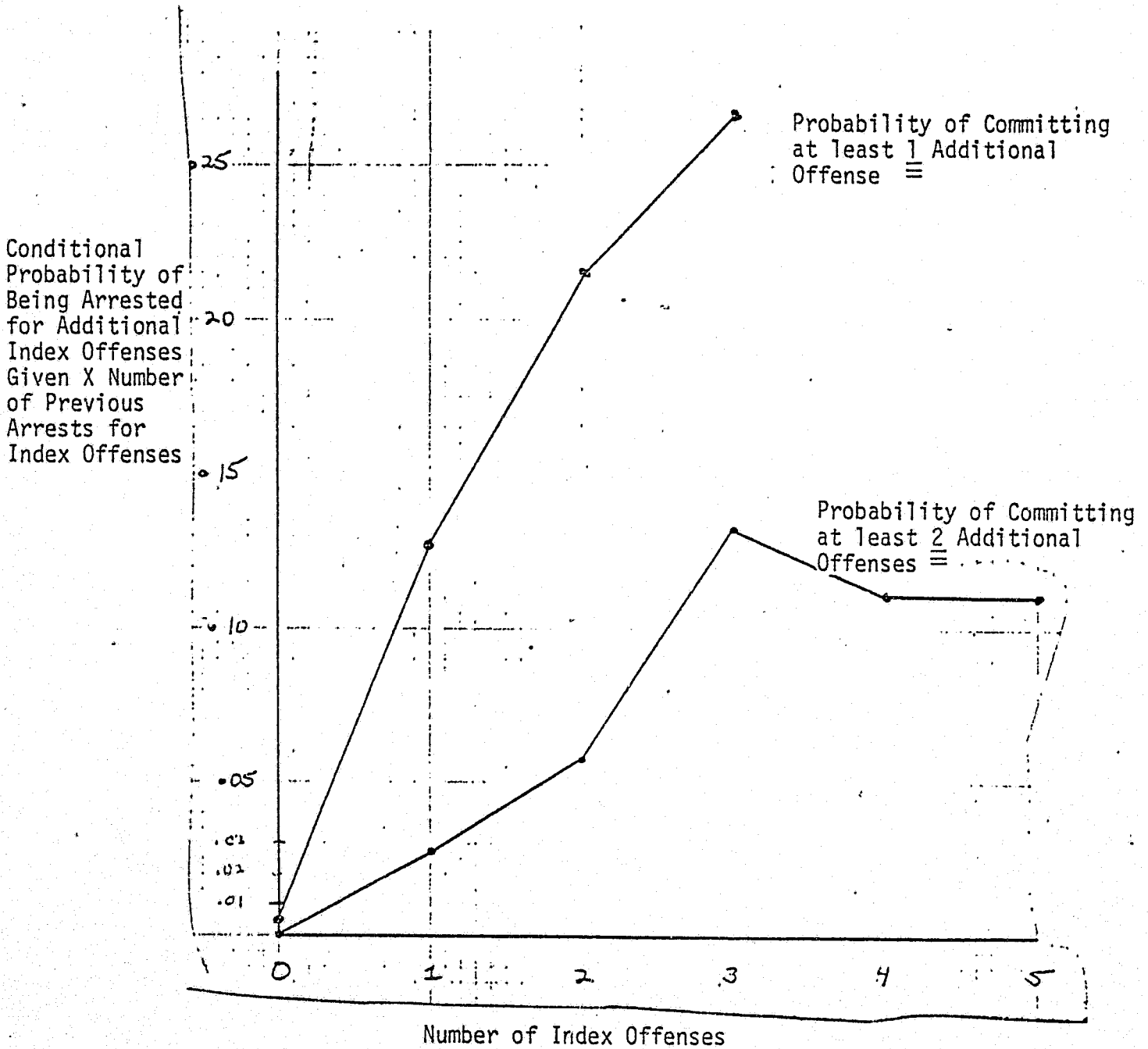
thing: young persons who were arrested were less likely to be incarcerated than older persons and younger persons received shorter prison terms than older ones.¹³ There are probably several reasons for this; one may be that, because of the way in which juvenile records are kept separate from adult ones, a youthful offender may come before a prosecutor or judge unaware of that person's serious and lengthy prior record.

C. Summary

In sum, a useful way to think about the crime problem in New York and plan a response is the following. Probably the most important component of the crime problem is violent, unprovoked attacks among strangers. This is primarily a problem of robbery, though rapes, homicides, assaults and burglaries may also play a role. The serious incidents involving strangers represent only a small fraction of the incidents handled by New York State's Criminal Justice System. However, the incidents are generated by offenders of all ages. Moreover, most of the serious offenses are committed by a relatively small fraction of offenders who commit all offenses frequently, but serious offenses very frequently compared to other offenders. In addition, the peak period of activity for these offenders is probably their mid to late teens. Finally, the tendency to commit serious offenses relatively frequently can be observed in the pattern of criminal activity during the ages of 14-18 very few of those who end up committing serious offenses

Figure 1

The Probability of Additional Arrests for Index Offenses Within a Given Year Given Prior Arrests for Index Offenses in That Same Year



Source: Juvenile Violence, Part I, Office of Children's Services, Division of Criminal Justice Services, p. 16

frequently do not have serious criminal records at this time, and very few of those who do have serious criminal records over this period will suddenly stop.

If the crime problem is as described above, then there are important implications for the design of New York's response. First, we see that the problem is one of "triage": we must find a way to concentrate our court processing and custodial resources on the relatively small number of serious offenses and chronic offenders that come to the attention of the courts. Second, because the problem spans the age distribution of offenders, we must establish the triage procedures in both juvenile and adult criminal justice systems. Third, because the patterns of criminal activity become apparent in the period covered by both juvenile and adult courts, and since criminal activity for chronic offenders may peak in their mid to late teens, it is crucial that there be effective coordination between the juvenile courts and the adult courts, and that there be effective prosecution of youthful offenders in the adult system.

Fourth, to cope with the wide diversity of offenses and offenders appearing in the criminal justice system, it is necessary to have a wide range of dispositions available to judges. We may want to insist that judges treat all offenders alike with respect to length of sentences, but we may want significant variation in levels and kinds of supervision available within both adult and juvenile corrections systems. In the next

section of this report, we will review New York State's capabilities in the light of these operational requirements.

IV. NEW YORK STATE'S CURRENT RESPONSE TO VIOLENT,
UNPROVOKED ASSAULTS

If we had conducted our review of New York State's response to the problem of serious offenses and chronic offenders several years ago we would have found much to criticize. An examination of the juvenile justice system would have revealed a court system in which relatively minor status offenses were handled more expeditiously and resulted in more frequent, longer and higher levels of supervision than more serious criminal offenses.¹⁴ In addition, we would have found a juvenile corrections system in which two opposed ideologies clashed, and in which a large fraction of the available resources were committed to relatively archaic "training schools" which isolated youths from their communities and provided little in the way of rehabilitation services.¹⁵ An examination of the adult criminal system would have revealed long delays in the processing of cases, no explicit procedure for focusing on serious offenses and offenders, and no officially sanctioned procedure by which judges in the adult court could learn whether a given defendant had committed serious crimes as a juvenile. The adult corrections system would have revealed anything but a set of dispositions that were distributed evenly over possible levels and styles and supervision: a large share of the resources (but a small portion of the defendants) would be lodged in rural prisons, and the remainder would be under the marginal supervision of overworked probation officers.¹⁶ Thus, the system was poorly organized to

intervene in the activities of young chronic offenders who committed a large share of the offenses that seriously concern us.

In recent years, however, this system has been importantly affected by legislative initiatives designed to turn it in the direction we consider appropriate. Major changes include the following. First, the establishment of the "designated felony" procedure in juvenile courts has created something like the "triage" system we think is important. While early evaluations of the program reveal some problems in implementation, there is relatively little more that legislation could accomplish in this area.¹⁷

Second, we are impressed by the philosophy and accomplishments of DFY. They have developed (at least on paper) a set of facilities and programs that are appropriately distributed over levels and styles of supervision. Moreover, they have a coherent philosophy for moving people among these facilities that meets the society's desire for security and preserves whatever rehabilitation potential exists in handling juvenile offenders.¹⁸

Third, the recent statute which mandates the finger printing of juveniles arrested for some kinds of offenses and makes these records available to adult court judges goes a long way towards allowing the coordination between the juvenile and adult system that is crucial to the identification and appro-

priate supervision of the few chronic offenders who account for a large fraction of the crime.¹⁹ Unfortunately, since there is no way to make this statute retroactive, it will be several years until its effects are felt. But, again, there is little more that legislation can accomplish in this area.

Fourth, there has been a dramatic improvement in the ability of New York's Criminal Courts to process cases expeditiously. A combination of both increased resources and improved efficiency has substantially reduced the average time to disposition for criminal cases.²⁰

Fifth, the creation of Major Offense Bureaus, Career Criminal Programs, and Early Case Assessment programs in selected areas of New York State establishes important "triage" systems in the adult criminal justice system. The lack of any evaluations of these programs prevents us from saying confidently that they have solved the problem of focusing court resources on serious offenses and chronic offenders.²¹ Moreover, since defendants are placed in these programs on the initiative of prosecutors, and since prosecutors will not have access to information about serious juvenile offenses, these programs may be relatively unsuccessful in handling chronic offenders who are aged 16 to 18. Despite these limitations, these programs represent movement in the correct direction.

The only area in which there has been relatively little action is in the area of supervising adult convicted offenders. This is currently the province of the Department of Correctional Services and the Department of Probation. To observe some potential problems in this area, it is valuable to step back for a moment and broadly conceptualize the problem of supervising adult convicted offenders.

When we think about the "corrections" problem, we tend to think of matching a group of convicted offenders who are differentially wicked, uncontrollable, and irretrievable with a set of capital facilities that have specified capacities and security guarantees embedded in their physical structure. To the extent that this perspective focuses on the heterogeneity of the population of convicted offenders and suggests the need for diverse facilities and programs to accommodate offenders during fixed terms mandated by the courts, the perspective is extremely valuable. However, to the extent that it limits our idea of "supervision" to the single objective of "security", and considers nothing more than the heights of the walls, the number of locks, and the strength of the bars that insulate convicted offenders from the rest of the world as devices for guaranteeing "security", it limits our ability to imagine and create alternatives to our current system. After all, the level of "security" attained by any given correctional facility is as much a matter of the density of human supervision, the organization of inmate activities,

and the siting of facilities as it is the architecture of the facility itself. Moreover, while effective security should probably be our primary objective in supervising convicted adult offenders, we should comprehend that we can achieve given levels of security with facilities and programs that vary in terms of "humaneness" to prisoners, and that retain varying degrees of whatever rehabilitation potential exists within specific convicted offenders. Thus, the "correction problem" is slightly different than simply constructing capital facilities, rated at different levels of security, in quantities that match the relative docility or wildness of the offender population. It is partly a problem of deciding on appropriate levels of security for specific offenders, and partly a problem of deciding through what combination of architecture, human surveillance, programmatic activity and siting - each with differing implications for the humaneness of the supervision and the preservation of whatever prospects for rehabilitation exist - that level of security will be achieved.

It is in the light of this rather broad idea of the possibilities for achieving given levels of supervision that we have briefly reviewed the New York State Correctional System. What we observe is two extreme conditions: a rather heavy reliance on architecture, rural sites, and regimentation to provide fairly high levels of security for a relatively small number of offenders, and a rather flimsy system of supervision provided by an overworked probation department for a relatively

large number of offenders. There are virtually no programs such as halfway houses that provide modest levels of security by substituting dense human supervision, programmatic activity and a few locks for the inadequate supervision supplied by probation.

Of course, this situation may conceivably reflect the state's best judgment about how to allocate a given budget for corrections across levels of security provided through specific kinds of facilities and programs. However, it is important to understand that the current gap in the set of programs (i.e. the failure to operate facilities and programs which provide moderate levels of security in relatively humane facilities and programs) may greatly impact on the system's ability to handle 16-18 year old chronic offenders. Currently, judges in New York State faced with the prospect of sentencing a young convicted offender must make a stark choice between large, secure, primarily rural facilities such as Coxsackie, Elmira, or Eastern; a group of work camps whose characteristics are not well known; or probation. In this choice, judges may decide on probation more often than is desirable, particularly if the defendant is young and appears to have no record, but also even if the defendant has a record. It is simply too difficult for most judges to consign a 16 or 17 year old "kid" to institutions they believe to lack any rehabilitative potential. Thus, the gap in correctional facilities and programs may result in many chronic, youthful offenders being sentenced to probation

with a very large probability that they will continue to commit crimes while on probation.

Of course, it is not surprising that relatively little has changed in the area of adult corrections. It is an area of great controversy and great expense. Virtually all the other changes we described required relatively few resources. Moreover, much of the money that was required came from the Federal Government. In contrast, changes in the adult corrections and probation system would require large amounts of money primarily from New York State sources. Still, it is important to observe that the lack of some kinds of facilities and programs may hinder the state's ability to supervise a group of offenders who account for a large fraction of the serious crime problem.

In sum, in recent years the legislature and the administrative agencies in New York have turned deliberately in the directions we consider appropriate. We applaud the changes that have occurred.

Despite the major improvements, however, we have identified one major gap in the existing system that could be closed by legislative action. The gap involves the effective prosecution and disposition of cases that involve serious offenses and chronic offenders who are 16-18 years old, the so called "youthful offenders".

We noted above several weaknesses in New York's criminal justice system that continued despite the recent changes. First, the absence of retroactive efforts to determine how many serious criminal offenses were committed by people who are now, or recently were, juveniles implies that we will continue to be ignorant about these histories until the new law is fully implemented, and we accumulate histories on people who are now 13-14 years old. Second, the fact that prosecutors who have the responsibility for initiating special treatment for defendants under Major Offense or Career Criminal programs will not have access to these records in any case implies that virtually all 16 and 17 year olds, and most 18 year olds, will be effectively excluded from these special prosecutorial programs. Third, the gap in the array of facilities and programs offered by the Department of Probation and the Department of Corrections implies that confronted with a 16-18 year old convicted of a serious offense but without any apparent record of chronic criminal behavior, judges must choose probation, work camps, or large institutions such as Cossackie, Elmira or Eastern. Taken together, these observations suggest that New York State's criminal justice system may fail to identify, prosecute, and supervise chronic offenders who are 16-18 years old.

To determine whether our concern that the system fails to supervise 16-18 year olds effectively is justified, we made

two simple though crude observations. First, we compared the age distribution of those arrested for specific crimes with the age distribution of those arrested for specific crimes with the age distribution of those serving sentences in the state prisons for similar offenses. We know that there is an enormous attrition of cases as they move forward in the criminal justice system from arrest to sentencing. The question is whether the attrition is greater for some age groups than others. If 16-18 year olds represent a smaller fraction of those in prison than those arrested, within specific crimes, we might conclude that this group is treated more leniently in New York's criminal justice system. Table 5 presents the results. The data indicates that 16-19 year olds arrested for robbery and burglary may in fact be treated more leniently by the New York State Criminal Justice System.

Table 5

Age Distribution of People Arrested for Specific
Offenses Compared with the Age Distribution in Prison for
Given Offenses

Age \ Offense	16 - 19	20 - 29	30 - 39	40
I. Robbery				
% Arrested for Offense	36%	51%	9%	4%
% in Prison	19%	66%	13%	3%
II. Assault				
% Arrested for Offense	11%	42%	29%	17%
% in Prison	11%	47%	26%	16%
III. Burglary				
% Arrested for Offense	33%	52%	10%	3%
% in Prison	15%	60%	19%	6%

Sources: 1) "Criminal Justice System Under Stress", Vera Institute of Justice; 2) "Population Under Supervision of the Department of Correctional Services"

Second, we requested data on the dispositions of all robbery indictments for people aged 16, 17, 18, 19, 20, 21 and 22 years old in New York State. Table 6 presents the results. Analysis reveals the proportion of first degree robbery indictments that result in a probation disposition declines systematically with the age of offenders. The fraction of those resulting in prison sentences in state facilities increases significantly with age. Thus, it appears that youthful offenders are treated relatively leniently in New York State's Criminal Justice System. Indeed, it is conceivable that they are treated more leniently than 14-15 year olds accused of similar offenses would be treated under the current designated felony procedures.

Table 6

Dispositions of People Indicted for First Degree Robbery
By Age

(New York State: 1976)

Disposition of Case Age of Offender	Convicted			No Conviction	
	Probation	Imprisonment		Acquitted or Dismissed	Other
		Local Jails	State Prison		
Aged 22: % of all Cases (% of all Convictions)	17% (22%)	9% (11%)	53% (67%)	11%	10%
Aged 21: % of all Cases (% of all Convictions)	19% (25%)	6% (8%)	51% (67%)	10%	13%
Aged 20: % of all Cases (% of all Convictions)	18% (23%)	4% (5%)	56% (73%)	11%	10%
Aged 19: % of all Cases (% of all Convictions)	27% (33%)	5% (6%)	50% (61%)	8%	9%
Aged 18: % of all Cases (% of all Convictions)	31% (39%)	5% (5%)	47% (57%)	7%	9%
Aged 17: % of all Cases (% of all Convictions)	38% (47%)	6% (7%)	37% (46%)	9%	9%
Aged 16: % of all Cases (% of all Convictions)	42% (49%)	8% (9%)	35% (41%)	8%	6%

Source: New York State Division of Criminal Justice Services: Special Tabulation.

There is a cruel irony in this situation. It is likely that the period 16-19 represents a relatively high level of criminal activity for chronic offenders. However, it is precisely in this age period that the criminal justice system is least effective. If offenders of this age were subjected to the designated felony procedures with the board array of juvenile facilities available for disposition, they would be handled effectively. Or, if there was an effective way for prosecutors to know about serious juvenile offenses and suitable dispositions available in the adult corrections system, they could be handled effectively. The current situation allows them to slip through a hole. It is as though the Criminal Justice System's response divided just as it met the hard core of the crime problem: the juvenile system is diverted into handling a relatively small number of serious cases with a good court procedure and an excellent set of dispositions; the adult system fails to notice the 16-18 year olds until they have completed their peak period of criminal activity. The cruelest irony of all is that this situation exists partly because we wanted to treat this group of offenders harshly by subjecting them to the full rigors of the adult system.

V. PROPOSALS FOR LEGISLATIVE ACTION

Our diagnosis of the nature of the "crime problem" and New York's current response to that problem leads to several recommendations for legislative action. By far the most important recommendation is to close the gap in New York's current response to the violent crime problem by developing more effective procedures for handling "youthful offenders" convicted of serious offenses as adults and having records (sometimes unknown) of serious offenses as juveniles.

It is possible that the problem will be helped by the full implementation of the statutes that authorizes the finger printing of juveniles arrested for specific offenses and make these records available to adult judges. This is not nearly enough. The statute should allow the records to be examined by prosecutors as well, and to organize the procedures of Major Offense Bureaus and Career Criminal Programs so that age is not taken into account in deciding whether a case is suitable for these programs. Without such measures, the 16-18 year olds may never be affected by the special procedures available in adult courts. As matters now stand, prosecutors cannot perform their essential screening function properly and thus sometimes treat a serious young offender as if he had no prior record.

But even with these measures, we are concerned that youthful offenders will not end up being effectively supervised. The remaining problem is one of creating facilities and programs that provide levels and kinds of supervision appropriate to this population. Of course, peoples' views differ about how such people ought to be supervised. Probably widespread agreement exists that these offenders should be given sentences that expose them to close state supervision for given periods of time. However, exactly how close the supervision should be, and precisely how the supervision should be maintained are matters requiring further discussion.

We believe that many individuals in this group have committed very serious offenses and pose continuing risks to the society. Hence, a commitment to "just deserts" and "incapacitation" dictates significant sentences in relatively secure facilities. At the same time, we share the view that youth is, to a degree, a mitigating factor-in part because it is much harder to predict the future behavior of the very young than the somewhat older offender. Though we do not wish to base sentences on such predictions, we are nonetheless sensitive to the fact, understood by judges, that it is easier to misjudge immature personalities. This fact does not reduce our commitment to the basic principle that youthful offenders should be subject to similar terms of enforced supervision as older offenders, but it does alter our view of how the supervision should be

provided. Facilities and programs that provide moderate levels of security through close human supervision and intensive, disciplined programmatic activities may be much more appropriate for youthful offenders than those that provide similar levels of security through isolation, locks, bars, walls and regimentation designed only to keep track of individual prisoners.

In the light of this perspective, when we examine the facilities and programs available to judges who must sentence youthful offenders in New York State, we observe an important fact: there are virtually no programs providing dense human supervision in facilities close to the communities from which most offenders are drawn (e.g. group homes). While we are not sure that these are the best facilities for handling a large fraction of convicted youthful offenders, we cannot believe that such programs would not be a useful complement to programs currently available in New York State.

Note that in proposing the creation of such facilities and programs we are not urging a reduction in the security currently being provided by New York's programs for supervising convicted adult offenders. Indeed, our main purpose is to increase the average level of supervision over convicted youthful offenders. It is important to keep in mind that a large fraction of the youthful offenders end up on probation. If we increase the capacity of programs and facilities offering higher levels of supervision than probation, but still toler-

able as places for youthful offenders, then we are likely to increase the average level of supervision of youthful offenders. Judges will have dispositions available to meet the community's need for security in a sufficiently humane way that would enable placing relatively young offenders in the facilities. Indeed, we can imagine the development of an adult corrections system offering facilities and programs that offered a wide variety of levels and kinds of supervision. Convicted offenders could be placed in relatively harsh settings at the beginning, but as they demonstrated their responsibility, they could move to lower levels or different kinds of supervision. Such a program might be desirable not only for youthful offenders, but also for adult offenders reaching the ends of their terms. Without such programs, we worry that youthful offenders will end up largely unsupervised.

If the New York Legislature was persuaded of the need for such programs, they would still have to consider two major issues. The first is whether they would be willing to pay for them. It is expensive to buy effective supervision, even if one relies on walls, bars, locks, or rural isolation to economize on the human labor required to maintain a high level of supervision. It may be even more expensive if one wants to provide the supervision with fewer physical restraints and denser human observation as we have suggested. But it is important to keep in mind that the major decision is whether to provide

more supervision over youthful offenders or not. The particular kind of supervision one chooses will turn out to be less significant a decision than the decision about whether to create some kind of additional supervisory capability. Once one decides that it is important to supervise youthful offenders effectively, it may turn out to be relatively easy to reach a consensus among various parties as to the appropriate mix of dense human supervision, work camps, and locks and bars.

The second major issue for the legislators is to decide within which administrative agency these programs should be established. There are three possibilities: the Department of Correctional Services, the Division for Youth, and the Department of Probation. Each has strengths and weaknesses. The Department of Correctional Services currently has jurisdiction over youthful offenders, and has, therefore, the advantage of significant experience with the relevant population. The major problem is that the organization seems committed to large rural facilities. There may be no bureaucratic tolerance or capability to create the kinds of facilities and programs which we think would be useful complements to the existing system.

The Division for Youth has a philosophy and a set of bureaucratic capabilities which are consistent with the program we imagine, but there are two main obstacles to their undertaking this program. First, there is a legal problem with the Federal Juvenile Justice Act which requires "juveniles" and "adults"

to be kept separate from one another in all custodial facilities if a state wishes to continue to receive federal money. This means that DFY would have to construct a new parallel system of facilities and programs. Second, if DFY were to assume responsibility for youthful offenders, the size and composition of its client population would change dramatically. A very large number of relatively hard core offenders would be dumped on a small program that involves relatively few hard core offenders. This might damage their current programs for juveniles.

The Department of Probation has the fundamental problem of not being able to guarantee effective custody. Programs operated under their auspices could not be made fully responsible for guaranteeing the custody of convicted offenders. If the offenders "ran", they would be dependent on an overworked "warrant squad" to return the youthful offenders to the programs.

If we were forced to choose among these options, we would probably choose the Department of Correctional Services. They have clear legal jurisdiction and experience at close supervision. Special efforts should be initiated, however, to see the concept properly implemented in that agency. The programs would probably have to be protected by making it a separate division with the adult system, lavished with resources, and prodded by regular oversight.

Compared with these recommendations about effective processing and supervision of youthful offenders, our other recommendations are relatively minor and insignificant. Essentially, they urge nothing more than the aggressive pursuit of policies already established by New York.

First, New York should continue to expand their utilization of Major Offense Bureaus, Career Criminal Programs, and Early Case Assessment Programs throughout the state. The legislature should note, however, the potential for confusion and inefficiency created by having three different programs designed to accomplish the same purpose of focusing prosecutorial resources on serious offenses and chronic offenders. The operations of the different programs should be monitored and evaluated. Some guidelines about the coordination of these programs may be desirable. In addition, care should be taken to assure that youth would not be a barrier to inclusion in these programs, and that prosecutors would have access to records of serious juvenile offenses as well as judges.

Second, the Designated Felony Program in the Family Courts should be closely monitored and evaluated. Early evaluation reports indicate an improvement in the ability of the family courts to handle serious cases, but the improvement may be less than is both feasible and desirable.

Third, New York State should quickly press ahead with the development of an offender-based information system. Such records should be carefully protected to insure the privacy of offenders and guard against stigmatization. But those who handle offenders in the New York State Criminal Justice System should have relatively complete knowledge of arrests and convictions for serious offenses throughout New York State and from other parts of the country (with regard to age). Such information is crucial to making a "triage" procedure work in the Criminal Justice System.

VI. SUMMARY

The criminal offenses that generate enormous fear and hostility among New York State residents are those that involve violent attacks by strangers in public locations or rude intrusions into private homes. Such offenses represent only a small fraction of the total matters handled by the New York State Criminal Justice System. The key offense is robbery: it is the most common of serious crimes among strangers. In fact, approximately one quarter of the murders that occur under known circumstances in New York occurred during robberies. Thus, the strategic objective of New York's attack on the crime problem must be to control serious robbery incidents.

A growing body of national data indicates that a large fraction of serious criminal offenses (including primarily robbery, as well as rapes, assaults and burglaries) are committed by a relatively small number of chronic offenders. These offenders begin their criminal activity early, continue throughout their lives, commit all kinds of offenses more frequently than other offenders, and commit serious criminal offenses - particularly robbery - much more frequently than other offenders. Moreover, it appears that the peak period of activity for these chronic offenders is their mid to late teens. Hence, crucial to New York State's attack on the crime problem is a strong capacity to identify, prosecute and supervise these chronic offenders during their peak period of activity.

Ironically, despite impressive, recent improvements in the capacity of New York State's Criminal Justice System to concentrate on violent attacks and chronic offenders, a significant gap exists in the system's capability to handle serious, chronic 16-18 year old offenders, precisely the group that ought to be at the head of our list. On either side of this age group, the system performs well in identifying cases that involve serious offenses or chronic offenders. An excellent procedure for identifying and prosecuting serious 14-15 year old offenders now exists as a result of the designated felony act. Similarly, an excellent set of dispositions is available in New York State's Division for Youth. Hence, 14-15 year olds are handled well. Similarly, special procedures for giving prosecutorial priority to serious offenses and offenders exist in the adult courts. The programs and facilities of New York State's Department of Correctional Services seem adequate to cope with most hard-nosed adult criminals. Thus, cases involving chronic offenders over 20 can be handled expeditiously and disposed of effectively. However, those chronic or serious offenders between 16 and 19, whom we know represent a major threat, are not now well handled by the New York State Criminal Justice System.

Part of the problem is that until recently, juvenile records of serious criminal activity have not been available to prosecutors and judges in adult courts. This has recently been rectified by a statute which allows the finger printing of

juveniles who are arrested and "convicted" of specified offenses. However, since it is impossible to create juvenile records retroactively, this law will take several years to come into full effect.

A more substantial part of the problem lies in the lack of facilities and programs within the adult correctional system suitable for this population of offenders. Confronted by a youthful offender convicted of a serious offense and having a noticeable record of previous offenses, a judge may nonetheless be reluctant to decide that Attica or Greenhaven is the correct disposition. There is simply too much uncertainty about the character and potential of the immature offenders to relegate them to institutions which hold out so little hope. Lacking any other alternatives, the judge will decide on probation. In fact, current evidence indicates that people aged 16 and 17 years old convicted of armed robbery are about twice as likely to end up on probation as those aged 21 and 22. It is possible that those aged 16 and 17 are now treated more leniently than 14 and 15 year olds.

Thus, our recommendation is that New York State should strengthen its current capabilities to identify, prosecute and dispose of cases involving 16-18 year old serious, chronic offenders. It should be possible for prosecutors to identify 16-18 year old offenders who have records of frequent, serious offenses as juveniles. And Programs and facilities should be created within

the adult correctional system that provide a level of security substantially greater than that provided by the probation system, but do so in relatively humane settings. With such programs, a significant gap in New York State's ability to concentrate on serious offenses and chronic offenders would be closed: an important group of chronic offenders could be identified and supervised effectively during their peak levels of criminal activity.

FOOTNOTES

1. For an excellent description and analysis of the kinds of events that wind up as felony indictments in New York City's criminal courts, see "Felony Arrests: Their Prosecution and Disposition in New York City's Courts", Vera Institute of Justice, February, 1977.
2. Hans Zeisel, et. al. "A Criminal Justice System Under Stress", Vera Institute of Justice, New York City, 1975, p. 35, Table 4-1. Note: the numbers are for New York City in 1971. Comparable, recent number for state-wide felony offenses were not available. The 1976 Annual Report of New York State's Division of Criminal Justice Services indicates that approximately 1,000,000 Part I offenses were recorded in 1975 and 1976, approximately 140,000 felony arrests occurred, and approximately 6,000 people were sentenced to more than one year in jail.
3. Ibid, p. 73 calculated from figures presented in Table 6-6.
4. New York State Division of Criminal Justice Services, Annual Report '76, p. 86.
5. Joan Petersilia, Peter W. Greenwood, Marvin Lavin, Criminal Careers of Habitual Offenders, Rand Study, R-2144-DOJ, August, 1977.
6. First degree robbery involves the forcible stealing of property and either serious physical injury, armed with a deadly weapon, or uses or threaten with a deadly weapon. Robbery in the second degree involves the forcible stealing of property with less dangerous weapons.
7. James J. Collins, Jr. "Offender Careers and Restraint: Probabilities and Policy Implications" Preliminary Draft pp. 16-18.
8. Office of Children's Services, Division of Criminal Justice Services, Juvenile Violence.
9. Ibid, p. 16.
10. James J. Collins, Jr. "Offender Careers", p. 67, Table 4-1.
11. Joan Petersilia, et. al. Op. cit.
12. James J. Collins, Op. cit.
13. Joan Petersilia, et. al. Op. cit.

14. New York Senate Research Services, Task Force on Critical Problems, Family Court...The System that Fails All.
15. Interviews conducted at the State Division for Youth.
16. The state-wide average caseload for probation officers is reported to be approximately 70. The New York City caseload averages 180. Informal interviews with Probation Department officials.
17. Juvenile Justice Institute, Division of Criminal Justice Services, "Designated Felony Case Processing: An Initial Overview", unpublished mimeo, October, 1977.
18. Interviews with DFY personnel. See also, "Progress Report on Placement Diversification in the Division for Youth", New York State Division for Youth, September, 1976.
19. State of New York, S.22-6 and A.7010-B, January 5, 1977.
20. Interviews with Judges David Ross and Richard J. Bartlett. See also, New York State Division of Criminal Justice Services, New York State Felony Processing, Quarterly Reports.
21. Telephone conversations with Ms. Wilda Hess of New York State's Division of Criminal Justice Services.