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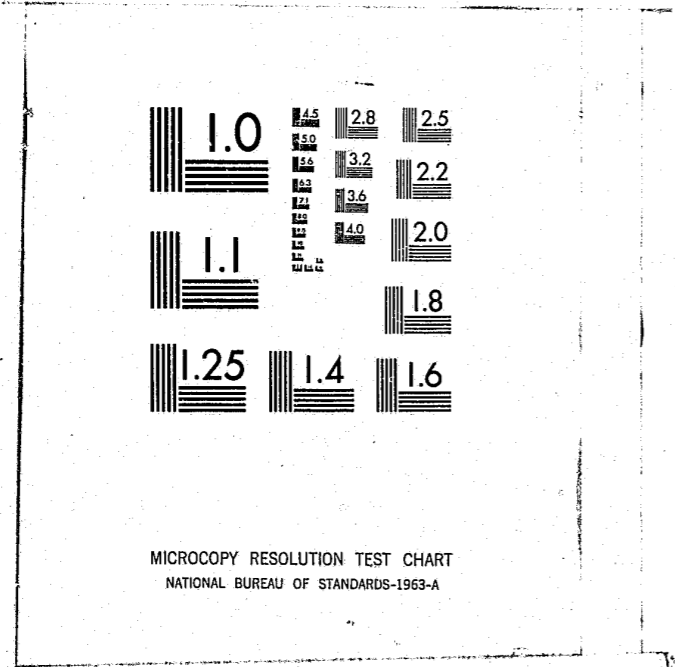
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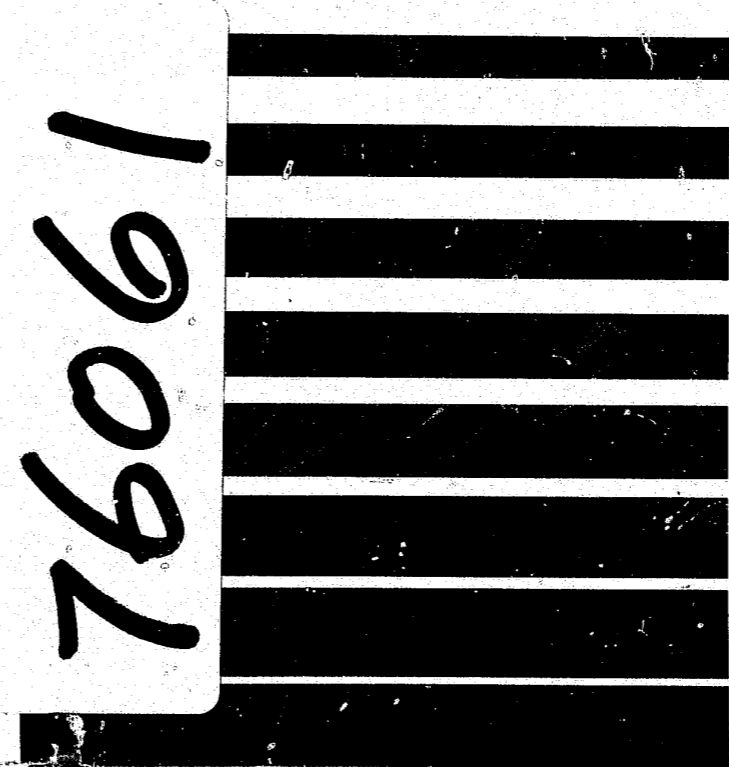National Institute of Justice
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MFI

Classification Instruments for Criminal Justice Decisions

Volume 4

76091

Sentencing and Parole Release

SENTENCING AND PAROLE RELEASE.

SOURCEBOOK

prepared by the .

AMERICAN JUSTICE INSTITUTE

with the

NATIONAL COUNCIL ON CRIME AND DELINQUENCY

CLASSIFICATION INSTRUMENT DISSEMINATION PROJECT .
·1007 - 7th Street, Ste. 414
Sacramento, Ca. 95814

Marvin Bohnstedt, Project Director

Saul Geiser, NCCD Staff Director

June 1, 1979

SENTENCING AND PAROLE RELEASE

SOURCEBOOK

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INTRODUCTION

The American Justice Institute, along with the National Council on Crime and Delinquency, has recently completed a national survey of screening and classification in criminal justice. Sponsored by the National Institute of Corrections, the year-long survey assessed the current state-of-the-art in the design and utilization of classification tools for decision-making. The present volume contains a portion of those findings.

In building a data base, National Survey staff made over 350 telephone contacts with classification experts, research organizations, and justice system agencies. These contacts combined with an extensive review of the existing literature reveal a recent trend toward formalizing offender classification, establishing more explicit criteria for screening decisions, and shifting emphasis from subjective judgements to reliance on standardized instruments in the classification and decision-making process. For the purpose of this study, "instruments" are defined as written forms which contain a fixed set of weighted criteria that are combined into an overall offender summary score. Consideration of this score in the classification process assists justice system practitioners in making more consistent and uniform classification decisions. Familiar examples of instruments include:

1.   Vera Scale: used to classify the eligibility of pretrial defendants for release on own recognizance;

2.   Base Expectancy Tables: used to screen offenders for risk of recidivism;

3.   Federal Parole Guidelines: used to reduce disparity in parole-release decisions.

Though these examples emphasize different criteria and were created for different purposes, they all serve to structure the classification process so that resulting decisions become more objective, uniform, and potentially replicable. Among the survey's 350+ primary contacts, project staff identified 105 sites where instruments, as defined, appeared to be used. Excluded from consideration were sites not using instruments, sites using instruments mainly for program placement (since the survey's research charter explicitly excluded diagnostic classification), and

sites using instruments duplicated elsewhere. Thus, the 105 identified sites are those we believed to be using unique classification instruments and related procedures.

National survey staff made considerable effort to ensure that the study systematically sampled different geographical regions and different levels of jurisdiction. However, the survey does not claim to be statistically represent- ative of the overall population of classification programs in the U.S., nor even of the more restricted population of programs that use instruments. Although staff contacted a broad distribution of agencies using classification tools, limited resources made it impossible to reach all such programs. Moreover, since the total population of classification programs is at present unknown, standard research methods such as random or quota sampling were not used. Nevertheless, the purpose of the survey was to describe the current variety (some would say similarity) of approaches and techniques in the field of criminal justice classi- fication, and this we believe has been achieved.

The national survey also selected agencies that represent different decision points in the criminal justice system. A "decision point" is defined for the purpose of this study as a juncture in the criminal justice system where decisions are made which affect the path of an individual through, or out of the system. These points include pretrial release and diversion, sentencing, institutional custody level, parole release, and parole/probation supervision level.

The results of our study have been organized with the practitioner specifi- cally in mind. Accordingly, findings are categorized by decision point; material pertaining to each of four decision points has been grouped together in a separate volume or "Sourcebook." Each of these Sourcebooks addresses one of the following types of classification:

1. Pretrial Release
2. Sentencing and Parole Release
3. Institutional Custody
4. Probation/Parole Supervision

This approach should help practitioners to quickly and easily locate information pertinent to their field. A fifth volume is devoted to general information. It contains a review of the classification literature, a bibliography, discussion of research methods, and the data collection forms used in the study.

The state-of-the-art summaries, site visits, and telephone interview sum- maries have been written by different authors. Consequently, the individual components of the Sourcebooks may differ somewhat stylistically. We chose to emphasize accuracy of content, rather than consistency of style; the various research staff who collected the information and best understood the on-site operations were assigned the task of writing the summaries and reports.

The Sourcebooks are divided into three main sections: (1) State-of-the-Art Summary, (2) Site Reports, and (3) Telephone Interview Summaries. The last two sections include descriptions of instrument usage in specific agencies, and copies of the instrument(s) used by that agency. The State-of-the-Art Summary describes current classification instruments and practices that are employed at the decision point assessed by each Sourcebook. The Summary is essentially a synthesis and evaluation of the findings generated by the site visits, telephone interviews, and literature review. It also includes recommendations about devel- opment and implementation of classification instruments at the respective deci- sion points.

Section II of the Sourcebook, the Site Visit Reports, provides the reader with an in-depth look at currently used instruments, and how they operate in specific agencies. On the basis of the 105 telephone interviews, survey staff selected 22 locations that employed 25 distinct instruments for more intensive study through on-site observations and interviews. National survey staff, usually working in pairs, spent from two to four days at each site. During these visits, an effort was made to observe the classification system in operation, to inter- view as many people as possible who use or who are affected by the process, and to collect research results and statistics on the use of the instrument. A detailed interview protocol developed by staff (see Research Volume) was used while on site in order to ensure complete and consistent data collection. The form was not always rigidly followed, however, in order to allow for spontaneous comments and other advantages gained by a flexible interview approach. Informa- tion was obtained under general headings as follows:

- Agency Characteristics
- Decision Points Involved
- System Flow
- Caseload Characteristics
- Research and Development of the Instrument
- Instrument Implementation

- Formal Instrument Characteristics
- Screening Process
- Decision Process
- Review Process
- Results and Impact
- Policy Issues

The third section of the Sourcebook, the Telephone Interview Summaries, contains succinct, one or two page descriptions of agencies and their use of classification tools. In contrast to the in-depth analysis of the site reports, the telephone summaries present brief overviews of classification techniques used by specific agencies. Agencies contacted were identified by staff through published reports discovered during the literature review, and through leads from consultants and practitioners. The agencies thus identified were contacted, interviewed when appropriate (i.e., if they were using operational instruments), and then used as a source of referrals to other jurisdictions. Our assumption was that a relatively inclusive sample of agencies had been obtained when leads uncovered in this manner referred us back to agencies previously contacted.

The agencies interviewed were sent a pre-interview notice describing the survey objective and the kinds of questions that would be asked. Telephone interviews were then held by appointment using the interview questionnaire given in the Research Volume. Each interview lasted from 30 to 90 minutes, depending upon the complexity of the classification system in question. Most interviews were with a single respondent although several calls involved two or more agency representatives. In each case, information was obtained under the following general headings:

- Identification of Respondents
- Use of Screening Instrument
- Automatic Selection Criteria
- Characteristics of Screening Instrument
- Administration of the Instruments
- Results and Effects of the Instrument
- Accessibility for Site Visit and Referrals

The Sourcebook materials were sent for verification to the agency staff who were originally contacted during site visits and telephone interviews. During this verification process we learned that 34 of the telephone interview sites are not using classification instruments according to our definition, so we dropped them from the study sample. Some of these excluded sites are using lists of criteria without any weights or total scores, and others are not using any formalized criteria at all. The agencies remaining in the sample after the verification process provided us with updated information and statistics, cleared up any apparent misunderstandings, or approved the initial drafts as written. We will now turn to the State-of-the-Art Summary describing current issues and practices specific to the use of instruments in sentencing and parole release decisions.

SENTENCING AND PAROLE RELEASE
STATE-OF-THE-ART

Although there are some important differences between sentencing and parole decision-making, it is important that the two functions be considered in the same context. Under the indeterminate sentencing system that prevails in most of the United States, judges and parole boards jointly influence sentencing policy as well as individual case outcomes. And the current movement in some states toward determinate (or legislatively-fixed) sentences would sharply reduce the role of both the judiciary and parole authorities in shaping such policy. Indeed, the spectre of determinate sentencing is one of the main reasons why judges and parole boards have begun to turn to classification instruments as a means of introducing greater objectivity and uniformity into the decision-making process. Intelligent analysis of sentencing and parole classification thus should proceed from the recognition that the two decision points are closely related, both functionally and with respect to current policy developments within criminal justice.

History of Classification for Sentencing and Parole

The use of classification instruments by judges is a recent development, but parole classification has a rather long history. In fact, parole classification instruments have been in use longer and are more thoroughly researched than those at any other decision point in the criminal justice system.

The earliest approach to parole classification began in the 1920's with the pioneering efforts of Warner, Hart, and Burgess to predict parolee recidivism.[1] These researchers believed that parole decision-making could be placed on a more scientific footing if parole boards were to employ the kinds of actuarial methods used by insurance companies to assess the risks of policy coverage. The first attempt to develop such an instrument was made by Ernest Burgess in 1928, under

the auspices of the Illinois Parole Board. In search of factors indicative of success (non-recidivism) on parole, Burgess examined the official records of some 3,000 former inmates of Illinois prisons. He identified 22 such factors, each associated with a parole violation rate below the sample average. By summing the number of "favorable" factors that described a parolee, Burgess established score classes and calculated the average probability of parole success for those in each class. The result was what Burgess called an "experience table", a classification instrument used to assess the probability that an inmate would recidivate if released on parole.

Thus began a criminological research tradition characterized by the production of increasingly sophisticated instruments for predicting criminal behavior. Interestingly, although Burgess' original prediction methods were rather unsophisticated by present standards, several of the variables he identified (including prior criminal record and age at release) were consistently affirmed by later studies to be among the more accurate indicators of parolee recidivism.[2] Indeed, it may be said that most later work has been largely a refinement and elaboration of Burgess' basic method. Subsequent research, such as that resulting in the California Base Expectancies,[3] has attempted to improve statistical methods for identifying, weighting, and combining prediction factors,[4] to refine predictions for particular kinds of offenders,[5] and to refine predictions for particular levels of "risk".[6] Nevertheless, the underlying actuarial approach remains basically the same as that developed by Burgess.

1. F. B. Warner, "Factors Determining Parole from the Massachusetts Reformatory," Journal of Criminal Law and Criminology 14 (1923):172-207; H. Hart, "Predicting Parole Success," Journal of Criminal Law and Criminology 14 (1923):405-413; E. W. Burgess, et al., "The Working of the Indeterminate Sentencing Law in the Parole System in Illinois," (Springfield, Illinois:Illinois Parole Board, 1928).

2. C. Baird, "Parole Prediction Study, Report No. 3," (Illinois Department of Corrections, Research Division, May 1973); D. Babst and C. Chambers, "New Directions in Parole Expectancy Research," Criminology 10 (1972); D. Glaser, The Effectiveness of a Prison and Parole System (Indianapolis, Ind.:Bobbs-Merrill,1964).

3. M. Bohnstedt, Determination of Base Expectancies for the 1957 Male Parole Release Population: Research Report No. 11, (Sacramento, Calif., California Youth Authority, Division of Research, 1959); and

D. Gottfredson, A Shorthand Formula for Base Expectancies (Sacramento, Calif., Department of Corrections, Division of Research, 1962).

4. See, for example, L. Wilkins, "The Problem of Overlap in Experience Table Construction," (Davis, Calif., NCCD Research Center, June 1972).

5. See Babst and Chambers, supra note 2.

6. See, for example, T. Sarbin, E. Wenk, and D. Sherwood, "An Effort to Identify Assault-Prone Offenders," Journal of Research in Crime and Delinquency 5, 1 (1968).

By the mid-1960's, despite many years of research to improve prediction instruments, two major problems with parole prediction had become evident. First, although experience tables did predict better than chance, even the best instruments tended to produce three to four "false positives" (offenders predicted to recidivate who actually did not) for each "true positive" or correct prediction.[7] Efforts to improve the accuracy of predictions generally were unsuccessful, leading many researchers to conclude that there may be a natural limit or ceiling on accuracy in criminological prediction.[8] The injustices generated by low predictive accuracy (denying parole to several persons who will not recidivate in order to prevent the crime of one who will) has led some to argue that the use of parole prediction instruments should be abandoned on legal and ethical grounds.[9]

A second problem with parole prediction instruments that had become evident by the 1960's was that parole boards simply refused to use them. A survey of all 51 parole jurisdictions in the United States in 1961[10] revealed that only four had ever used parole prediction tables and two of these had discontinued their use. Reasons for parole board resistance to the practice included:

1. Experience tables were "too mechanical" and did not allow sufficiently for individual differences.

2. Such instruments were based on a limited set of variables that often excluded factors such as institutional infractions which practitioners believed to be important.

3. They were based on a single criterion of success or failure-- recidivism, while overlooking additional and possibly more important criteria.

4. They did not even predict recidivism well.

5. They tended to underplay the role of "subjective" or "clinical" factors not easily measured.[11]

With the invaluable aid of hindsight, it may be seen that all of these criticisms stem from a more general underlying problem--the lack of shared understanding between researchers and criminal justice practitioners. Virtually none of the studies conducted prior to 1960 investigated the process of parole decision-making; most concentrated on parolee characteristics and their relationship to recidivism. Ignoring many of the practical considerations that enter into parole decisions, researchers simply assumed that the risk of recidivism was (or should be) the main criterion and then constructed their prediction tables accordingly.

From the perspective of parole board members, risk of recidivism clearly is only one factor in decision-making--and not necessarily the most important. While this point may be obvious to anyone familiar with parole board hearings, it did not fully penetrate the field of criminological research until after 1960. Later work has shown that such factors as offense severity and institutional behavior are at least equally important to board members in parole decision-making.[12] Offenders convicted of more serious offenses (offenses against persons) are more often retained in prison beyond the judicially imposed minimum than are less serious (property) offenders. Institutional behavior (disciplinary infractions, participation in prison programs) also influences time before parole, as board members apparently believe it must to maintain institutional order.

Not only did experience tables ignore factors considered important by parole board members, the tables' reliance on likelihood of recidivism also tended to produce

7. See F. Simon, Prediction Methods in Criminology (London: Her Majesty's Stationery Office, 1971).

8. D. M. Gottfredson, L. T. Wilkins, P. B. Hoffman, and S. M. Singer, The Utilization of Experience in Parole Decision-Making--A Progress Report. Parole Decision-Making Summary (Davis, Calif.: National Council on Crime and Delinquency Research Center, 1973); J. Monahan, "The Prediction of Violent Criminal Behavior: A Methodological Critique and Prospectus." In: National Research Council (ed.), Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions in Crime Rates (Washington, D.C.: National Academy of Sciences, 1978); and F. Simon, ibid.

9. N. Morris, "The Future of Imprisonment: Toward a Punitive Philosophy," Michigan Law Review, Vol. 72, No. 6 (May 1974), p. 1173.

10. V. Evjen, "Current Thinking on Parole Prediction Tables," Crime and Delinquency Vol. 8 (1962), 215-224.

11. Ibid.

12. See, for example, A. Heinz, J. Heinz, S. Senderowitz, and M. Vance, "Sentencing by Parole Board: an Evaluation," Journal of Criminal Law and Criminology Vol. 67, No. 1 (March 1976): and D. Gottfredson, P. Hoffman, and L. Wilkins, "Making Paroling Policy Explicit," Crime and Delinquency Vol. 21, No. 34 (1975).

decisions diametrically opposed to those board members felt to be appropriate. Because offense severity is often inversely related to recidivism (more "serious" offenders are less likely to commit new offenses on parole),[13] use of experience tables would require parole boards to set early release dates for persons they-- and the public--believed to least deserve them. Similarly, were parole boards to adopt a strictly "predictive" approach to release decisions, they would have to de-emphasize institutional adjustment--a policy that would be distasteful to many. As Ohlin has observed, "the professional and more sophisticated criminal types adjust well to prison rules and regulations...[while] many offenders who find it difficult to adjust to prison life retain some of the qualities most necessary to adequate adjustment in the free community."[14]

Under the circumstances, it is not surprising that parole boards found experience tables of little use in decision-making. It is clear that they were based on an oversimplified conception of the parole decision-making process. Parole (and sentencing) policy reflects a variety of competing purposes, prominently including "just deserts", public protection against crime, and the regulation of prison populations. Classification systems designed for use in such decisions must take into account a variety of competing factors if they are to be effective and useful.

Current Approaches to Classification and Screening

Standardized screening instruments[15] are used by only a small proportion of parole authorities and an even smaller proportion of courts. Only eight parole jurisdictions and five court jurisdictions reported current use of such instruments in case decisions, although a number of classification systems are in the planning or development stage in other locations.

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13. See, for example, M. Neithercutt, "Parole Violation Patterns and Commitment Offense," Journal of Research in Crime and Delinquency Vol. 9 (July 1972). Such studies have shown that rates of parole violation are less than 20% for person offenders and more than 30% for property offenders, although there are important exceptions to this general pattern.

14. L. Ohlin, Selection for Parole (New York: Russell Sage Foundation, 1951).

15. "Instruments" are defined, for purposes of this study, as: written forms containing a fixed set of variables, ratings on which are combined into an overall summary score for use in offender classification.

Among those jurisdictions that now employ classification instruments in decisions affecting type and length of sentence, it is possible to distinguish three main approaches: (1) parole guidelines, (2) sentencing guidelines, and (3) risk classification. Parole guidelines generally are characterized by the use of a decision "matrix" in which factors associated with the offender's crime and prior history are tied to specific decision outcomes. (Some versions employ a decision "tree"[16] instead of a matrix.) Parole guidelines were first developed during the early 1970's by Gottfredson et al.[17] in collaboration with the U. S. Parole Board (now U. S. Parole Commission). Variants of this approach have since been adopted by parole authorities in the states of Oregon, Minnesota, Maryland, and Washington. In several other states, parole guidelines are now on the drawing board.

Sentencing guidelines are an off-shoot of parole guidelines. They also utilize a decision matrix or a decision "tree", but they are designed for use by judges and apply to both decisions affecting length of sentence and "in/out" decisions (that is, whether or not to imprison a convicted offender in the first place). Since they affect a wider range of decisions and a much larger number of cases,[18] sentencing guidelines have the potential for a much broader impact than parole guidelines. To date, however, they have been implemented in very few court jurisdictions (e.g., Denver, Philadelphia, Chicago, Phoenix, and Newark).

The third approach, risk classification, is currently used by only one agency, the Michigan Department of Corrections and Parole Board (the State of Kentucky is in the process of developing a similar program). Michigan's classification program represents a revival of the experience table, but it goes beyond the earlier approach in a number of important ways. Rather than being concerned with recidivism in general, the Michigan program is keyed to identifying the dangerous, and particularly the violent, offender. Also, in addition to providing public protection against those identified as potentially violent, the program is aimed at reducing prison populations by granting early parole or community placement for inmates identified as

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16. A decision "tree" is a branching series of yes/no questions posed in a specific order. The answer to each question determines which question must be answered next. Following any sequence of questions leads ultimately to one of a number of terminal decision points.

17. Gottfredson et al., Supra note 8.

18. Numerous studies have shown that nationally, only a small percentage of convicted felons are incarcerated; the vast majority receive a range of non-institutional dispositions.

non-dangerous.

Despite differences in emphasis, all three approaches--parole guidelines, sentencing guidelines, and risk classification--are seen as viable alternatives to determinate (or legislatively-fixed) sentencing. Determinate sentencing,[19] proposed as a means of introducing uniformity and fairness into a system viewed as arbitrary and capricious, has been criticized on several grounds. Many judges, parole board members, and correctional authorities oppose fixed or "flat" sentencing as too mechanical and not sufficiently responsive to differences among offenders. Others have predicted that determinate sentencing will result in longer terms and increased reliance on incarceration, thus aggravating prison overcrowding. Both parole and sentencing guidelines represent attempts to structure discretion and reduce sentence disparity without going to the extreme of fixed sentencing. Michigan's risk classification program is based on the principle of "selective incarceration" of the dangerous offender, while permitting early release of the more numerous, non-dangerous offender population. Because of their potential for reducing sentence disparity without the negative side-effects of determinate sentencing, the classification and screening instruments discussed below should be considered in the context of this larger debate.

Parole Guidelines

In 1972 the Law Enforcement Assistance Administration funded a three-year research effort to develop a classification system for use by parole boards. The "Parole Decision-Making Project," conducted by Gottfredson, et al., in collaboration with the U. S. Board of Parole, marked a significant departure from previous research on parole classification. The shift from the study of parolees to the study of parole decision-making stemmed in part from the recognition that previous classification instruments were not perceived as useful by parole boards. In studying the process of parole decision-making, the project sought to integrate factors used by board members into the classification instrument. But the main reason for studying the decision-making process was to establish more explicit parole policy through analysis of the implicit standards and policies

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19. Determinate sentencing laws have been passed in a small number of states, including California, Indiana, Maine, and Illinois, and such legislation is now pending in a number of other states.

reflected in case decisions. In effect, the U. S. Parole Board's intention was to capture and institutionalize its own decision-making behavior by identifying its implicit decision-making rules and formalizing these rules as guidelines for future decisions. This would not only result in more explicit standards, but also provide for greater consistency and uniformity in release decisions.

The project found three main factors to be most influential in determining variations in number of months before release. In order of importance, these were: (1) seriousness of the commitment offense; (2) parole "prognosis" (likelihood of further crimes while on parole); and (3) institutional behavior (disciplinary record while in prison). The first two factors appeared to be most important at initial hearings where the inmate first came before the board and was assigned a provisional review date. Such dates could be predicted fairly accurately from offense-severity and parole-prognosis ratings alone. Institutional behavior was the most important consideration in review hearings, where the inmate had reached his parole eligibility date and the board had to decide whether to release him or continue his term. Inmates with good disciplinary records generally were released at this time, while those with poor records were not.

The project's next step was to devise a classification instrument with which to apply these policy dimensions to future case decisions.[20] Recognizing the multi-dimensional character of parole decision-making, the researchers saw that no uni-dimensional classification scheme such as the Burgess-type experience tables would prove workable. Even an instrument devised solely for use in initial board hearings would have to reflect at least two policy dimensions--offense severity and parole prognosis. The researchers thus proceeded to develop two separate scales for offense severity and parole prognosis, conceptualizing these as vertical and horizontal axes of a two-dimensional decision "matrix." (A current version of the U. S. Parole Commission's decision matrix appears in Table 1).

From board member ratings of different criminal offenses in order of seriousness a six-level scale of offense severity was developed. The horizontal or parole-prognosis scale, called a "salient factor score," was a Burgess-type prediction instrument developed essentially in the traditional manner (based on

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20. Project methods and findings are spelled out in greater detail in D.M. Gottfredson, et al., Guidelines for Parole and Sentencing (Lexington, Mass.: D.C. Heath, 1978).

Table 1

U.S. Parole Commission
Guidelines for Decision Making:
Months to be Served before Release

Severity of Offense Behavior	Parole Prognosis Salient Factor Score			
	Very Good	Good	Fair	Poor
Low	6 – 10	8 – 12	10 – 14	12 – 18
Low Moderate	8 – 12	12 – 16	16 – 20	20 – 28
Moderate	12 – 16	16 – 20	20 – 24	24 – 32
High	16 – 20	20 – 26	26 – 34	34 – 44
Very High	26 – 36	36 – 48	48 – 60	60 – 72
Greatest I	40 – 55	55 – 70	70 – 85	85 – 110
Greatest II	Greater than above--however, specific ranges are not given due to the limited number of cases and the extreme variation possible within the category.			

samples of parolees). Although the researchers were well aware of prediction techniques newer and more sophisticated than the Burgess method, they chose to employ the latter both because of its simplicity and because research had shown that the older method tended to predict as well as more mathematically sophisticated methods such as multiple regression or configural analysis.[21] There were, however, a few minor departures from the traditional approach. For example, care was taken to utilize items for which official data were readily available and which board members already employed, even if only informally. Items were also excluded if they posed ethical or legal problems (e.g., prior arrests not leading to conviction or race and ethnicity), even though the excluded items might possess good predictive power. In this way, not only predictive but practical and policy considerations influenced the choice of variables to be included in the scale.[22]

The final step in constructing the matrix was to compute time-to-be-served ranges for each combination of offense severity and parole prognosis. Given six severity and four prognosis categories, there were 24 possible combinations or "cells" within the body of the matrix. Drawing on a large sample of previous cases, the researchers tabulated the median time served for each possible type of case and entered these figures within the cells of the matrix. To permit some flexibility in applying the matrix to individual cases, each figure was bracketed within a discretionary range (plus or minus a certain number of months).

The matrix is designed to be used in a manner quite similar to the way mileage charts are used to find the distance between two cities. A case is located on both the offense-severity and salient-factor scales, and the range of time-to-be-served is read at the intersection of the two coordinates. It should be emphasized that the ranges are "presumptive" and not binding; that is, they suggest the term ordinarily served by cases of the same type, but are not

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21. Gottfredson, et al., ibid., p. 42.

22. The original salient-factor scale included 11 variables: auto theft; crime involving co-defendants; number of prior incarcerations; number of prior sentences; more than 18 consecutive months incarceration for any previous offense; high-school education; probation or parole revocation; under 18 at first conviction; under 18 at first incarceration; employment history; and release plan to live with spouse or children.

intended to be applied in a fixed and mechanical manner. The purpose of the matrix, according to its developers, is to "structure" discretion without attempting to eliminate it entirely.

The matrix represents an important advance over the earlier, experience-table classification instruments in three major respects. First, it permits a multidimensional approach to parole classification that takes into account a variety of policy dimensions. (Further dimensions could be added to create a three or four-dimensional decision matrix, thus allowing classification to be tailored to the specific contours of parole policy.) Second, the matrix links classification to particular decision outcomes--that is, to specific ranges of time-to-be-served for offenders in each classification category. (Experience tables, in contrast, provide no decision guidelines and are presented to parole boards as one of several factors to be considered without specifying how this factor should be weighted in decision-making). And third, the matrix approach is potentially applicable not only to parole classification, but also to decision-making at a variety of other points in the criminal justice system.[23] As a generalized approach to decision-making, the matrix is versatile enough to incorporate the dimensions and variables associated with the kind of decision to which it is applied.

Use of the U. S. Parole Guidelines

Use of the federal guidelines was initiated in 1972 as part of a pilot project in the northeastern region and extended to all federal parole selection decisions in 1973. Public Law 94-233 (1976), known as the Parole Commission and Reorganization Act, introduced a number of reforms in the federal parole selection process. Prominent among these reforms was the "regionalization" of the Parole Commission, which delegated parole release decisions to an expanded staff of hearing examiners,[24] while the Commission now performed policy-setting and appellate functions. (One reason why the guidelines matrix proved especially

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23. A similar matrix is already used by courts in some jurisdictions in sentencing decisions, and still another version has been proposed for bail decisions. See: Gottfredson, et al., supra note 8, chapter 8.

24. The procedure for decision-making is outlined in the site visit report on the U.S. Parole Commission later in this volume.

useful to the Commission is that it provides a means of monitoring and exercising more effective control over the decisions of an expanded and decentralized staff). In addition to regionalizing the Commission and mandating the use of guidelines, the reorganization act also introduced two-member hearing panels, a requirement that reasons for parole denial be specified in writing, and a two-stage appeals process.

As a measure of the effectiveness of the matrix in structuring discretion, about 84% of the initial hearing decisions fall within the indicated guidelines ranges. Those that do not conform are about equally divided between deviations above and below the recommended ranges. Guideline usage is regularly monitored in order to determine the percentage of deviations from the recommended ranges and the reasons for deviation. In this way the Commission can assess the extent to which certain hearing examiners may be exceeding their discretion, as well as identify areas in which the guidelines may need modification. Some degree of deviation from the matrix is viewed as appropriate and desirable, a sign that the guidelines are being applied with respect for differences among individual cases. The Commission is attempting to steer a middle course between what is perceived as the twin evils of unfettered discretion and a fixed and mechanical approach to decision-making.

It should be noted that, although the federal guidelines have been hailed as a significant advance in parole decision-making, they have received some criticism. Federal prisoners have argued that their application to individual cases is far from consistent and that certain criteria incorporated in the offense-severity and salient-factor scales are unfair and legally objectionable. The Commission has removed some of the more problematic criteria in the most recent version of the guidelines, but the number of inmate lawsuits challenging parole decisions has substantially increased over the past few years. Others have criticized the Commission's method of establishing time-to-be-served ranges; computing average time served for offenses in the past, it is suggested, does not insure a fair sentencing system. Still other critics have pointed out that, because judges are under no obligation to follow the guidelines, a sizeable proportion of cases is not affected by their application. Finally, broader criticisms of the guidelines approach have been made by proponents of determinate sentencing who argue that, although guidelines are valuable, they should be applied by judges rather than parole boards. These critics maintain that guidelines do not address the

principal source of sentence disparity--the judge's decision whether or not to incarcerate a convicted felon.[25]

The Oregon Parole Guidelines

Oregon was one of the first states to adopt guidelines for parole classification and decision-making. Like the federal guidelines, the Oregon guidelines employ a two-dimensional decision matrix with recommended time-to-be-served ranges in each cell. But whereas the federal guidelines are based on extensive research, the Oregon guidelines are not. The matrix format used in Oregon was borrowed from the federal model and adapted to local policies on an ad hoc basis. In one sense, this might appear to be a weakness. It could be argued that the Oregon guidelines lack a proper empirical foundation. The lack of a research base, however, was not a significant problem because of the prescriptive, reform-minded character of the Oregon system. The Oregon Parole Board is more interested in the punishment that certain kinds of offenders "should" suffer than in the punishment similar offenders have received in the past. In contrast to the federal guidelines, which were premised upon a "descriptive" approach that applied past policy to future decisions, Oregon's guidelines represent a deliberate effort to institute new parole policy. When appointed to the Oregon Parole Board in 1975, the board chairman, Ira Blalock, was determined to effect basic changes to make parole policy more equitable and consistent.

Prior to Blalock's appointment, the board lacked systematic criteria for determining if and when an inmate would be paroled. The administrative rules under which the board operated stated only that the board "will evaluate the readiness of the inmate for release, including, but not limited to, personal history factors, offense committed, institutional adjustment, personality changes, and the attitude of the community." The notion that there is an optimal point of "readiness" for parole is, of course, one of the hallmarks of the rehabilitative approach to parole decision-making. But Blalock and several other parole board members had serious reservations about the usefulness of rehabilitative criteria in parole decisions. They found the concept of parole readiness too vague to provide a reliable basis

25. A more extensive account of these and other criticisms of the federal guidelines is provided in a recent article in the December, 1978 issue of Corrections Magazine, "Are Guidelines a New Form of Unfairness?"

for such determinations.

In place of parole readiness, Blalock proposed a new principle for parole decision-making: "just deserts." Just deserts refers to the principle that "the punishment should fit the crime" or, in the language of Oregon's new parole statute, that "punishment [should be] commensurate with the seriousness of the prisoner's criminal conduct." Just deserts, sometimes referred to as the "justice model," is somewhat controversial in criminal justice circles because of its association with determinate sentencing and its implied criticism of the rehabilitative ideal. Nevertheless, it has gained currency in criminological literature as an alternative to the criteria that traditionally have guided sentencing and parole release decisions. Inspired particularly by the writings of Norval Morris, David Fogel, and Andrew von Hirsch,[26] proponents of this philosophy hold that severity of criminal conduct should be the primary if not exclusive consideration in decisions affecting the duration and severity of punishment.

The principle of "just deserts" provided the cornerstone of Bill 2013, the enabling legislation underlying the Oregon parole guidelines. Key provisions of the bill are worth noting, since they help to explain some of the differences between the Oregon and the U. S. parole guidelines:

> Rules on duration of imprisonment; objectives; considerations in prescribing rules:
>
> (1) The commission shall propose to the board and the board shall adopt rules establishing ranges of duration of imprisonment to be served for felony offenses prior to release on parole. The range for any offense shall be within the maximum sentence provided for that offense.
>
> (2) The ranges shall be designed to achieve the following objectives:
>
> (a) Punishment which is commensurate with the seriousness of the prisoner's criminal conduct; and

26. N. Morris, supra note 9; D. Fogel, We are the Living Proof...The Justice Model for Corrections (Cincinnati: W.H. Anderson, 1975); and A. Von Hirsch, "Prediction of Criminal Conduct and Preventative Confinement of Convicted Persons" (Buffalo Law Review, Vol. 21, 1972).

(b) To the extent not inconsistent with paragraph (a) of this subsection:

    (A) The deterrence of criminal conduct; and

    (B) The protection of the public from further crimes by the defendant.

(3) The ranges in achieving the purposes set forth in subsection (2) of this section, shall give primary weight to the seriousness of the prisoner's present offense and his criminal history (Oregon Revised Statutes, Section 144.780).

Perhaps the most striking feature of the statutory language is its departure from the rehabilitative approach to parole decision-making. Nowhere in the statute is "rehabilitation" or parole "readiness" even mentioned. Another traditional consideration in parole decision-making--parole prognosis or "risk"--also is given short shrift under the revised statute. Although the law permits the board to consider the "protection of the public from further crimes by the defendant," it explicitly subordinates this factor to the just-deserts principle (subsection 2), and emphasizes that primary weight must be given to prior criminal behavior rather than predicted future criminality (subsection 3). Advocates of just deserts are generally opposed to parole prediction, arguing that parole decisions should not be based "on uncertain predictions of dangerousness," but only upon the "demonstrated past criminality" of the offender.[27]

It is on this point that the Oregon guidelines differ most significantly from the federal model. Whereas the federal guidelines emphasize both offense severity and the prediction of future recidivism, the Oregon guidelines are keyed more directly to demonstrated past criminal behavior, including both instant offense and prior criminal record. As Blalock explains, "In all candor, we're not really that interested in prediction. Our matrix is more geared to figure out whose present crime and prior criminal history merit particular punishments."[28] Although initial versions of the Oregon matrix borrowed heavily from the federal model, a number of variables (such as employment history and school attendance)

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27. Morris, supra note 9, p. 1173; Von Hirsch, supra note 26. The Oregon guidelines were influenced especially by the work of Von Hirsch, since he helped to draft the revised parole statute.

28. Statement to staff of National Risk Assessment survey.

were subsequently dropped from the Oregon guidelines on the grounds that they did not reflect criminal activity and should not affect the range of time to be served.[29]

In addition to such differences in policy emphasis, there are some noteworthy operational differences between the Oregon and the federal guidelines. One of the most instructive features of the Oregon program is the way in which classification is segregated from decision-making. The classification process (by which an inmate is rated for offense severity and criminal history to determine the appropriate time-to-be-served range) is entirely completed before the initial hearing. The offense-severity and criminal-history scales have been scored and verified for accuracy,[30] and the presumptive time-to-be-served range is already known by the time the offender appears before the parole board.

The importance of this sharp separation between classification and decision-making may be illustrated by comparison with the procedures followed under the federal guidelines. In the federal system, hearing examiners ordinarily complete the matrix and render their decision in a single process. According to a 1975 study in the Yale Law Journal, this procedure encourages a certain amount of "fudging." Some hearing examiners reportedly adjust either the offense-severity or salient-factor scores in order to bring the indicated guideline range into line with the term they subjectively believe to be appropriate. Observation of a large number of hearings suggested that hearing examiners engaged in this practice to avoid having to present written reasons for their departure from the guidelines.[31] If the Yale findings are accurate, they suggest some operational advantages of separating classification from decision-making. Because the Oregon program is

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29. Some similar items have been deleted from the current federal guidelines. For the current version of the Oregon guidelines, see the Oregon report in site visit section of this Sourcebook. The Oregon guidelines have retained some variables of a predictive nature in the offender-history axis.

30. Classification is the exclusive function of parole analysts employed by the Corrections Division on a full-time basis to screen all cases prior to initial parole hearing. The most time-consuming aspect of the analysts' work is verification of the information required by the matrix. Scoring of the matrix takes only minutes once the necessary data has been compiled, but the process of compiling and cross-checking the data on an individual case often takes up to 90 days.

31. Comment, "Parole Release Decision-Making and the Sentencing Process," Yale Law Journal, Vol. 84 (1975).

structured so that the two functions do not overlap, the accuracy and relia-
bility of classification is less an issue at the parole hearing, and the main
issue before the board is whether the recommended guideline range is appropriate
given the circumstances of the case at hand.

The Minnesota Parole Guidelines

The guidelines employed by the Minnesota Corrections Board (MCB) illustrate
a third policy emphasis that is possible within the general framework of the matrix
approach. Whereas the Oregon guidelines are premised on the policy of "just deserts,"
and the federal guidelines focus on both just deserts and predicted recidivism, the
Minnesota parole guidelines reflect three distinct policy objectives: public pro-
tection, deterrence, and rehabilitation. To protect the public, MCB delays the
release of inmates likely to commit a new felony, thereby reducing the length of
time that the inmate is "at risk" in the community. To deter crime, the board in-
creases the period of incarceration in direct proportion to the severity of the
offense. Up to this point, the Minnesota guidelines are quite similar to the
federal parole guidelines, employing risk-prediction and offense-severity scales
in a two-dimensional decision matrix with recommended time-to-be-served ranges.

Where the Minnesota guidelines differ from both the Oregon and the federal
guidelines is in the manner in which it is determined whether the offender will be
paroled at the upper or lower end of the guideline range. In the Oregon and federal
systems, this decision is made at the discretion of the parole board representative
or hearing representative. In Minnesota the same decision is based on rehabilita-
tive criteria drawn from an offender's Mutual Agreement Program (MAP) or "parole
contract." Under the MAP program, an eligible inmate contracts with the MCB to
complete various educational, vocational, and rehabilitative programs in return
for being paroled at the early end of his guideline range. By successfully com-
pleting a MAP contract, an inmate with a guideline range of 11 to 17 months, for
example, can reduce his term of incarceration by six months. If he fails to
negotiate a contract--which is a legally binding agreement between the inmate and
the corrections department and parole board--or if he does not complete his part
of the contract, he is released at the upper end of the guideline range. The
Minnesota guidelines illustrate how rehabilitation, as well as just deserts and
public protection, can be built into an explicit decision-making structure.

Sentencing Guidelines

Drawing from experience with parole guidelines, guidelines recently have
been proposed as a means of structuring discretion in sentencing. Like parole
guidelines, guidelines for judicial decision-making usually are matrix-type
classification instruments that relate offender and offense characteristics to
recommended decision outcomes. Unlike parole guidelines, however, sentencing
guidelines not only address length of incarceration; they also govern those "in/out"
decisions (normally among the least visible in the criminal justice process) that
determine whether or not a convicted offender will be incarcerated in the first
place. Because sentencing guidelines operate at a point before the vast majority
of offenders are screened out for non-incarcerative sentences, they have the po-
tential for a broader and more significant impact on case decisions than parole
guidelines.

It remains to be seen whether this potential will be realized. The national
survey discovered only five court jurisdictions now using sentencing guidelines.
In at least two of these jurisdictions, Denver and Phoenix, the use of sentencing
guidelines soon may be discontinued because of the passage of determinate sentence
laws. A third sentencing guidelines program, in Philadelphia, is still in an ex-
perimental stage. The remaining two jurisdictions, Chicago and Newark, refused
to permit the national survey team to observe their programs.

The Denver Sentencing Guidelines

The Denver District Court has employed sentencing guidelines longer than any
other jurisdiction in the United States. In 1974, the Denver court initiated an
LEAA-funded project entitled "Sentencing Guidelines: Structuring Judicial Discre-
tion."[32] That many of the researchers who had participated in the development of
parole guidelines were involved in the sentencing guidelines project is reflected
in the similarity in methods and approach.

32. L. T. Wilkins, et al., Sentencing Guidelines: Structuring Judicial Discretion
    (Albany, New York: Criminal Justice Research Center, 1976).

The Denver sentencing instrument consists of a guideline sentence worksheet and a series of sentencing "grids." On the worksheet are items of information and associated weights relating to characteristics of both the crime and the criminal. These weights are totaled to obtain an "offense score" and an "offender score," which are then located on the appropriate sentencing grid (determined by the statutory class of the offense). Plotting the two scores against each other, as in the parole guidelines, reveals the suggested type and/or length of sentence.

Three additive items of information comprise the offense score. First is the intra-class seriousness rank, which ranges from 1 to 4. Second is the seriousness modifier, based on injury, use of weapons or drug sale, which ranges from 0 to 2. Third is the victim modifier, which is scored 1 if the victim was known to the offender and 0 otherwise. The sum of these values is the offense score, which ranges from 1 to 6.

Six items of information comprise the offender score: current legal status (probation, parole, or escape); prior juvenile convictions; prior adult misdemeanor convictions; prior adult felony convictions; prior adult probation/parole revocations; and prior adult incarcerations over 30 days. The sum of these six coded values is the offender score, which ranges from 0 to 13.

The guidelines are scored by the supervisor of the investigative unit of the probation department, who is also responsible for preparing presentence investigation reports. Based on the information in these reports, the supervisor computes the guidelines recommendation and then forwards both the presentence report and the recommendation to the sentencing judge. Since the presentence report is prepared independently of the guideline computations, the presentence narrative may not agree with the guideline sentence. Consequently, some judges use the guidelines as a "check" on both the probation recommendation and their own decisions. In any case, the judge has complete sentencing discretion within statutory limits and judicial compliance with the guidelines is strictly voluntary. If the judge sentences outside the guideline range, he or she is asked only to record the reasons for the disparity. Comparisons of the guidelines and actual sentences are fed back to the judges for review every six months.

Unfortunately, little information is available on the impact of Denver's sentencing guidelines program. The feedback reports to the judges contain the only data available. One of the latest of these reports, issued in March 1977,

indicates that sentences agreed with the guidelines in about 74% of all cases (but in only 31% of aggravated robbery cases and 36% of robbery cases). "In/out" disagreement occurred in 13% of all cases, while disagreement over sentence length was 5% for terms above and 7% for terms below the guideline ranges. Failure to achieve the 85% agreement projected by the researchers was explained by one judge as a result of the failure to adjust the guidelines to reflect the most frequently cited reasons for departure from them. Another reason, however, may have to do with the nature of judicial discretion. Unlike parole guidelines, which involve some enforcement mechanisms (such as appeal procedures and mandatory written reasons for guideline departures), conformity with sentencing guidelines depends solely on voluntary judicial compliance.

Judicial reaction to the guidelines clearly has been mixed. In interviews with staff of the Risk Assessment Survey project, one of the most common reactions among Denver judges was resistance to any scheme that threatens to limit judicial discretion. One judge insisted that his decisions "from the gut" were better than those based on the guidelines, and many others appeared to share his attitude. Another Denver jurist, however, described the amount of discretion available to judges today as "appalling," noting that if the judiciary proved unable to exercise self-control, controls were likely to be imposed from without.[33]

Other Sentencing Guidelines Programs

Two other sentencing guidelines programs observed by the national survey team are the Court of Common Pleas in the City and County of Philadelphia and the Maricopa County (Phoenix, Arizona) Superior Court. Both programs are in an experimental stage and, like Denver, Chicago, and Newark, both have been developed in collaboration with the Criminal Justice Research Center in Albany, New York. The survey team also observed the development of a classification instrument designed for use by California's Community Release Board which, under the new determinate sentencing law, is charged with reviewing judicial sentences to assess "disparity."

33. This is exactly what is happening in Colorado, where a determinate sentencing law recently was passed. The new law sharply limits judicial discretion in determining length of incarceration. However, since there is still room for discretion regarding the "in/out" decision, there may yet be a role for sentencing guidelines. The probation department is revising its grids to reflect the new determinate sentence standards, but it is too early to assess the results of this effort.

This instrument is significant not only as an example of how determinate sentencing is being implemented, but also as another way in which discretion can be structured even in the absence of determinate sentencing.

Philadelphia. Among sentencing guidelines programs, Philadelphia's is probably in the earliest stage of implementation. Development of the Philadelphia program differed from that of Denver, Phoenix, Chicago, and Newark in that the research was administered and funded locally, with guidance from the Albany Research Center. Following essentially the same procedures as in Denver, research began in December 1976 and a pilot version of the guidelines (dealing only with the in/out decision) was implemented in February 1978. At present, participating judges pass sentence in the traditional manner, consulting the guidelines only to compare their decisions with those recommended. The pilot guidelines are similar to Denver's with only a few minor changes. A victim classification (private citizen or organization/institution) has been added to the offense score, while drug sale has been dropped; employment history has been added to the offender score, while prior juvenile convictions and adult probation/parole revocations have been deleted.

Although participating judges are highly supportive of the guidelines concept, wider acceptance of the program is not assured. Only ten of the 35 judges in the Court of Common Pleas are now working with the guidelines, and some of the remainder have expressed resistance because they fear infringement upon judicial discretion. The situation is complicated by a new prosecuting attorney, recent media pressure, and the fact that the Pennsylvania legislature is considering determinate sentencing proposals. These developments have combined to produce a highly politicized atmosphere that may impede further implementation of the program.

Phoenix. Although the guidelines programs of Phoenix and Philadelphia were begun at about the same time, the Phoenix program is in a somewhat more advanced stage of implementation. Research began in February 1977 and the program became operational in April of that year. Unlike the Philadelphia program, the Phoenix guidelines are routinely scored by probation officers as part of the presentence investigation process and then forwarded to judges for consideration in decision-making.

Phoenix judges insisted on a number of modifications in the matrix before they would adopt the guidelines program. Two notable changes were the addition of points for offenses involving a "lewd act with a child" and offenses where the victim required hospitalization. Judges insisted upon these changes despite the fact that researchers found that their addition reduced the predictive accuracy of the matrix. This problem illustrates the frequent tension between "descriptive" and "prescriptive" approaches to the development of classification instruments. The descriptive approach works well where the implicit decision rules on which guidelines are based are consistent over time. It is obviously less effective where the rules are evolving or where, as in Phoenix, decision-makers wish to prescribe new policy. The Phoenix judges had been receiving considerable criticism from both the media and a conservative legislature regarding their alleged lenience toward certain types of felony offenders. By incorporating these concerns prescriptively into the guidelines, they were able to make the judiciary more accountable to the public without implicating any individual judge.

Because a strictly descriptive approach was not followed, it could be expected that the program would have initial difficulties with agreement between guidelines and sentences. In fact, some categories of offenses (such as driving under the influence of alcohol, felony pursuit cases, and prostitution-related offenses) are not even scored because they consistently fall outside the grids. Nevertheless, it seems likely that agreement between guidelines and sentences could improve as the new sentencing criteria begin to take effect and the results feed back into the monitoring system. Unfortunately, there may not be enough time for this to happen. The Arizona legislature recently passed a new criminal code (effective October 1, 1978), which revises the state's sentencing philosophy to a presumptive one that amounts to determinate sentencing. As a result, sentencing guidelines may be relegated to a largely superfluous role.

California. Somewhat surprisingly, the national survey discovered that California is also in the process of developing a sentencing guidelines type of instrument, despite the fact that the sentences judges can impose are now strictly limited by the state's new determinate sentencing law. The instrument under development is designed to permit monitoring of the new determinate sen-

tencing law and identification of cases in which sentence disparity still occurs. Although California's sentencing laws now limit judicial discretion far more than under the earlier indeterminate system, the new law aims primarily at standardizing length of incarceration rather than in/out decisions.

The agency responsible for reviewing sentences for disparity is the Community Release Board (CRB). (This is somewhat ironic, since the CRB replaces the Adult Authority, which for so long stood as a symbol of the indeterminate sentence). Reduction of disparity is to be accomplished through review of all cases sentenced to state prisons and a projected 10% sample of cases sentenced to probation. In developing a classification instrument that will identify cases in which sentence disparity occurs, the CRB has borrowed heavily from the research approach used in the development of parole and sentencing guidelines. Disparity standards are being developed for eight to ten offense groups, using multiple-regression analysis on a retrospective sample of cases. By this means, the relationship between sentencing and a variety of factors associated with offender and offense can be clarified. As with sentencing and parole guidelines, the objective is to determine what sentence the average case of a particular type would receive. While the format of the CRB instrument is yet to be determined, it is likely to employ a number of sentence matrices or grids.

Where the CRB's research goes beyond the guidelines is in its attempt to distinguish sentence "disparity" from legitimate variations in sentencing. Plea bargaining and its effect upon sentencing highlights the complexity of this issue. When an offender accepts a plea bargain and is convicted of a less serious offense than that described in the presentence report, the judge frequently takes this into account in imposing sentence. The result is that the sentence may appear disparate compared to other cases of the same offense type, although the judge has merely taken into account the realities of plea bargaining. Given the variation among jurisdictions in the use of plea bargaining and the accuracy of charging patterns, it could be argued that it would be more unfair if the courts did not take these factors into account.

Obviously, there are no simple answers to the question of what constitutes sentence "parity" and "disparity." Issues such as these have compelled the CRB research staff to consider a much wider range of factors than those considered in the development of sentencing and parole guidelines. Not only are they taking into account characteristics of the offender and the offense, they are also examining the impact of jurisdictional differences in criminal justice practices.

Once the classification instrument is developed, CRB plans to use it to identify and rectify sentence disparity. For all new commitments to state prisons (together with the 10% sample of probationers), a case profile will be developed. Using this profile data, the classification instrument will be scored to identify cases of possible sentence disparity, which will be reviewed in light of the reasons given by the judge in passing sentence. If the CRB finds the sentence to be disparate, it will refer the case to the sentencing court with a recommendation for re-sentencing. In theory, the court can ignore the CRB's recommendation or even re-sentence the offender to a still more "disparate" punishment. In practice, however, neither of these options is likely especially since judges in California must stand for re-election.

Although the CRB review system is in the early stages of development, it is of potential significance to other jurisdictions in two respects. First, it demonstrates that even under determinate sentencing classification instruments still may be useful in structuring the discretion that remains. Second, the program illustrates a promising application of the guidelines approach that could prove workable in jurisdictions without determinate sentencing laws. By employing guidelines instruments retrospectively in a process of sentence review, the CRB system may provide the kind of enforcement machinery that is lacking in other applications of sentencing guidelines. This type of review mechanism has been legislatively imposed in California, but in other jurisdictions it could be self-imposed through administrative structures such as sentencing councils and judicial advisory boards. Such an approach would have the potential for greater effectiveness in reducing sentence disparity, while at the same time avoiding the imposition of inflexible sentencing criteria.

Risk Classification

The most significant feature of the classification system used by the Michigan Department of Corrections and Parole Board is that it is designed to identify offenders who pose a high risk of committing violent or assaultive crimes. Suggesting a revival of interest in the earlier tradition of parole prediction research, the Michigan system is similar in some ways to both experience tables and the salient-factor scale used in the federal parole guide-

lines.[34] Although researchers elsewhere have abandoned the effort to improve the accuracy of violence prediction, results now coming out of Michigan have rekindled interest in developing classification instruments that more accurately identify the dangerous offender. The potential significance of this classification system justifies its consideration as a separate approach.

Rationale for the Michigan System

Because the prediction of violent behavior is a controversial research area in which relatively limited results have been achieved, Michigan's decision to reopen this line of inquiry deserves some explanation. Two policy considerations, other than public protection, prompted correctional officials to develop such a predictive system: prison overcrowding and the prospect of determinate sentencing. As in many other states, Michigan's prison population has continued to exceed existing bed capacities in recent years, despite efforts to expand community-based alternatives. In designing a new classification system, therefore, one important aim was to relieve overcrowding by identifying high-risk (dangerous) offenders for retention within the prison system, while allowing low-risk (non-dangerous) offenders to be paroled at an early date. A system based on "selective incarceration" of the dangerous and early release of the non-dangerous was expected to relieve overcrowding while helping to reduce violent crime.[35]

Although aware of the objections to violence prediction, Michigan officials were persuaded by a number of counter-arguments. The proposed classification system, it was pointed out, would be applied only to those who had already been legally convicted and their terms could not be extended beyond the maximum prescribed by law. Preliminary research findings also suggested that with more sophisticated research techniques, the level of predictive accuracy might be significantly improved. And finally, the parole board undoubtedly would consider violence potential, even in the absence of formal prediction instruments; objectively-based predictions, it was assumed, were an improvement over intuitive

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34. The federal parole guidelines, however, are concerned with recidivism generally rather than specifically with violent recidivism.

35. Perry Johnson, "The Role of Penal Quarantine in Reducing Violent Crime," Crime and Delinquency Vol. 24, No. 4 (October, 1978): pp. 465-485.

assessments.

The most convincing argument for attempting to predict violence, however, was that in its absence determinate sentencing was likely to be imposed. Corrections officials in Michigan were opposed to proposals that sentences be legislatively fixed, fearing that such a system would exacerbate prison overcrowding while preventing correctional administrators from doing anything about it. Their argument was forcefully articulated by Perry Johnson, Director of the Department of Corrections, and his deputy, William Kime:

> [T]o abandon dangerousness entirely as a criterion for incarceration is not a step which either can or should be taken in view of the real world alternatives. The public demands and deserves protection from crime. If the law enforcement community can not provide this by acting selectively, then we are certain to see a spate of repressive legislation which applies generally. We will see an increase in mandatory prison terms and in their length. In Michigan, and presumably elsewhere, about one parolee in 100 will commit a murder or very serious violent act. When prison terms in general are made longer, we will be locking up not two or three, or even ten, to prevent the crime of that one, but 99. And even without repressive legislation, correctional systems are already holding many whose incarceration serves no apparent need. It is not a question of accepting the cost of uncertain prediction but a weighing of that cost against that of the realistic probable alternatives. If we opt for locking up two or three or four to prevent the crimes of one, we think it is preferable in ethical, humane, and practical terms to generally increased incarceration.[36]

Instrument Development

Development of Michigan's violence prediction instrument began in 1974, using established procedures of actuarial research. The research differed from previous studies in two respects, although neither was without precedent.[37]

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36. P. Johnson and W. Kime, "Performance Screening--A New Correctional Synthesis," in "Synopsis of 'Hearings' on Screening/Classification" (Washington, D.C.: National Institute of Corrections, 1977), p. 19.

37. In addition to purely technical concerns, a number of practical and policy considerations influenced the instrument design. Race, for example, although a statistically significant predictor, was dropped for legal and policy reasons.

First, in coding offenses committed by parolees, the researchers consulted pre-sentence investigation reports to determine whether violence was involved. In coding the "real offense," the researchers sought to correct for deficiences in official data and to avoid the problems of inaccuracy experienced by previous studies that relied on court data. A second somewhat novel feature of the research methodology was the use of the Automatic Interaction Detector (AID) computer program developed at the University of Michigan. A statistical procedure that identifies configurations of variables having maximum predictive power, AID permitted the Michigan program to identify "interaction effects" and to develop a more comprehensible risk assessment device.

In the final version of the Michigan instrument, three dichotomous (yes/no) variables are used to classify an offender as "very high" assaultive risk: (1) whether the circumstances of the offense fit the description of robbery, sex assault, or murder; (2) whether the offender has been cited for "serious institutional misconduct" during his present term; and (3) whether the offender's first arrest occurred before his 15th birthday. According to the study, parolees possessing all of these characteristics had four times the rate of assaultive crime while on parole (40.5%) than the base rate for the sample as a whole (10.5%). It should be cautioned that these findings have yet to be validated. Because the entire 1971 parole population was used in devising the final version of the instrument, there was no validation sample with which to test the predictive accuracy of the instrument. Michigan has received an LEAA grant to undertake a validation study, but until that study is completed the results should be viewed as tentative.[38] It should also be cautioned that even if validated, the results of the Michigan study cannot be transferred automatically to other jurisdictions. Since each jurisdiction has its own population mix and crime patterns, different variables may have to be incorporated in violence-prediction instruments in other

38. From the history of prediction research some shrinkage of predictive accuracy can be expected in the validation study. This is particularly true where the construction method employs more highly sophisticated statistical techniques, such as multiple-regression or configural analysis. Although such techniques tend to produce higher correlations than the simpler Burgess method on construction samples, there tends to be considerably greater shrinkage when applied to validation samples. See: F. Simon, supra note 7; W. Wilbanks and M. Hindelang, "The Comparative Efficiency of Three Prediction Methods," Experience for Parole Decision-Making Project, Report No. 5 (Davis, Calif.: NCCD Research Center, 1973), Appendix B.

jurisdictions.

Implementation of the Risk Classification Instrument

Use of the violence risk classification instrument, in conjunction with a "property risk" instrument developed in a similar manner, began in July 1976. Screening is performed by staff at Michigan's Reception and Diagnostic Center (RDC). All new commitments to the state prison system pass through the RDC and are rated on both instruments. Some problems arise from the fact that the necessary information must be drawn from presentence investigation reports, which RDC staff feel are not always complete or accurate. Departmental efforts to improve the presentence investigation process unfortunately are hindered by the decentralization of the probation system, which leaves some probation operations outside the Department's jurisdiction.

The risk-classification system is used in several types of case decisions, including determination of eligibility for minimum custody, community-based programs, and other special-release activities, as well as for parole decisions. The Department has issued guidelines for custody-level assignment on the basis of offender risk classification, but RDC staff have indicated that they place greatest emphasis on the high-risk category. Such cases are given special attention during intake processing because they must be referred to the parole board for review in executive session.

If an offender is classified as either "very high" on assaultive risk or "high" on both assaultive and property risk, his case must be heard in executive session of the full seven-member board. In such cases, which comprise about 10% of the board's total caseload, board policy prescribes the exercise of unusual caution. Although the board considers many factors other than risk in rendering its decision (e.g., rehabilitative progress, age, reports from institutional and diagnostic staff), the presumption seems to be that high-risk cases ordinarily will be denied parole unless there are factors in the offender's record that strongly favor release.

Impact

The principle of "selective incapacitation" upon which Michigan's program is based is oriented toward a dual objective: increasing the term of incarceration

(within statutory maximums) for those classified as dangerous, while decreasing the length of incarceration (within statutory minimums) for those identified as non-dangerous. Since the non-dangerous far outnumber the dangerous,[39] these objectives imply a strategy for reducing the size of prison populations while maintaining or enhancing public protection against violent crime.[40]

Michigan's prison population, however, has continued to expand during the period that the classification program has been in operation. Department of Corrections projections now indicate that prison population will increase to over 14,900 in 1979 (up from about 13,600 in 1977). Average length of incarceration has been increasing, despite efforts to liberalize the use of parole and community placement for low-risk offenders. Moreover, the modal, or most frequent parole "pass" has increased from six months prior to the introduction of the risk classification program, to 12 months at present.[41]

In large part, of course, these trends reflect forces over which corrections and the parole authority have no control. In Michigan, as in many other states, the courts are annually committing greater numbers of offenders to prison for longer terms, which inevitably means larger prison populations. In view of the increasing influx of new commitments, it may be unrealistic to expect the risk classification system so recently instituted by the Department to have had a significant countervailing impact. Nevertheless, a question remains whether the parole classification system might not have contributed to Michigan's burgeoning prison population. Needed is a closer analysis of how the classification system affects disposition of both "high-risk" and "low-risk" offenders. Although

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39. Offenders classified as "high" and "very high" assaultive risk comprised 11.3% of the 1971 Michigan parolee population, while those classified as "low" and "very low" risk comprised 43.2%. William Kime, "The Summary of the Parolee Risk Study," (Michigan Department of Corrections Program Bureau, January 10, 1978). pp. 4-5.

40. Director Johnson implies that, if fully implemented, the risk-classification program has the potential for reducing the violent crime rate in Michigan by approximately 4%. See his discussion of the "corrections discretion model" in: "The Role of Penal Quarantine in Reducing Violent Crime," Supra note 35.

41. For an informative discussion of these and other aspects of the Michigan program, see Edith Flynn, "The Michigan Department of Corrections Classification for Risk System -- A Case Study," (Washington, D.C.: National Institute of Corrections, forthcoming).

selective incapacitation is premised on the stricter treatment of the former and liberalized treatment of the latter, in practice the parole classification system seems to emphasize only stricter treatment of the high-risk offender. The parole board has become more conservative in its disposition of this type of offender, to the point where prison officials have begun to perceive the build-up of high-risk cases as a potential management problem. With respect to the low-risk offender, however, policy implementation appears less effective as may be inferred from the increase in the modal parole pass during the time that the system has been in operation. In short, the parole classification program may not have had a more dramatic impact on prison populations because the conservative treatment of the high-risk offender is not yet matched by an equally concerted effort to liberalize parole release for the more numerous low-risk offender group. Although the Department of Corrections has significantly liberalized the use of other release options (e.g., home furlough and community placement) for low-risk cases, the parole system itself does not appear to reflect the same emphasis.

Summary

Standardized screening instruments currently are used by only a small proportion of parole authorities and an even smaller proportion of courts; but they are generating increasing interest as the prospect of determinate sentencing faces a growing number of U. S. jurisdictions. Among those jurisdictions now employing classification instruments in decisions affecting type and length of sentence, three different approaches can be distinguished: parole guidelines; sentencing guidelines; and risk classification instruments. All three approaches offer a viable alternative to legislatively fixed sentencing and parole policy by introducing greater objectivity and uniformity in decision-making without the inflexibility imposed by determinate sentencing laws.

It should be stressed that the classification programs described in this report are relatively new and untested. None as yet has been subjected to rigorous evaluation. Even parole guidelines, in operation the longest, have not been fully evaluated, and critics have questioned the extent to which they can meaningfully impact sentencing practices. Criminal justice practitioners, researchers, and policy-makers should keep a close watch on the development and use of these

various instruments in order to distinguish what "works" from what does not. If classification is to be established as a realistic alternative to determinate sentencing, some hard questions must be asked and satisfactorily answered.

SITE VISIT REPORT

DECISION POINT: SENTENCING

SENTENCING GUIDELINES PROGRAM

PHOENIX, ARIZONA

SITE VISIT: June 13 - 15, 1978

INTERVIEWERS: Peggy Smith, Ph.D.
               Garry Kemp

CONTACT PERSON: Peter Anderson
                 Judicial Administrator
                 Court Administrators Department
                 Superior Court of Arizona
                 Maricopa County
                 (602) 262-8575

Overview

In an attempt to reduce disparity in sentencing, the Superior Court of Maricopa County has recently implemented sentencing guidelines to aid judicial decisions. The court has worked closely with the Criminal Justice Research Center in Albany, New York in the implementation of these guidelines. Research in preparation for constructing guidelines began in February, 1977. The court reviewed several alternative models before the use of sentencing guidelines was approved in January, 1978, and implementation took place the following April. Although analysis of research data is ongoing, judges feel the guidelines are a useful information tool in reaching their objective of reducing sentencing disparity. The sentencing guidelines program has been established in Maricopa County as a cooperative venture between the Superior Court and the Probation Department. The Probation Department is under the supervision of the Presiding Criminal Judge (Goodfarb) of the Superior Court.

Organizationally, the Superior Court of Maricopa County is under the Supreme Court of Arizona. Superior courts in Arizona are established in each of the 14 counties. Each superior court has its own rule-making power and operates independently of any other formal organization. The State Court of Appeals acts as a buffer between the Supreme and Superior Courts. All initial appeals in criminal cases, except where a capital sentence has been handed down, are handled at the Court of Appeals level; capital sentences are appealable directly to the Supreme Court. Figure 1 shows the relationship between each of the State Courts.

The Superior Court of Maricopa County is the court of highest trial jurisdiction, handling civil cases over $500 and criminal cases where jurisdiction is not otherwise provided by law. Within the court there are 37 divisions; each division is presided over by its own judge and falls within a general category depending on the nature of the cases handled. The categories are shown in Table 1:

Table 1
Superior Court Categories

	Number of Judges
Criminal	10
Juvenile	2
Probate	1
Domestic Relations	5
Special Assignments	1
Civil	18
	37 Total

FIGURE 1

ARIZONA STATE COURT STRUCTURE

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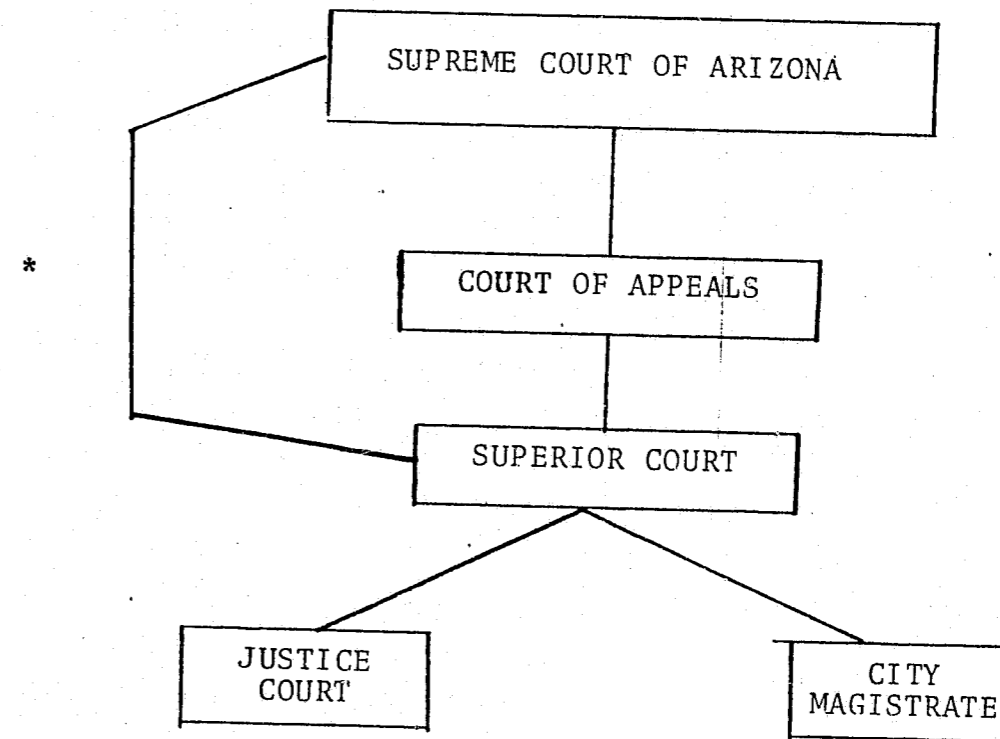
*Direct appeal to the supreme court involving those criminal actions for which a sentence of death or life imprisonment has been imposed

The ten courts within the criminal division are administered by a pre-siding judge and nine other trial court judges. Each trial court judge, while autonomous in many respects, is functionally responsible to the presiding criminal judge and ultimately responsible to the Presiding Judge of the Superior Court. Funding for the Superior Court is provided primarily by the county, which furnished 90% of the budget. The other 10% (which amounts to 50% of the judges' salaries) is supplied by the State of Arizona. The other 50% of the judges' salaries and all other court operating expenses are covered by funding from the county.

The primary decision made by a Superior Court judge in the Criminal Division once a defendant has been convicted, is whether to incarcerate or to place the individual on probation. During 1977, there were 3,722 defendants sentenced. Of this number, 2,587 (69.5%) were felony adjudications and 1,135 (30.5%) were misdemeanors. Sentencing outcomes indicate that of all defendants sentenced during 1977, 2,649 (71.1%) received probation. Of the remainder, only 659 (17.7%) went to prison, 169 (4.5%) were sentenced to county jail, while an additional 245 (6.6%) received some unspecified type of sentencing outcome.[1]

A comparison of 1976 and 1977 sentencing patterns shows that there has been an increase in the proportion of persons who have received probation, rather than some other disposition. In 1976, 2,338 defendants received probation while 1,197 received other dispositions--a ratio of approximately 2 to 1. In contrast, 1977 data show that 2,649 persons received probation while 1,073 were given other dispositions--a ratio of about 2.5 to 1. These figures demonstrate an increase of roughly 25% in the proportion of cases receiving probation in 1977 as compared to 1976.[2]

Probation Intake Supervisors complete the sentencing guidelines data sheet after the presentence investigation is complete. The scored data sheet is then presented to the judge who passes sentence. Once a defendant is sentenced, he/she is either incarcerated or released under the supervision of the probation department. Figure 2 illustrates the risk assessment decision process:

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1. Adult Probation Dept., Superior Court of Maricopa County, 1977 Annual Report, p. 11.

2. Adult Probation Department, loc. cit.

Figure 2
Risk Assessment Decision Process
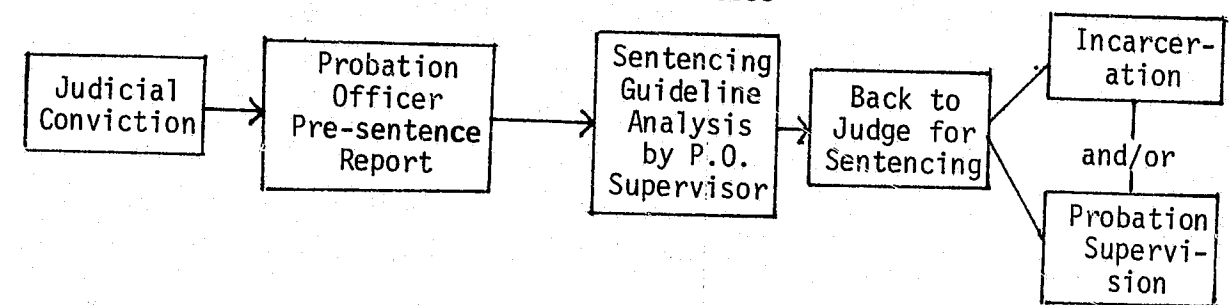
The Instrument and Its Development

Three different scoring instruments are used for three different categories of crimes--violent offenses, property crimes, and drug offenses (see Appendix A). All three instruments have both an offense score and an offender score, although there are slight variations in the offense score for each of the three types of crimes. For each instrument, the offense score includes an offense rank and the number of criminal events. In addition, violent crimes are scored for injury to victim and drug offenses are scored for type of drug. The offender score is the same for all crimes and includes the following variables:

- Legal Status at Time of Offense

- Prior Juvenile Convictions

- Prior Juvenile Incarcerations

- Prior Adult Convictions

- Prior Adult Convictions Against-the-Person

- Prior Adult Incarcerations

- Employment Status

Because the variables used are defined so precisely, the instrument does not permit discretionary judgments on the part of the evaluators.

The sentencing grids, shown in Appendix B, were constructed from research performed by the Criminal Justice Research Center (CJRC) in Albany, New York. The compilation of data reflecting past sentencing patterns was conducted by CJRC research staff in Phoenix by reviewing probation department records for both predictor variables and sentencing outcomes. The construction sample consisted of approximately 2,000 offenders sentenced during 1976. AJI staff were unable to obtain a demographic breakdown of the sample.

CJRC selected 97 predictor variables shown to have predictive value in earlier studies for model construction. These predictor variables focus primarily on criminal record and social history. Criterion variables are used for sentencing "in-out" decisions and length of sentence.

The CJRC Albany staff performed a regression analysis and selected those variables with the highest predictive accuracy for the "in/out" decision. If a variable was present in the decision to incarcerate, scoring was established as 0 or +1. Several potential models were constructed for each of the three types of offenses and presented to the judges. These models represented predictive accuracy ranging between 78% and 89%.

The judges, however, expressed several concerns regarding the models presented. First of all, they felt the models were overly simplistic, presenting too few variables and leaving out several other important variables, such as injury to victim and sex crimes with children. Some judges were also concerned that the models appeared to represent externally-imposed criteria, rather than representing actual sentencing considerations of the Phoenix bench. A number of additional relevant variables were proposed by the criminal judges, and the Albany CJRC staff then constructed 18 additional models with varying predictive accuracy, based on the judges' suggestions.

Subsequently, the judges selected those models which included the variables which they believed to accurately reflect the most important concerns of the Phoenix courts. Even though predictive accuracy was slightly reduced, the judges felt these variables were too important to exclude. Thus, the final selection represented a series of compromises between those variables the Albany CJRC staff found to have the highest statistical predictive accuracy, and those variables the criminal judges believed to have the most impact on their sentencing decisions.

Offender scoring consists of adding points (+1) for variables which represent higher "risks." Severity of offense scales were constructed by asking the pre-

siding judges in the criminal court to rank the most frequent offenses by order of severity. The basic rank is augmented by a point which is added for additional offenses and injury to victim. The range of possible scores for severity of offense is 1 to 6; the range of possible offender scores is -1 to 8. The resultant grids for the three separate types of offenses each contain from 45 to 50 cells (see Appendix B). Although data were not available on the number of cases in the construction sample which fell within each cell of the respective grids, it appears that on the average only 10 to 12 cases would have fallen within most cells. Probability laws suggest that some cells may have had even fewer cases.

The model grids are being used by judges currently, and data are being compiled both on the predictive accuracy of the grids, and the extent of departure from the grids in sentencing decisions. The first computer printout after the first two months of implementation indicates that judges' in/out decisions conformed to grid guidelines 87% of the time. However, the length of sentence imposed fell within the guidelines only 27% of the time. The research staff will continue to compile data on the extent of conformity and departures. Although the proposed models were tested by CJRC staff against a validation sample, the size and sampling techniques were unknown to AJI site-visit personnel.

Implementation

Sentencing guidelines have been introduced in Maricopa County in an attempt to reduce sentencing disparity. Traditionally, the State of Arizona has adopted a conservative stance in punishing criminal offenders by incarcerating a high ratio of defendants. Public discussion and media publicity have focused on concern over protecting the personal and property rights of citizens. Using political debates over the construction of a new state penal code as a vehicle, Maricopa County began to explore the feasibility of sentencing guidelines as a means of structuring judicial decisions. Since the guidelines research was begun, the legislature has enacted a new criminal code which amounts to presumptive sentencing. This code will force judges to sentence in a manner congruent with community expectations. At this time, there are many unanswered questions about the implementation of the new criminal code and its impact on sentencing guidelines. In

any event, guidelines were implemented after political debate had provided the impetus for formulating appropriate sentencing patterns.

Research leading to the construction of guidelines was initiated after Judge Broomfield, Presiding Judge of Superior Court, learned of experimentation with sentencing guidelines by CJRC in other jurisdictions. Following several meetings between CJRC staff and the judiciary, the judges authorized CJRC to proceed with research on past sentencing patterns and to develop several alternative sentencing models. Research began in February, 1977 with a CJRC analyst reviewing probation files on-site in Phoenix. Upon conclusion of the research, CJRC presented several sentencing models to the court in October, 1978. As described above, judges expressed concerns about the proposed models which did not fit their perceptions of the most important criteria. After a series of negotiations and construction of alternative models, the judges approved the use of sentencing guidelines which they believed incorporated their most important concerns. Guidelines and sentencing grids were finally approved in January, 1978 and implemented in April of the same year.

The judges interviewed during the site visit were highly supportive of sentencing guidelines and saw them as a valuable information tool not previously available. There was little concern over limiting judicial discretion--perhaps because guidelines are used only as an information tool, and perhaps because the new criminal code will probably limit judicial discretion far more than sentencing guidelines.

Some resistance to the use of guidelines was noted from probation administrators however, and a number of questions that needed to be resolved were raised by probation officers during implementation. Probation officers generally believe that their recommendations in the presentence report are far better indicators of risk since they reflect professional judgment rather than quantitative scores. In point of fact, the interviewed judges indicate they rely heavily on the recommendation of the presentence report. Presiding Judge Goodfarb stated that probation officers are "our eyes and ears." At the present time, both the officer's presentence report and the guidelines data sheet are presented to judges who may then depart from guidelines decisions if they feel it is warranted.

Research expenses for construction of guidelines were paid by CJRC. However, there were also some costs of implementation assumed by the court in the form of time spent by judges and probation supervisors. It is not know what research and

implementation costs were incurred by CJRC, although it is known that funding for technical assistance on the sentencing guidelines project has since expired.

The fact that there is a high rate of concordance (87%) with "in/out" decisions, but only 27% agreement on length of sentence, suggests that judges may not yet be seriously consulting guidelines recommendations in sentencing decisions. However, the judges are cooperating in submitting reasons for departure. It is intended that these data will be used to adjust guideline times to reflect current sentencing patterns.

There have been no legal challenges to the use of sentencing guidelines, and none are anticipated since the scores and grids are used merely as an information tool and do not limit judicial discretion. Overall, it appears that guidelines were implemented in Phoenix without much of the political opposition that has accompanied their initiation elsewhere. The ultimate success or failure of the guidelines experiment will be largely dictated by the implementation of the recently enacted new criminal code.

Screening and Decision Processes

Two Adult Probation Supervisors responsible for the presentence investigation staff compute screening scores. The decision to delegate screening tasks to two supervisors rather than line officers was based on four considerations. The first of these was the desire to maximize consistency in screening. Second, training two supervisors was less time-consuming than training 16 line officers. Thirdly, line officers already complained of too much paperwork, and finally, the screening process needed to be separated from the preparation of presentence reports so that the reports would not reflect or be biased by the screening scores. Each of the two supervisors performs screening in the process of reviewing presentence reports prepared by line officers. Approximately 5% of their time is devoted to this task, and the remainder of their time to ordinary supervision of eight line officers who prepare investigative reports.

The primary information source used in screening is the presentence report prepared by line probation officers. However, the presentence report itself relies on additional sources, including an interview with the defendant, rap sheets of prior records, and the police report of the instant offense. In addition, the probation officer seeks collaborative community contacts with family, employer,

and social service agencies in order to verify client-supplied information. The presentence report follows a standardized format and includes the following information: criminal record (both current offense and prior record); defendant statement of circumstances surrounding the offense; social history (obtained from the interview); statements of victims and interested parties (included when applicable); and finally, the probation officer's discussion, evaluation, and recommendation for disposition. This standardized format makes information readily accessible for screening purposes.

The screening information most frequently unavailable is the offender's juvenile record. For defendants over the age of 23, juvenile records are never available. If the defendant is under age 23, Arizona juvenile records are accessible, providing the agency knows about the record. Juvenile records from other states are usually unavailable. The primary source of juvenile record, then, is defendant-supplied information which is of questionable validity at best. Furthermore, when a defendant supplies juvenile record information, it works to his disadvantage by scoring points against him. When a juvenile record is not available, that category is scored zero which works to the defendant's advantage.

Screening occurs in the supervisor's office and takes about four minutes. Approximately 300 cases are screened per month by the two supervisors, or about 35 to 40 per week per supervisor. However, supervisors must receive each presentence report anyway, so that the time added for screening is minimal. Caseload volume creates time pressures on both line officers and supervisors. The presentence report must be filed 48 hours prior to sentencing, which must occur within 30 days. In actuality, line officers have only 13 working days to complete the report. Their case load will include a maximum of five cases per week, with an average of seven to eight hours spent on each investigation including the preparation of the report. Since reports usually reach the supervisor's desk just prior to the required filing date, they ordinarily must complete screening on a daily basis.

Defendants are interviewed by the probation officer and are aware that a presentence report will be prepared and a recommendation submitted to the judge. In fact, defendants supply much of the information. However, they are generally unaware that screening scores will be calculated. Their attorneys may review the presentence report prior to sentencing, and challenge any information. Since the screening scores are attached to that report, attorneys also have access to this

information. However, the public defender's office indicated it does not attach much significance to the screening scores, and defendants appear to be largely uninformed of the scores.

The sentencing guideline data analysis sheets which are filled out by the probation officer supervisors are attached to the presentence report and sent to the judge. Once received, the judge reads the presentence report, examines the sentencing guideline recommendations, and then hands down a sentence. Judges are not required to adhere strictly to the sentencing guideline recommendation; in fact, they are encouraged to go outside the grid if they think it is appropriate. Judges receive feedback on their sentencing decisions from the presiding criminal judge's office and are informed of the extent to which these decisions fall within the grid. Reasons for departure are listed in Appendix C. No feedback is provided to probation personnel.

Results and Impact

Since sentencing guidelines have only been in operation for several months, it is too early to evaluate the impact of the program. The passage of the new criminal code introduces presumptive sentencing, and the future of sentencing guidelines is therefore uncertain. Nevertheless, efforts are underway to combine sentencing guidelines with the new criminal code.

Commentary

The separation of screening from preparation of presentence reports presents some intriguing research possibilities. Mr. Duffy, Chief Probation Officer, estimates that judges follow the recommendations of the presentence report 95% of the time, and sees no change in this pattern since implementation of sentencing guidelines. Judge Goodfarb, presiding judge of the criminal court, confirmed that the presentence report is an essential ingredient in sentencing decisions. Other informants, such as public defenders, also supported the observation that judges attach considerable weight to the presentence report, and relatively little to the sentencing grids. Further research is needed to determine whether judges follow the recommendations of the presentence report more frequently than that of the sentencing grids.

SENTENCING DATA ANALYSIS SHEET--VIOLENT

OFFENSE TYPE (MOST SERIOUS OFFENSE)

VIOLENT
Offense Type

OFFENSE SCORE

A. Inter-Class Rank   _____ +

B. Number of Criminal Events   _____ +
    0 = One
    1 = Two or more

C. Injury to Victim(s)   _____ =
    0 = No injury or minor injury
    1 = Injury requiring hospitalization; death;   ┌────────┐
        rape; sexual molestation of child   │   │
                                                          └────────┘
                                                          Offense
                                                          Score

OFFENDER SCORE

A. Legal Status at Time of Offense   _____ +
    0 = Not under State control
    1 = Under State control

B. Prior Juvenile Convictions   _____ +
    0 = None
    1 = One or more

C. Prior Juvenile Incarcerations (Over 30 Days)   _____ +
    0 = None
    1 = One or more

D. Prior Adult Convictions   _____ +
    0 = None
    1 = One or more

E. Prior Adult Convictions Against-the-Person   _____ +
    0 = None
    1 = One or more

F. Prior Adult Incarcerations (Over 30 Days)   _____ +
    0 = None
    1 = One or more

G. Employment Status   _____ =
    -1 = Part/full-time employment   ┌────────┐
     0 = Unemployed   │   │
                                                         └────────┘
                                                         Offender
                                                         Score

---

SENTENCING DATA ANALYSIS SHEET--PROPERTY

OFFENSE TYPE (MOST SERIOUS OFFENSE)

PROPERTY
Offense Type

OFFENSE SCORE

A. Inter-Class Rank   _____ +

B. Number of Criminal Events   _____ =
    0 = One   ┌────────┐
    1 = Two or more   │   │
                                                          └────────┘
                                                          Offense
                                                          Score

OFFENDER SCORE

A. Legal Status at Time of Offense   _____ +
    0 = Not under State control
    1 = Under State control

B. Prior Juvenile Convictions   _____ +
    0 = None
    1 = One or more

C. Prior Juvenile Incarcerations (Over 30 Days)   _____ +
    0 = None
    1 = One or more

D. Prior Adult Convictions Not Against-the-Person   _____ +
    0 = None
    1 = One or more

E. Prior Adult Convictions Against-the-Person   _____ +
    0 = None
    1 = One or more

F. Prior Adult Incarcerations (Over 30 Days)   _____ +
    0 = None
    1 = One or more

G. Employment Status   _____ =
    -1 = Part-time or full-time employment   ┌────────┐
     0 = Unemployed   │   │
                                                         └────────┘
                                                         Offender
                                                         Score

SENTENCING DATA ANALYSIS SHEET--DRUGS

OFFENSE TYPE (MOST SERIOUS OFFENSE)

DRUGS
Offense Type

OFFENSE SCORE

A. Inter-Class Rank _____ +

B. Description of Drug Involved _____ +
    -1 = Cannabis or drugs listed in Dangerous
         Drug Act (632-1901 and seq.)
     1 = Drugs listed in Uniform Narcotics Drug
         Act (sec. 36-1001 and seq.)

C. Number of Criminal Events _____ =
    0 = One
    1 = Two or more

Offense
Score

OFFENDER SCORE

A. Legal Status at Time of Offense _____ +
    0 = Not under State control
    1 = Under State control

B. Prior Juvenile Convictions _____ +
    0 = None or one
    1 = Two or more

C. Prior Juvenile Incarcerations (Over 30 Days) _____ +
    0 = None
    1 = One or more

D. Prior Adult Convictions _____ +
    0 = None or one
    1 = Two or more

E. Prior Adult Convictions Against-the-Person _____ +
    0 = None
    1 = One or more

F. Prior Adult Incarcerations (Over 30 Days) _____ +
    0 = None
    1 = One or more

G. Employment Status _____ =
    -1 = Full or Part-time employment
     0 = Unemployed

Offender
Score

VIOLENT

Offender Score

Offense Score	-1	0	1	2	3	4	5	6	
5	120-144 144-180	156-204 210-270	156-204 210-270	180-223 300-360	180-228 300-360	204-276 360-420	204-276 360-420	204-276 360-420	minimum (in months) maximum (in months)
4	10-12	10-12	60-72 96-120	60-72 96-120	60-72 96-120	108-120 144-180	120-144 300-360	120-144 300-360	
3	5-7	10-12	10-12	60 60-72	60 60-72	60-72 96-120	60-72 120-144	120-144 180-216	
2	OUT	OUT	2-4	10-14 21-27	21-27 30-42	21-27 42-54	30-42 51-69	30-42 51-69	
1	OUT	OUT	OUT	OUT	OUT	OUT	7-9	8-10	

SENTENCING GRIDS

APPENDIX B

PROPERTY

Offender Score

Offense Score		-1	0	1	2	3	4	5	6	
	6	OUT	OUT	4-6	30-36 48-60	30-36 48-60	30-36 48-60	42-54 60-72	42-54 60-72	minimum (in months) maximum (in months)
	5	OUT	OUT	OUT	24 30-36	24 30-36	30-36 48-60	30-36 48-60	30-36 48-60	
	4	OUT	OUT	OUT	12-15 24-36	12-15 24-36	30-36 48-60	30-36 48-60	30-36 48-60	
	3	OUT	OUT	OUT	4-6	8-10	12 24	12-15 36-48	12-15 36-48	
	2	OUT	OUT	OUT	OUT	4-6	10-12	10-12	10-12	
	1	OUT	OUT	OUT	OUT	4-6	10-12	10-12	10-12	

DRUGS

Offender Score

Offense Score	-1	0	1	2	3	4	5	6	7	
5	6-8	6-8	6-8	10-12	60 60-72	60 60-72	60-72 120-144	60-72 120-144	60-72 120-144	min. max.
4	6-8	6-8	6-8	10-12	48-60 60-72	48-60 60-72	60-72 120-144	60-72 120-144	60-72 120-144	
3	1-3	2-4	4-6	6-9	48-60 60-72	48-60 60-72	48-60 60-72	48-60 60-72	48-60 60-72	
2	OUT	OUT	OUT	6-9	24 48	24 48	48-60 60-72	48-60 60-72	48-60 60-72	
1	OUT	OUT	OUT	OUT	OUT	OUT	4-6	4-6	4-6	
0	OUT	OUT	OUT	OUT	OUT	OUT*	4-6	4-6	4-6	

*Weekends

SENTENCING GUIDELINE DEPARTURE REASONS

001   APO recommendation
002   Mens Rea-dulled by Alcohol and/or drugs
003   No prior criminal record (or) 1st offense in a long period of time
004   Extent of prior criminal record-lengthy
005   Stipulated sentence/plea agreement
006   Defendant dangerous/violence used
007   Circumstances surrounding crime were aggravated/vicious
008   Circumstances surrounding crime were mitigating
009   Following statutory recommendation
010   Age of defendant
011   Sentence should serve as deterant
012   Age of case-defendant clean since arrest
013   Small amount of drug
014   Large amount of drug
015   Psychiatrist recommendation
016   Danger to society
017   Defendant remorseful
018   Defendant employed/going to school
019   Defendant has mental problem; not responsible for actions,
       retarded, easily persuaded, emotionally distressed
020   Health of defendant
021   No legal means of getting defendant to ASH
022   Defendant depraved, disadvantaged (no parental guidance,
       hard knocks, etc.)
023   Defendant has good background, good potential
024   Defendant is addict/alcoholic
025   Defendant needs help
026   Defendant is not dangerous
027   Data sent range too harsh or too light
028   Defendant has a bad attitude; disrespectful; found in
       contempt of court
029   Rehabilitation will work rather than ASP/good candidate for
       rehabilitation
030   Defendant would have received stiff sentence but victim will receive
       restitution
031   Crime involved land fraud
032   Defendant chose prison to probation
033   Everyone involved recommendation
034   Defendant was a snitch/cooperated with government
035   Frequent sale of drugs/defendant is pusher
036   Charge defendant is sentenced on is a reduced charge-
       defendant will only serve half the time, etc.
037   Defendant is sex pervert/has prior sex offense
038   Defendant just released from ASP/MCJ and has committed another crime
039   Sentence and time served=suggested sentence
040   Defendant to pursue drug program
041   Defendant is residing out of state
042   Probation won't work
043   County attorney recommendation
044   Defendant pregnant/has young dependants

SITE VISIT REPORT

DECISION POINT: SENTENCING

CALIFORNIA COMMUNITY RELEASE BOARD

SACRAMENTO, CALIFORNIA

SITE VISIT: August 7 & 8, 1978

INTERVIEWER: Marvin Bohnstedt, Ph.D.

CONTACT PERSON: Mary Lou Fenili
                 Assistant Legal Counsel and
                 Program Manager
                 Disparate Sentence Review

                 Tele: (916) 445-4071

Overview

The California Community Release Board (CRB) serves four major functions: (1) to operate as a parole board for those sentenced to prison under the former Indeterminate Sentence Law (ISL) and those sentenced to life terms with the possibility of parole, (2) to hear parole violation cases and revoke parole where appropriate, (3) to conduct reviews of all commitments to state prison under the Determinate Sentence Law (DSL) to determine whether the sentence imposed is disparate, and (4) to investigate and make recommendations to the Governor on applications for executive clemency. The third function is the main concern of this paper. California Penal Code Section 1170 (f) mandates that the CRB review all DSL sentences assigned to state prison to identify disparity, defined by the Attorney General as a "substantial difference" between the subject sentence and sentences imposed on other offenders committing the same crime under similar circumstances [60 Cal. Ops. Atty. Gen. 143 (1977)].

The CRB looks for disparity in each of the following exercises of judicial discretion: (a) denial of probation, (b) imposition of the upper or lower term, (3) imposition of concurrent or consecutive sentences, and (d) imposition of enhancements. "Upper or lower term" and "enhancements" require explanation. Under the DSL, most felonies carry a punishment of a determinate "range" which specifies three periods of incarceration. The ranges are 16 months; 2 or 3 years; 2, 3, or 4 years; 2, 3, or 5 years; 3, 4, or 5 years; 3, 4, or 6 years; 3, 4, or 6 years; 3, 5, or 7 years; 3, 6, or 8 years; 5, 7, or 9 years; and 5, 7, or 11 years [P.C. § 1170 (a) (2)]. The judge must impose the middle term, unless circumstances in aggravation (upper term) or mitigation (lower term) are found and stated on the record [P.C. § 1170 (b)]. The base term--upper, middle, or lower-- may be increased by the imposition of additional terms for enchancements. The enhancements are specific to the crime (being armed with or using a firearm, using a deadly weapon, inflicting great bodily injury or great loss), or general to the defendant (prior prison terms and consecutive/concurrent sentences).

The CRB is presently a component of the Health and Welfare Agency. On July 1, 1979, it is expected to become part of a "correctional services agency," along with the Department of Corrections, the Correctional Industries Commission, and the Youth Authority. Board members are appointed by the Governor who designates one member as the chairman. The Executive Officer directs the civil service staff.

The internal organization is depicted in Figure 1.

The Board employs 106 personnel, including the nine board members, 45 hearing representatives, and various other legal, investigative, and support staff. The funding for these positions and other CRB responsibilities is provided by the state General Fund following the usual budgeting pattern for state agencies.

CRB personnel interact with a wide variety of criminal justice agencies. They assist judges, district attorneys, defense lawyers, and probation officers with sentencing issues, and work with local law enforcement agencies in the parole revocation process. The Board receives legal advice and representation from the Attorney General's Office. It also exchanges information with the Judicial Council, a constitutional body which provides rules for the courts, including rules to assist judges in exercising discretion under the DSL.

Approximately 700 DSL cases were received in state prison between July 1, 1977 when the DSL went into effect, and December 1977. The majority of cases received during this period were still being sentenced under the indeterminate sentencing law, since the date of the conviction offenses, and not the date of sentencing, determines which law applies. The CRB initially expected to review about 8,000 cases annually, but it now appears the Board may be reviewing 10,000 to 12,000 cases annually. Part of the increase may be a function of Proposition 13, the California tax cut initiative, since county administrators may be asking judges to send more cases to prison because local budgets have been reduced.

In addition to the cases committed to prison, the CRB will analyze a sample of cases granted felony probation. This analysis will provide a standard for determining disparity in the denial of probation. The sample probation cases will not be otherwise reviewed by the CRB.

The main decision the Board makes at present is whether or not a sentencing decision is disparate. If the CRB so finds, the chairman will by motion to the sentencing court recommend recall of the commitment to state prison, and resentencing as though no sentence had been pronounced [P.C. § 1170 (f)]. The CRB recommendation carries no compulsion, however, courts may ignore the recommendation or follow it in whole or in part. What will actually happen remains to be seen.

The CRB has one year after "commencement of the term of imprisonment" in which to accomplish the disparity review. The first DSL term began July 8, 1977,

Chairman Community Release Board	Members Community Release Board
Howard Way	Ruth Rushen (V.C.) Raymond C. Brown Robert E. Burton N. A. Chaderjian Frank Coronado Ralph Pizarro Rudolph De Leon Jeanne Sides

Executive Officer

Gary D. Macomber

Chief Counsel
Brian Taugher

Legal Counsel
Joan Cavanagh
Steve Green

Disparate
Sentence Project
Mary Lou Fenili
Jean Briscoe

Supervising Special Investigator
Richard Washington

Sacramento Unit
Louis Dentici
Herbert Greene
Ira Greenstein
Hugh Owsley

Los Angeles Unit
Osie Walton
Grant Lawrence
Jim Friesel

Chief Representative
Robin Dezember

CRB Representatives
45 Positions

Decision Review
Joe Crow

Cen. Off. Calendar
Paul Chamlee
Dale Moore

Appeals Unit
Hearing Rep.
Cathy Neff

Scheduling Unit
June Crow
Sue Eilts

Support Services
Glen Babby

Management Analysis
Beulah Hayward

Central Office
Clerical Support
Alice Tufts

Figure 1
COMMUNITY RELEASE BOARD ORGANIZATION CHART

Approved: _[signature]_ Howard Way, Chairman   2-1-78   Updated: 4-19-78

with the first review due one year later. Only a few cases had become due at the time of this site visit. The CRB is conducting the disparity review as late as possible within the one-year mandate in order to accumulate as many cases as possible on which to construct a model.

At the time of the site visit, the CRB was borrowing heavily from the results of the Sentencing Guidelines Study (Wilkins, Kress, Gottfredson, Calpin, and Gelman, 1976) in establishing temporary disparity standards. These standards are being developed for 8 to 10 offense groups on the basis of multiple regression analysis. As more cases are accumulated, more sophisticated statistical techniques will be employed. The Board also intends to use a wider range of variables than they are now using in the relatively crude, interim instruments. The more elaborate analysis requires extensive coding of information from case records, but coders could not be hired until October because of the hiring freeze imposed by the Governor following the passage of Proposition 13.

The Instrument and Its Development

The "interim report," or temporary coding document, contains 29 factors including information about the court's disposition, the loss sustained, victims, weapons, offender age, prior records, use of intoxicants, education, etc. Coding forms for the more complete analysis contain 156 variables, including the 29 mentioned above, but going into much greater detail on each topic. Source documents for the coding are (1) presentence reports, (2) "rap sheets," (3) statements filed by attorneys prior to sentencing hearings, (4) transcription of sentencing hearings, and (5) charging documents.

The more sophisticated statistical analysis will include interactive, hierarchical analysis programs, such as the AID program developed by the University of Michigan Survey Research Center and used by the Michigan Department of Corrections in constructing their inmate classification instruments. An initial analysis will be conducted on a limited number of cases available at the outset of the project. In addition,

> . . . as a larger group of offenders is committed under the DSL, the
> criteria used to classify cases can be expanded to permit more refined
> groupings . . . this reanalysis and redefinition of classification
> criteria will be performed periodically, perhaps on either a semiannual

or annual basis. This analysis will include only the cases
that were sentenced within a specific period [probably one year]
previously. Again derivation of new classificatory criteria
will require modification of parameters in the computer program.
(System Design Document, 1978)

The objective is to make the review standards sensitive to systematic changes
in sentencing practices among the California judiciary as a whole. Results
of each new analysis will then be used to modify the "parameters" that are
used in measuring disparity.

The system design document indicates that coders will be provided detailed
code-books and will be thoroughly trained and supervised. It also explains
how periodic checks will be made on inter-coder and intra-coder reliability.
However, construction and validation samples are not mentioned as they apparently
are not planned.

Format of the instruments had not been determined at the time of the site
visit, but it was anticipated they were likely to resemble the Wilkins, et. al.,
Sentencing Guidelines, consisting of one or more matrices or grids. The Sentenc-
ing Guidelines grids consist of two dimensions: (a) the "salient factor score"
which assesses offender characteristics and prior record, and (b) a seriousness
of current offense scale. These two measures are used in a matrix much like a
road map mileage table, only instead of locating two cities and reading the mile-
age between them, one locates the salient factor score and the offense serious-
ness and then reads the sentence at the intersection of the two axes. A more
complete description of Sentencing Guidelines is presented in three of our site
visit reports describing guideline use in Denver, Philadelphia, and Phoenix
courts. While the Wilkins, et. al., Sentencing Guidelines are used during the
actual sentencing, the CRB instrument(s) will be used for reviewing sentences
after the fact. Nevertheless, the objectives at the time of the site visit
were identical--to determine what sentence the "usual case of this type" should
receive.

Between the time of the site visit and the preparation of the final draft
of this report, the CRB has refined its approach. The statistical design des-
cribed above will still be used to study the denial of probation and selection
of the base term, but additional analysis will be applied to the question of the
imposition or striking of additional punishment for enhancements, both specific
and general. For example, all cases in which use of a firearm had been pled and

proven.

This process will result in an instrument different from the others dis-
cussed in this study. The Board does not intend to construct sentencing guide-
lines for use by the courts since this is the prerogative of the Judicial Council,
should that body decide that guidelines would be desirable for increasing uni-
formity in sentencing. Furthermore, the Board will be reviewing cases on a
quarterly basis and may change standards from quarter to quarter. As a result,
the CRB instrument will be different from others in this study despite some metho-
dological similarities.

Implementation

The costs for developing and implementing the review process are being
borne by the state General Fund. They include: (a) 76% of the salary of an
Assistant Legal Counsel since August 1977, (b) 100% of the salary of a Correction-
al Case Records Administrator since January 1978, (c) 10 days per month consult-
ing costs for the 1977-78 fiscal year, (d) part-time, work-study students since
June 1978, and (e) employment since July 1978 of five Program Technicians, a
Supervising Program Technician, and a Correctional Case Records Manager. Start-
up costs were estimated at $500,000 in an unsuccessful proposal submitted to the
Office of Criminal Justice Planning, California's conduit for LEAA funds.

Screening and Decision Process

In the disparate sentence review process, the CRB is looking at the offender's
actual behavior during the offense episode, as well as the offense title for which
the person was convicted. In other words, if the offender accepted a plea bargain
and was convicted of a lesser offense than that charged, the review would compare
the circumstances of the offense with those of a case which involves similar cir-
cumstances. The CRB believes it must look at the actual circumstances of the
offense in order to understand sentencing practices because judges know the "real
facts," not merely the legal facts, at the time of sentencing. As a result, a
judge might accept a reduced plea, but impose the upper term for the lesser offense
because of the seriousness of the actual behavior.

The CRB will be using the abstract of judgment, the "rap sheet," the probation officer's report, the charging documents, and the transcript of proceedings at the time of sentencing as the major source documents for the review. The probation officer's report is the primary source of factual information regarding the actual offense behavior.

The CRB realizes that the entire process will be subject to careful scrutiny from inception to the final decision regarding the disparity of a sentence. Accordingly, the CRB is being very thorough in developing the process. The Board has obtained the Attorney General's opinions and hired an outside consultant in the early stages of developing the process in an effort to establish a procedure that is legally and methodologically sound.

There are four sources of variation in sentences: technical errors in computing the term, differences in the exercise of prosecutorial discretion, inequities in legal definition of crimes, and differences in the exercise of judicial discretion in sentencing. Only the last of these variation sources is defined as disparity. Judicial discretion then, is scrutinized according to the following four steps in the review process: data collection, data analysis, initial review, and final review.

These steps are illustrated in flow charts presented in Appendix A, and generally consist of the following activities. (1) During data collection, a factual profile of the offender and offense is developed. This includes "what really happened in the offense" (as described above) as well as his or her criminal and social history. (2) Data analysis may involve classifying the case by term length, type of offense, or a combination of the two, and then applying statistics to determine which cases are variant. Term length classification consists of combining all offenses with identical term ranges (low, middle, or high, such as 2-3-4 years). Offense classification might include categories such as homicide, violence, sex, property, etc. The data analysis portion of the process is computer assisted. (3) The initial review involves determining whether a variant sentence is the result of judicial discretion. This step is accomplished by examining the source documents, applying the Judicial Council Rules, and considering reasons given by the judge in pronouncing sentence. (4) In the final review, a decision is made as to whether the sentence is disparate and, if so, whether to recommend recall and resentencing. This step requires another examination of source documents, Judicial Council Rules, and reasons for sentencing decisions. If the

Board decides to recommend recall, a formal motion is filed in the Superior Court. Sentences which are too severe are correctable by the court; sentences which are too short are not. [P.C. § 1170 (d)].

Results and Impact

The Legislature passed the DSL and charged the Community Release Board with sentence review in an effort to promote uniformity and reduce disparity in sentences to state prison. As yet only a small number of cases have been reviewed, and none have been returned to court for resentencing because of disparity. Therefore, the review process has not had much impact yet. However, as courts gain more experience in sentencing under the DSL and as information about sentencing practices becomes more readily and frequently available, courts may be expected to sentence with greater uniformity for similar offenses committed under similar circumstances.

What constitutes justifiable variation has yet to be defined. For example, one large contributor to variation in sentences may be the court's geographic location; for similar offenses a court in the rural central valley may impose a more severe sentence than a court in one of the urban coastal areas. The DSL implies that a statewide standard should be applied in the review process. However, it also indicates that "circumstances of the offense" should be considered. Whether geographic location or other factors should be considered circumstances of the offense justifying sentence variation will have to be resolved in the courts.

Commentary

While use of the CRB instrument is in its earliest stage, currently being employed only after the fact of the sentencing decision, it nevertheless is significant as a classification device. As mentioned above, the instrument will probably take on greater significance in the actual sentencing process when the results and impact of disparity review are felt by the courts, the Judicial Council, and the legislature. Even more important, however, is the fact that California, with the most determinate sentencing laws in the United States, still lacks a statistical instrument for classifying cases. This need suggests that jurisdictions with less structured sentencing processes could profitably develop similar instruments

either as alternatives, or as supplements to determinate sentencing legis-
lation if they wish to reduce disparity in sentencing or other criminal justice
decision-making processes. Several jurisdictions are using parole and sentenc-
ing guidelines as an alternative, and the State of California is using an instru-
ment as a supplement to determinate sentencing laws. The California experience
may well establish precedent for other states to follow.

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```
┌──────────┐   State      ┌──────────────┐
│Sentencing│   Prison     │Central Office│
│  Court   │─Commitment──▶│  DSR Unit    │
└──────────┘              └──────────────┘
                                 │
                                 ▼
```

Relevant Source Documents

A) Available in All Cases
  1) Abstract of Judgment
  2) PO Report
  3) Rap Sheet
  4) Sentencing Transcript

B) Available in Some Cases, if Submitted
  1) Statements in Mitigation or Aggravation
  2) Judge's Statement
  3) DA's Statement
  4) Defense Att'y Statement
  5) Law Enforcement Agency Statement
  6) Medical and Psychiatric Reports

C) Helpful, if Available
  1) Charging Documents
  2) Crime Report
  3) Arrest Report

Extrapolation of Factual Data ──▶

Factual Data Bank

1) Crime facts
  a) property
  b) person
  c) sex
  d) drugs

2) Defendant Personal History Facts

3) Defendant Criminal History Facts

(N items of data)

Extrapolation of Key Criteria

Subject Case Key Criteria

(n items)

DISPARATE SENTENCE REVIEW

CRB 1/78

Comparison (Present)

Comparison (Future)

```
Comparison (Present)                          Comparison (Future)

┌──────────────┐   ┌──────────────┐     ┌──────────────┐   ┌──────────────┐
│ Statistical  │   │ Subject Case │     │ Statistical  │   │ Subject Case │
│ Sample Key   │◄─►│ Key Criteria │     │ Sample Key   │◄─►│ Key Criteria │
│ Criteria     │   │              │     │ Criteria     │   │              │
│              │   │ (n items)    │     │              │   │ (kn items)   │
│ (n items)    │   │              │     │ (kn items)   │   │              │
└──────────────┘   └──────────────┘     └──────────────┘   └──────────────┘
```

Comparison (Present):

- Statistical Sample Key Criteria (n items)
- Subject Case Key Criteria (n items)
- No match on $\frac{a}{b}n$ items → No Disparity
- Match on $\frac{a}{b}n$ items → Possible Disparity → Initial Review

Comparison (Future):

- Statistical Sample Key Criteria (kn items)
- Subject Case Key Criteria (kn items)
- No match on $\frac{a}{b}kn$ items → No Disparity
- Match on $\frac{a}{b}kn$ items → Possible Disparity → Initial Review

DISPARATE SENTENCE REVIEW

ORB 1/78

INITIAL REVIEW

Disparate Sentence Review Unit

A) Examination of Relevant
   Source Documents

B) Application of Judicial
   Council Sentencing Rules

C) Application of Statewide
   Sentencing Practices
   Information

No Disparity

Disparity → Final Review

Apparent
Disparity

Rational
Explanation
Not Based
On Sentencing

No Disparity

DISPARATE SENTENCE REVIEW

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FINAL REVIEW

Panel of Two Members
and One Hearing
Representative
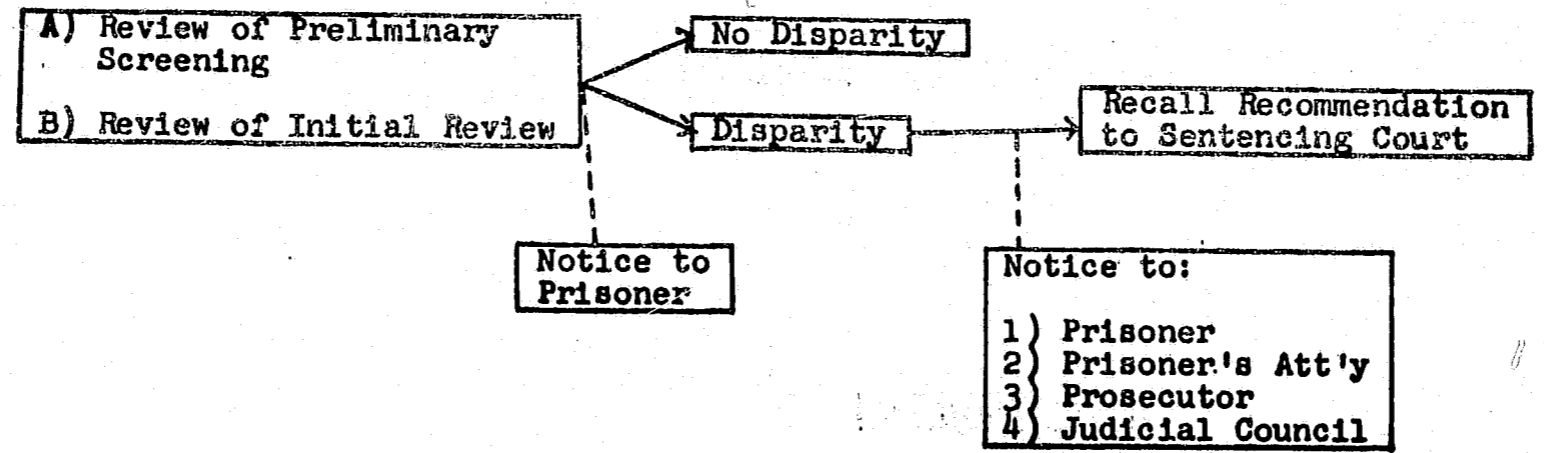
```
┌─────────────────────────┐      ┌──────────────┐
│A) Review of Preliminary │─────▶│ No Disparity │
│   Screening             │      └──────────────┘
│                         │
│B) Review of Initial Review │──┐                    ┌────────────────────────────┐
└─────────────────────────┘   └──────▶┌───────────┐  │ Recall Recommendation      │
         ┆                             │ Disparity │─▶│ to Sentencing Court        │
         ┆                             └───────────┘  └────────────────────────────┘
    ┌──────────────┐                        ┆
    │ Notice to    │            ┌───────────────────────┐
    │ Prisoner     │            │ Notice to:            │
    └──────────────┘            │                       │
                                │ 1) Prisoner           │
                                │ 2) Prisoner's Att'y   │
                                │ 3) Prosecutor         │
                                │ 4) Judicial Council   │
                                └───────────────────────┘
```

DISPARATE SENTENCE REVIEW

CRB 1/78

SITE VISIT REPORT

DECISION POINT: SENTENCING

DENVER DISTRICT COURT

DENVER, COLORADO

SITE VISIT: May 24 - 26, 1978

INTERVIEWERS: Marvin Bohnstedt, Ph.D.
Saul Geiser, Ph.D.

CONTACT PERSON: James Scott
Supervisor
Probation Department
Tele: (303) 575-3518

Overview

The Denver, Colorado, District Court, Criminal Division uses a classification instrument to assist judges in issuing similar sentences for similar cases. This court and others around the county are concerned with the problem of sentencing disparity, but the Denver District Court probably has more experience in combating disparity than any of the other courts that share this concern. Since 1974 the Denver court has actively participated in development and testing of sentence guidelines to help structure the decision-making process. Four other courts in the U.S. are experimenting with similar types of instruments, but none have been involved in the process as long as Denver.

Sentencing guidelines are especially important because they represent a compromise between indeterminate and determinate sentencing. Many state legislatures have passed or are considering passing determinate sentencing laws in part to reduce the disparity associated with determinate sentencing. However, determinate sentencing is as controversial as the indeterminate approach. Everyone concedes that sentencing disparity is a problem that results from indeterminancy, but strict determinate sentencing is viewed by many commentators as insensitive to the particular characteristics of individual cases and overly punitive. The compromise, sentencing guidelines, offers the potential of reducing disparity without invoking the extremes of indeterminate sentencing. Furthermore, the guidelines can be used within existing legislative authority.

The authority and restrictions within which the Denver District Court functions are the Constitution, Statutes, and Supreme Court rules. The six Criminal Division judges (including one woman and one black) are eventually accountable to the Colorado Supreme Court. An organization chart of the state court system is presented in Appendix A.

The Denver District includes approximately 550,000 residents, although the larger metropolitan area includes approximately 1,200,000. The latter figure is significant because individuals residing outside the City often commit crimes within the City and are handled within the Denver District Court. Recently, the population, the economy, and the crime rate all appear to have stabalized after rapid growth during the previous few years.

FY 1975-76 and FY 1976-77 figures show a downward trend in the number of new (court) filings. The increase in number of residents in Colorado increased (sic) only 2.7 percent in these two years (FY 1974-75 to FY 1976-77), compared to the 6.7 percent increase of the prior two year period (FY 1972-73 to FY 1974-75). The financial picture has improved since the recession of 1974, with its attendant inflation. According to the FBI, the reported crime rate per 100,000 people in Colorado is up only 1.6 percent, compared to the previous year's increase of 8.3 percent (Office of the State Court Administrator, 1977, p. 73)

Case filings flow to the courts, of course, from the District Attorney's Office. The Court then has the following five decision options in dealing with its cases.

1 - dismissal
2 - deferred prosecution
3 - deferred judgment and sentence
4 - probation (with various options)
5 - sentence

Court dismissals (option #1) are immediately released, while cases disposed of by options #2-#4 are supervised by the Probation Department. Sentenced cases (option #5) are sent to prison. The only relevant statistics available concerning types of cases handled by the Court are as follows (Office of the State Court Administrator, 1977, p. 106):

TABLE 1

CRIMINAL OFFENSE FILINGS BY TYPE OF OFFENSE FY 1976-77

DENVER DISTRICT

Offense Category	Cases
Offenses Against the Person	368
Offenses Against Property	1,303
Offenses Involving Fraud	215
Offenses Involving Governmental Operations	18
Drug and Narcotic Offenses	386
Misc. Offenses	158
Total Offense Filings	2,448

Table 1 shows that slightly more than half of the cases, or 53%, involve offenses against property. Regardless of offense, guidelines are used in all cases sentenced by the Denver District.

The Instrument and Its Development

The decision instrument consists of a "Guideline Sentence Worksheet" and a series of "Sentencing Grids" presented in Appendices B and C. On the worksheet are items of information and associated weights relating to characteristics of both the crime and the criminal. These weights are totaled separately into an "offense score" and an "offender score", which are then located on the appropriate sentencing grid, determined by the statutory class of offense. By plotting the two scores against each other (much like plotting mileage figures on a road map), one finds the suggested length and/or type of sentence.

Three items of information are added together to comprise the offense score. The first is the intra-class seriousness-rank which ranges from 1 to 4. The second item, the seriousness modifier, is based on injury, weapon usage, or drug sale and ranges from 0 to 2. Third is the victim modifier, scored -1 if the victim was known to the offender and 0 otherwise. The sum of these values is the offense score which ranges from 1 to 6.

Six pieces of information comprise the offender score: current legal status (probation, parole, or escape), plus five aspects of prior record including the number of juvenile convictions, adult misdemeanor convictions, adult felony convictions, adult probation/parole revocations, and adult incarcerations over 30 days. The sum of these six coded values is the offender score, ranging from 0 to 13.

The instrument was developed as part of an LEAA funded project entitled Sentencing Guidelines: Structuring Judicial Discretion (Wilkins, Kress, Gottfredson, Calpin and Gelman, 1976). The initial research began in July, 1974 and concluded in June, 1976. On July 1, 1976, the project moved into an implementation phase which is described in the present report.

In 1974 the pilot phase began when the researchers selected a sample of 200 cases and collected 205 items of information on each defendant from

pre-sentence reports. These variables were analyzed by the multiple regression technique in an attempt to "predict" (after the fact) sentencing decisions. Based on pilot study findings, the researchers developed three "models" of sentencing guidelines, or ways of combining the predictive variables. These models were then tested and compared to determine which one was most effective in predicting 221 actual sentencing decisions. The models were approximately equal in predictive effectiveness, accounting for about 80% of the "in-out" (incarceration or probation) decisions. Moreover, the judges on the Steering and Policy Committee did not seem to favor one model over the others. Consequently, a "synthesis" model incorporating elements of all three pilot models was developed and used in a demonstration phase.

In the demonstration phase a "feedback loop" was developed in order to improve the model's predictive ability and usefulness to the courts. The feedback consisted of providing to the sentencing judges statistical information comparing actual sentences to guideline sentences. This information was then used by the judges to alter the guidelines so that they would better conform to actual sentencing practice. During the demonstration phase, the research team also designed that part of sentencing predictions which determined how long individuals sentenced to incarceration would be held. The demonstration model was validated on 155 cases sentenced between March and April 1976 with the following results:

> In this sample, 12 percent of the cases fell outside of the guidelines on the basis of the 'in-out' decision. An additional eight percent of the cases was considered to have fallen outside the guidelines as a result of an incarceration term which varied by more than one year from the range specified in the guidelines. Thus, 80 percent of the cases in the validation sample fell completely within the guidelines. (Wilkins, et. al., 1976, pp. 81-82).

Implementation

In July, 1976, a slightly modified version of the guidelines was placed into operation. Every six months the judges review guideline vs actual sentence statistics according to the feedback loop described above. The

judges have made changes in the guideline time ranges, but not in variables or weights. They also have altered intra-class ranks slightly to compensate for departures from guidelines.

As mentioned earlier, the courts have employed guidelines attempting to reduce disparity among sentences. This goal may have been achieved in Denver, but to do so statewide would require implementing guidelines in every state court. Some preliminary plans for statewide implementation have been developed, but the actual attempt has not yet been made.

The court considers any type of recidivism a risk, although the offender history variables were developed to predict judges' decisions (sentences), rather than recidivism as such. This approach to prediction, as well as other guideline-policy decisions, was first suggested by the researchers, then deliberated upon, and finally endorsed by a national advisory panel of judges. The concept of "system risk" does apply to these sentencing decisions especially in the case of violent offenders. In other words, the courts are concerned with public reaction if they give a violent offender a relatively light sentence and he or she recidivates.

Screening and Decision Process

Scoring of the worksheet is dependent upon completion of the "pre-sentence" report. Occasionally there is a delay in obtaining pre-sentence data, especially from out of state sources, but the report usually is developed over a period of about four weeks. Actual person hours required for the pre-sentence report are about seven or eight, and the Investigation Unit completes 40-50 reports per week. The data come primarily from court proceedings, district attorney files, and police reports. When the pre-sentence report is finished, the Investigative Unit Supervisor reviews it and then completes the worksheet in just a minute or two based on the pre-sentence information. The worksheet could be done by a clerk, but the Supervisor has to read the case anyway so he fills out the worksheet.

In preparing the pre-sentence report, the probation officer interviews the inmate twice -- first to initiate data collection and later to verify the data subsequently collected. The inmate is not formally notified of the

worksheet, although he or she may be aware of it through the "grapevine". Of course, the inmate is informed that information given to the investigative officer can be used against the inmate, and he or she receives a copy of the pre-sentence report, although without the worksheet.

The guidelines are used in the following manner. At the bottom of the worksheet is a blank labeled "guideline sentence". In this space the Investigative Unit Supervisor copies the appropriate information from the Sentencing Grids. Based on the statutory offense class, he selects one of eight grids (two dimensional tables of values). Then he enters the grid with the offense score and offender score co-ordinates, finding at their intersection the guideline sentence. For relatively less serious offense and offender scores, he finds the designation "out" which signifies a non-incarceration sentence -- usually probation. For more serious offense and/or offender scores, he will find a range of incarceration time. The lowest range in the misdemeanor grids is 2-4 months for one offense/offender combination; the highest range is 20-24 months for another offense/offender combination. In contrast to these misdemeanor "flat sentence" ranges, the felony grids contain two ranges per intersection, a minimum and a maximum. The lowest felony sentence includes a 1-1/2 - 2 year minimum and a 2-1/2 - 3-1/2 year maximum, while the highest felony sentence for a different offense/offender combination is a 17-22 year minimum and a 35-40 year maximum. After the Supervisor finds and copies the appropriate guideline sentence on the worksheet, he sends the case materials to the court.

The sentencing judge then considers the pre-sentence report and the guideline sentence and decides the actual sentence. Since the investigating probation officer develops a sentence recommendation independent of the worksheet, the pre-sentence narrative may or may not agree with the guideline sentence. Consequently, one judge says he uses the guidelines as a "check" on probation recommendation and on his own decision. Regardless of the probation officer sentence recommendation or the guideline sentence, the judge has complete sentencing discretion within statutory limits. In spite of this, if the judge sentences outside the guideline range, he or she is asked to record the reasons for doing so. These reasons are included with the statistical comparisons of actual sentences vs guideline sentences which are fed

back to judges every six months.

Results and Impact

The feedback reports to the judges contain the only results-data currently available. The March 1977 report was based on 482 disposition decisions. These represent 94 percent of the disposition decisions made by the Court during the six month period between April 5, 1977 and September 29, 1977. The excluded decisions were those cases set for re-sentencing which had originally been sentenced prior to guideline implementation. (guidelines are not used for those cases). The amount of agreement between the actual and guideline sentences is shown in Table 2.

TABLE 2

PERCENTAGE OF CASES FALLING
WITHIN THE GUIDELINES

Category	Percentage	Numbers
Within guidelines	74%	359
Longer actual sentences	5%	26
Shorter actual sentences	7%	34
"In/out" disagreement	14%	63
		482

The report comments on these results as follows:

> To date, the guidelines are being followed in a slightly lower percentage of cases than indicated by our previous feasibility research. Most of this deviation has occurred in the 'how long' aspect of the incarcerative sentencing decisions. However, in numerous cases, the term of incarceration was outside the guidelines by only a small period of time. Therefore, it seems likely that these deviations could be greatly reduced if some minor adjustments were made in the range allowed for in the guidelines.

A report issued six months earlier also suggested that "deviation could be reduced if some minor adjustments were made..." (Judicial Department, March 1977).

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At that time only 70% of the cases were within guidelines, compared with the more recent 74%; and in/out disagreement in the earlier report was 14%, compared with the more recent 13%. However, one of the judges we interviewed indicated that the guideline revision process was not being carried out very effectively. Indeed the Albany research group planned 85% agreement between guidelines and actual sentences, and so far only 74% has been achieved.

The amount of disagreement is also pronounced for certain types of cases. Table 3 shows the three offense categories with least agreement in September, and the amount of agreement for those same offense categories six months earlier in March (Judicial Department, September 1977).

TABLE 3

OFFENSE CATEGORIES WITH LOW AGREEMENT
BETWEEN GUIDELINE AND ACTUAL SENTENCE

Category	September		March	
	Agreement	Cases	Agreement	Cases
Assault in the Third Degree	62%	21	47%	17
Robbery	40%	15	36%	11
Aggravated Robbery	15%	13	31%	11

Since agreement between guidelines and sentences is consistently low in these three categories, further adjustment of the guidelines for at least these categories does seem to be in order.

The reasons for sentencing outside guidelines vary considerably, but a few reasons have been given more than others. Table 4 shows the most frequently cited reasons.

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TABLE 4

MOST FREQUENT REASONS FOR

SENTENCING OUTSIDE GUIDELINES

Reasons	Frequency
Mandatory sentence applied	18
Defendant's involvement minimal	17
Recommendation on consent by D.A.	11
Plea	10
Prior record not serious	7
Restitution condition	6
Presently employed	5
Mental problems	5
All other reasons	84

Among the 84 "other reasons", no one reason was mentioned more than four times. Unfortunately, reasons were not presented in the earlier feedback report, so a comparison can not be made. Neither were data reported which would have allowed analysis of the reasons for disagreement according to different types of offense. Nevertheless, much of the disagreement could probably be reduced by adjusting guidelines for these most frequent reasons.

Commentary

One of the most prominent features of the sentencing guidelines is the attitude toward them shared by most of the judges: most magistrates display a reluctance to relinquish any decision-making prerogative. For instance, one judge said his decisions "from the gut" were better than those based on the guidelines, and most of the other judges seemed to agree with this feeling. Yet one jurist said "the amount of discretion available to judges today is appalling." At any rate, the judges may use or ignore the guidelines as they see fit. The only consideration asked of them is to state a reason

if their actual sentence disagrees with the guideline sentence. Thus, considerable sentencing disparity may continue. However, if the Chief Justice of the Supreme Court were to encourage the judges to increase the agreement between guidelines and actual sentences, the amount of disparity might be reduced.

In actuality, the extent to which the guidelines may have already reduced disparity in the Denver District Court is unknown. Comparisons should be made between sentencing before and after implementation of guidelines to measure disparity reduction. These comparisons should be made on the basis of "standard deviations" of sentenced time and proportion of in/out decisions for similar offense and offender score combinations. The data which would allow this type of analysis have already been collected, and a small amount of computer and analyst time would answer this very important question. Unfortunately, the Judicial Department does not have the resources to address this question.

Another issue of significance is the extension of guidelines state-wide. Since the technique seems to be working reasonably well in Denver, it should work in other state courts as well. The Chief Justice approved of a project to extend guidelines statewide, but the expected LEAA funding for the project was not forthcoming. Since the guidelines have already been constructed, it would seem that statewide application would require minimal resources. However, some judges feel that unique guidelines would have to be developed for different locations within the state.

Unfortunately, the whole sentencing guideline concept in Colorado may become an academic one. A determinate sentence law has recently been enacted by the State Legislature. The effective date has been postponed until April of 1979, so the next legislature will have the opportunity to alter the law. Perhaps data concerning the guidelines' reduction of sentence disparity could convince the law makers to rescind the determinate sentence law. Barring any such changes, however, the sentencing guidelines will be defunct next year.

CONTINUED

1 OF 3

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Organizational Chart of the Colorado Judicial System
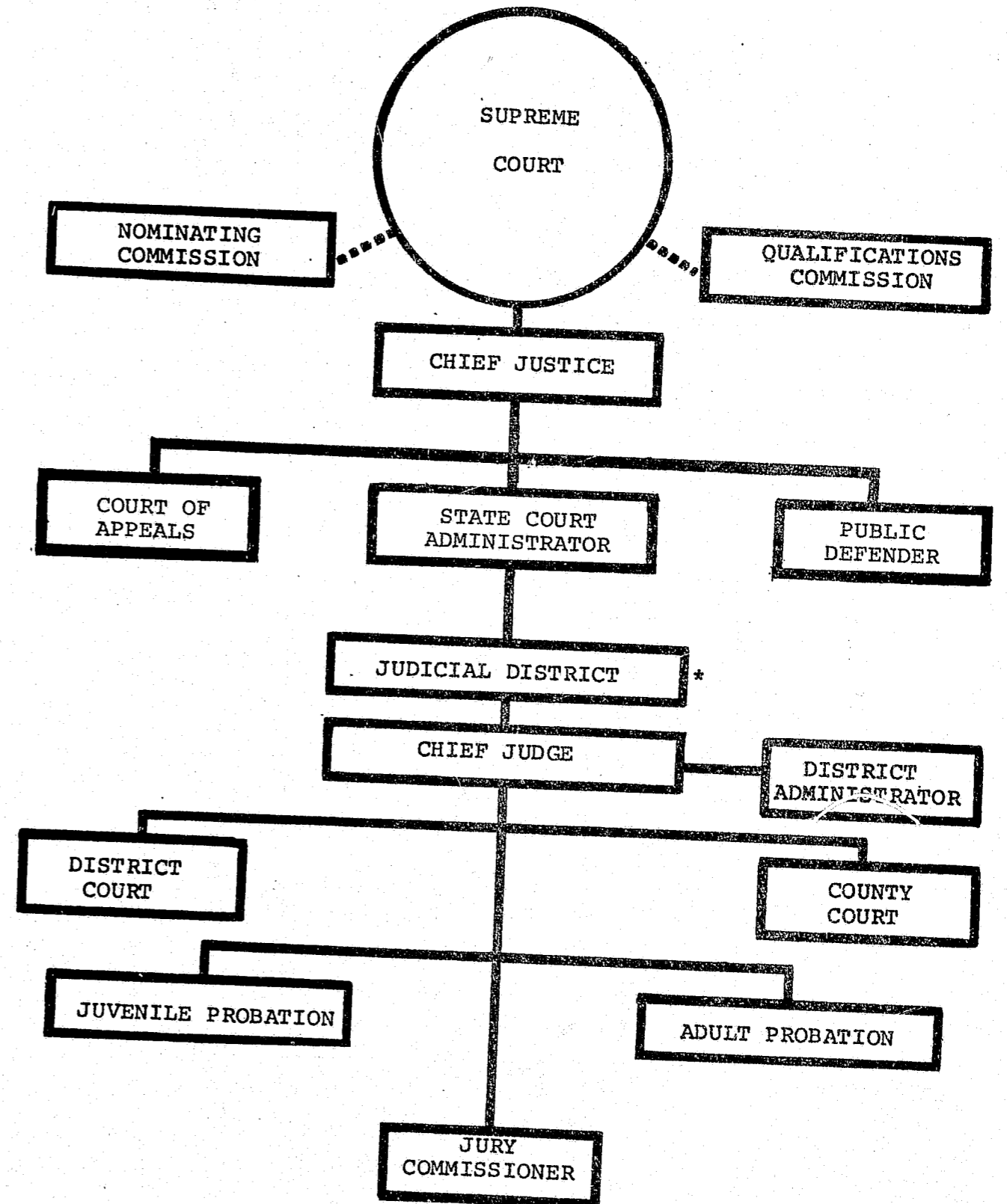
* This chart is representational. There are 22 judicial districts.

FELONY 3

Offender Score

Offense Score	0-1	2	3	4	5-8	9-10	11-13
4-5	5-7 yrs. minimum / 8-10 yrs. maximum	7-9 yrs. minimum / 12-15 yrs. maximum	10-12 yrs. minimum / 15-20 yrs. maximum	12-15 yrs. minimum / 15-20 yrs. maximum	12-15 yrs. minimum / 15-20 yrs. maximum	17-22 yrs. minimum / 35-40 yrs. maximum	17-22 yrs. minimum / 35-40 yrs. maximum
3	OUT	7-9 yrs. minimum / 12-15 yrs. maximum	7-9 yrs. minimum / 12-15 yrs. maximum	7-9 yrs. minimum / 12-15 yrs. maximum	8-10 yrs. minimum / 15-20 yrs. maximum	17-22 yrs. minimum / 35-40 yrs. maximum	17-22 yrs. minimum / 35-40 yrs. maximum
2	OUT	5-7 yrs. minimum / 12-15 yrs. maximum	5-7 yrs. minimum / 12-15 yrs. maximum	5-7 yrs. minimum / 12-15 yrs. maximum	8-10 yrs. minimum / 12-15 yrs. maximum	17-22 yrs. minimum / 35-40 yrs. maximum	17-22 yrs. minimum / 35-40 yrs. maximum
1	OUT	OUT	OUT	5-7 yrs. minimum / 12-15 yrs. maximum	5-7 yrs. minimum / 12-15 yrs. maximum	8-10 yrs. minimum / 12-15 yrs. maximum	8-10 yrs. minimum / 15-20 yrs. maximum

FELONY 4

Offense Score

Offender Score

	0-1	2	3	4-5	6-7	8	9-10	11-13
4-6	Indeterm. minimum 8-10 yrs. maximum	Indeterm. minimum 8-10 yrs. maximum	Indeterm. minimum 8-10 yrs. maximum	Indeterm. minimum 8-10 yrs. maximum	Indeterm. minimum 8-10 yrs. maximum	Indeterm. minimum 8-10 yrs. maximum	Indeterm. minimum 8-10 yrs. maximum	Indeterm. minimum 8-10 yrs. maximum
3	OUT*	Indeterm. minimum 3-5 yrs. maximum	Indeterm. minimum 3-5 yrs. maximum	Indeterm. minimum 3-5 yrs. maximum	Indeterm. minimum 5-7 yrs. maximum	Indeterm. minimum 8-10 yrs. maximum	Indeterm. minimum 8-10 yrs. maximum	Indeterm. minimum 8-10 yrs. maximum
2	OUT	OUT*	Indeterm. minimum 3-5 yrs. maximum	Indeterm. minimum 3-5 yrs. maximum	Indeterm. minimum 5-7 yrs. maximum	Indeterm. minimum 8-10 yrs. maximum	Indeterm. minimum 8-10 yrs. maximum	Indeterm. minimum 8-10 yrs. maximum
1	OUT	OUT	OUT*	Indeterm. minimum 3-5 yrs. maximum	Indeterm. minimum 3-5 yrs. maximum	Indeterm. minimum 3-5 yrs. maximum	Indeterm. minimum 5-7 yrs. maximum	Indeterm. minimum 8-10 yrs. maximum

*Potential candidate for work project or community corrections.

OFFENDER _____

JUDGE _____ DATE _____

Offense(s) Convicted Of: _____

_____

_____

OFFENSE CLASS (MOST SERIOUS OFFENSE)

OFFENSE SCORE

    A. Intra-Class Rank   _____ +

    B. Seriousness Modifier   _____ +

        0 = No injury   0 = No weapon   0 = No sale of drugs
        1 = Injury   1 = Weapon   1 = Sale of drugs
        2 = Death

    C. Victim Modifier (Crime Against Person)   _____ =

        0 = Unknown victim
       -1 = Known victim

OFFENDER SCORE

    A. Current Legal Status

        0 = Not on probation/parole, escape   _____ +
        1 = On probation/parole, escape

    B. Prior Juvenile Convictions   _____ +

        0 = No convictions
        1 = 1-3 convictions
        2 = 4 or more convictions

    C. Prior Adult Misdemeanor Convictions   _____ +

        0 = No convictions
        1 = 1-3 convictions
        2 = 4 or more convictions

    D. Prior Adult Felony Convictions   _____ +

        0 = No convictions
        1 = 1 conviction
        3 = 2 or more convictions

    E. Prior Adult Probation/Parole Revocations   _____ +

        0 = None
        2 = One or more revocations

    F. Prior Adult Incarcerations (Over 30 Days)   _____ =

        0 = None
        1 = 1 incarceration
        3 = 2 or more incarcerations

GUIDELINE SENTENCE _____

ACTUAL SENTENCE _____

REASONS (If actual sentence does not fall within guideline range):

OFFENSE CLASS

OFFENSE SCORE

OFFENDER SCORE

FELONY 4

Drug Offenses

Offender Score

Offense Score		0	1	2-4	5-6	7-9	10-13
	3	OUT	2-3 yr. minimum / 5-7 yr. maximum	2-3 yr. minimum / 5-7 yr. maximum	2-3 yr. minimum / 5-7 yr. maximum	2-3 yr. minimum / 5-7 yr. maximum	2-3 yr. minimum / 5-7 yr. maximum
	2	OUT	OUT	2-3 yr.* minimum / 5-7 yr. maximum	2-3 yr. minimum / 5-7 yr. maximum	2-3 yr. minimum / 5-7 yr. maximum	2-3 yr. minimum / 5-7 yr. maximum
	1	OUT	OUT	OUT	OUT	2-3 yr. minimum / 2½-4 yr. maximum	2-3 yr. minimum / 2½-4 yr. maximum

*Potential candidate for work project or community corrections.

FELONY 5

Offender Score

Offense Score	0-1	2	3	4-5	6-8	9-13
4-5	Indeterm. minimum 4-5 yrs. maximum	Indeterm. minimum 4-5 yrs. maximum	Indeterm. minimum 4-5 yrs. maximum	Indeterm. minimum 4-5 yrs. maximum	Indeterm. minimum 4-5 yrs. maximum	Indeterm. minimum 4-5 yrs. maximum
3	OUT	OUT*	Indeterm. minimum 4-5 yrs. maximum	Indeterm. minimum 4-5 yrs. maximum	Indeterm. minimum 4-5 yrs. maximum	Indeterm. minimum 4-5 yrs. maximum
2	OUT	OUT	OUT	Indeterm. minimum 4-5 yrs. maximum	Indeterm. minimum 4-5 yrs. maximum	Indeterm. minimum 4-5 yrs. maximum
1	OUT	OUT	OUT	Indeterm.* minimum 3-4 yrs. maximum	Indeterm. minimum 3-4 yrs. maximum	Indeterm. minimum 4-5 yrs. maximum

* Potential candidate for work project, split sentence, or community corrections.

FELONY 5

Drug Offenses

Offender Score

		1	2	3-4	5-8	9-10	11-13
Offense Score	3	OUT	OUT	1½-2 yrs. minimum maximum	2-3 yrs. minimum 4-5 yrs. maximum	3-4 yrs. minimum 4-5 yrs. maximum	3-4 yrs. minimum 4-5 yrs. maximum
	1-2	OUT	OUT	OUT	1-1½ yrs. minimum 2½-4 yrs. maximum	1½-2 yrs. minimum 3-4 yrs. maximum	2-2½ yrs. minimum 4-5 yrs. maximum

MISDEMEANOR 1

Offender Score

Offense Score	0-1	2-3	4-5	6-7	8-11	12-13
4-5	20-24 mo.	20-24 mo.	20-24 mo.	20-24 mo.	20-24 mo.	20-24 mo.
3	OUT*	9-12 mo.	14-18 mo.	20-24 mo.	20-24 mo.	20-24 mo.
2	OUT	OUT	14-18 mo.	14-18 mo.	14-18 mo.	20-24 mo.
1	OUT	OUT	OUT	9-12 mo.	14-18 mo.	14-18 mo.

* Work project or Community Correction Center.

MISDEMEANOR 2

Offender Score

	0	1	2	3-4	5-7	8-13
4-5	9-12 mo.	9-12 mo.	9-12 mo	9-12 mo	9-12 mo.	9-12 mo.
3	OUT*	9-12 mo.	9-12 mo	9-12 mo.	9-12 mo.	9-12 mo.
2	OUT	OUT	OUT	4-7 mo.	5-8 mo.	9-12 mo.
1	OUT	OUT	OUT	OUT	3-5 mo.	7-10 mo.

Offense Score

* Work project or Community Correction Center.

MISDEMEANOR 3

Offender Score

Offense Score	0-1	2-3	4-5	6-8	9-13
4-5	4-6 mo.	4-6 mo.	4-6 mo.	4-6 mo.	4-6 mo.
3	OUT	2-4 mo.	2-4 mo.	2-4 mo.	4-6 mo.
2	OUT	OUT	2-4 mo.	2-4 mo.	2-4 mo.
1	OUT	OUT	OUT	2-4 mo.	2-4 mo.

SITE VISIT REPORT

DECISION POINT: PAROLE RELEASE

UNITED STATES PAROLE COMMISSION

WASHINGTON, D. C.

SITE VISIT: June 28 - 29, 1978

INTERVIEWER: Jerome R. Bush

CONTACT PERSON: Dr. Peter Hoffman
Director, Research Unit
United States Parole Commission
Tele: (202) 724-3095

Overview

Of all the sites contacted in the national survey, the classification program of the U.S. Parole Commission--the Federal Parole Guidelines--is by far the most extensively researched and best documented. The original research upon which the Federal Parole Guidelines are based was first published by the NCCD in a series of thirteen supplemental reports plus a summary document, "The utilization of experience in parole decision making."[1] Several of these reports subsequently appeared in the professional criminal-justice journals. Most recently, a revised and updated account of this work has been published in a book by Don Gottfredson, Leslie Wilkins, and Peter Hoffman, Guidelines for Parole and Sentencing (Lexington, Mass.: D.C. Heath and Co., 1978). Numerous documents detailing specific aspects of the guidelines' development and application have also appeared under the cover of the U.S. Parole Commission Research Unit, directed by Dr. Peter Hoffman. In addition, accounts and descriptions of the federal parole system are contained in official government publications issued by the U.S. Department of Justice.

Due to the wealth of documentation on the federal parole system, this report relies heavily on already published materials. Although the national survey staff did conduct on-site interviews, much of this report contains excerpts or paraphrasing from documents indicated above. Where this is the case, footnotes indicate the specific sources of the excerpted or paraphrased materials. The national survey staff wishes to thank Dr. Peter Hoffman for his generous assistance in reviewing this report and suggesting changes and corrections. However, final responsibility for the descriptions and accounts contained herein rests solely with the national survey staff.

The United States Board of Parole was created by Congress in 1930. In 1976, the Parole Commission and Reorganization Act (Public Law 94-233, effective May 14, 1976) retitled the agency the United States Parole Commission. Placed within the Department of Justice for administrative purposes, the

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1. Don Gottfredson, Leslie Wilkins, Peter Hoffman, and Susan Singer, "The utilization of experience in parole decision-making: a progress report," monograph (Davis, Ca.: NCCD Research Center, 1973).

Commission is an agency with independent decision making powers set forth by statute. The Commission has parole jurisdiction over all federal prisoners wherever confined, and continuing jurisdiction over those released on parole or as if on parole (mandatory release).[2]

The Parole Commission and Reorganization Act of 1976 provided for: (1) the establishment of five regions, (2) the use of hearing examiner panels to conduct parole interviews and revocation hearings, (3) the establishment of explicit guidelines for decision-making, (4) the requirement of written reasons for parole denial, and (5) a two level appeals system. Each regional office is responsible for the parole functions pertaining to federal prisoners confined in any of the correctional institutions within its boundaries. Each office also has jurisdiction over all federal parolees and mandatory releasees within its boundaries who are supervised by United States Probation Officers assigned to the U. S. Courts.[3] According to statute, the probation officers function as "parole officers" for federal prisoners. Reports concerning the adjustment of parolees and mandatory releasees are prepared by the probation officers and submitted to the Commission.

Under the Parole Commission and Reorganization Act, a corps of hearing examiners was established and assigned to the regional offices. One examiner in each region is designated as an administrative hearing examiner and, under the direction of the regional commissioner, supervises the staff assigned to the region. Two examiners and the chief hearing examiner remain at headquarters in Washington, D.C. Operating out of the regional offices, hearing examiners conduct personal hearings with federal prisoners who are eligible by law for parole consideration. One component of the parole hearing is the computation of the Salient Factor Score as a form of risk assessment. Hearing examiners also conduct personal hearings with alleged parole or mandatory release violators retaken on the basis of a warrant or summons issued by the Commission. Examiners travel in two-person panels to each of the Bureau of Prisons institutions on a bi-monthly schedule. They also hold hear-

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2. "The United States Parole Commission: July 1, 1973 to September 30, 1976." U.S. Department of Justice (March 30, 1977), p. 2.

3. Ibid., p.8.

ings as required at certain state institutions where federal prisoners may be confined. The examiners may recommend to grant, deny, rescind, or revoke parole; prisoners are informed orally of the reasons for the decision immediately following the hearing. After review of the recommended decision at the regional office, a written notice containing reasons for the decision follows on an official notice of action. If the Regional Commissioner wishes to reverse a recommended decision of the panel or to modify it outside certain prescribed limits, he must refer the case to the Commissioners stationed in Washington, D.C. for a concurring vote.[4]

The Parole Commission and Reorganization Act provides for nine commissioners, appointed by the President with the advice and consent of the Senate, with one commissioner designated as chairman. Each of the five regional offices of the Commission is under the supervision of the chairman, and three commissioners comprise a National Appeals Board in Washington, D.C. On a cooperative basis, the commission uses the services of staff employed by the Bureau of Prisons who are assigned to correctional institutions throughout the nation. This staff prepares classification summaries, progress reports, and other reports concerning parole applicants.[5]

The Instrument and Its Development

In the late 1960's and early 1970's, the U. S. Parole Board was increasingly faced with criticism that its decision making practices were arbitrary and disparate. In 1972, the Research Center of the National Council on Crime and Delinquency received a three year grant from the National Institute of Law Enforcement and Criminal Justice of LEAA to collaborate with the then United States Board of Parole on a project entitled "The Utilization of Experience in Parole Decision-Making." The basic objective of the project was to develop, test, and demonstrate programs of improved information for parole decision making. The specific goals were to provide objective, relevant information for individual case decisions; to summarize experience with parole as an aid to improved policy decisions; and to aid paroling authorities in

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4.   Ibid., p. 9.

5.   Ibid., p. 9.

more rational decision-making for increased effectiveness of prison release procedures. To achieve these goals, the project was designed to: (1) define parole objectives and information needs, (2) describe parole decisions, (3) test relations between information available for parole decisions and the outcomes of those decisions (whether persons are paroled, mandatorily released, or discharged), (4) present relevant information quickly when needed for decisions, (5) develop procedures for policy control, (6) evaluate the utility of any new procedures developed, and (7) disseminate the results to parole systems throughout the country.[6]

One of the outcomes of the project was the development of an actuarial risk assessment instrument (experience table) termed a "Salient Factor Score" (SFS) for making parole prognosis assessments. The SFS is used in a matrix format with a severity of offense scale to establish parole decision-making guidelines, that is, the customary length of sentence to be served prior to release. The U.S. Parole Commission Guidelines for Decision-Making is presented in Table 1 as an example of a decision-making matrix. The vertical axis of the matrix defines the severity of the inmate's present offense by grouping offenses into seven categories of offense severity from lowest to greatest. Examples of common offenses that are placed in each category are listed in Appendix A. Severity ratings for offense behaviors not listed are determined by comparison with similar offense behaviors which are shown. On the horizontal axis of the guideline matrix, four categories of parole prognosis from very good to poor are shown along with the SFS ranges associated with each category. The actuarial device called the Salient Factor Score which contains seven predictive items is shown in Table 2.

For each combination of offense severity and offender parole prognosis, the matrix provides a decision guideline range. This decision range specified customary paroling policy in terms of the number of months to be served before release (subject to the limitations of the judicially imposed sentence), assuming the prisoner has demonstrated good institutional behavior. For example, an adult parole applicant with a "low moderate" severity offense (such as forgery of less than $1,000) and "good" parole prognosis (an SFS of 6-8) might expect to serve 12-16 months before release under this explicit policy.

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6.   "Utilization of experience in parole decision-making," op. cit., pp. 18-21.

Table 1

U.S. Parole Commission

Guidelines for Decision-Making:

Months to be Served before Release

	Parole Prognosis Salient Factor Score			
Severity of Offense Behavior	Very Good (11-9)	Good (8-6)	Fair (5-4)	Poor (3-0)
Low	6 - 10	8 - 12	10 - 14	12 - 18
Low Moderate	8 - 12	12 - 16	16 - 20	20 - 28
Moderate	12 - 16	16 - 20	20 - 24	24 - 32
High	16 - 20	20 - 26	26 - 34	34 - 44
Very High	26 - 36	36 - 48	48 - 60	60 - 72
Greatest I	40 - 55	55 - 70	70 - 85	85 - 110
Greatest II	Greater than above--however, specific ranges are not given due to the limited number of cases and the extreme variation possible within the category.			

TABLE 2

CURRENT (7-ITEM) SALIENT FACTOR SCORE

Register Number_____ Name_____

Item A

    No prior convictions (adult or juvenile) = 3
    One prior conviction = 2
    Two or three prior convictions = 1
    Four or more prior convictions = 0

Item B

    No prior incarcerations (adult or juvenile) = 2
    One or two prior incarcerations = 1
    Three or more prior incarcerations = 0

Item C

    Age at first commitment (adult or juvenile):
        26 or older = 2
        18-25 = 1
        17 or younger = 0

Item D*

    Commitment offense did not involve auto theft or
      check(s) (forgery/larceny) = 1
    Commitment offense involved auto theft (X), or
      check(s) (Y), or both (Z) = 0

Item E*

    Never had parole revoked or been committed for a
      new offense while on parole, and not a proba-
      tion violator this time = 1
    Has had parole revoked or been committed for a
      new offense while on parole (X), or is a proba-
      tion violator this time (Y), or both (Z) = 0

* Note to Examiners: If item D or E is scored 0, place the appropriate letter (X, Y or Z) on the line to the right of the box.

TABLE 2
CURRENT (7-ITEM) SALIENT FACTOR SCORE
Page Two

Item F

    No history of heroin or opiate dependence = 1
    Otherwise = 0

☐

Item G

    Verified employment (or full-time school attendance)
      for a total of at least six months during the
      last two years in the community = 1
    Otherwise = 0

☐

Total Score--- ☐

A "very high" severity offense/"poor" parole prognosis case (such as armed robbery combined with an SFS of 0-3), on the other hand, might expect to serve 60-72 months in the absence of exceptional circumstances. For the greatest severity cases like murder and kidnapping, there are no upper guideline limits specified. Consequently, decisions in such cases must be based upon extrapolation from the guideline time ranges specified for very high severity cases with similar prognosis and institutional characteristics. Decisions outside the guidelines, either above or below, may be rendered for "good cause" provided the reasons for the departure from customary policy are specified. Special aggravating or mitigating offense factors, clinical judgment (supported by specifics) that the prisoner is a better or worse parole risk than the actuarial device indicates, or exceptionally good institutional program achievement are factors which may justify decisions outside the guidelines.

Based upon research of the Utilization of Experience in Parole Decision-Making Project, the Parole Commission launched a pilot implementation study which included: (1) parole hearings conducted by panels of two hearing examiners, (2) provision of written reasons in cases of parole denial, (3) an administrative review process, and (4) the use of the decision guideline matrix. From the pilot study, revised decision-making procedures incorporating the above features (including the guideline matrix for parole decision-making, shown in Table 1) were developed and expanded to apply to all federal parole decisions in October, 1974. To facilitate systemwide implementation of the parole guidelines, the Research Unit of the Parole Commission developed a Guideline Application Manual which specifies: (1) the purpose and procedures for completing the guidelines, (2) definitions and procedures for determining the offense severity rating and the SFS, and (3) factors relating to parole decisions outside the sentencing guidelines. The guidelines are reviewed periodically by the Commission and revised as circumstances warrant. The instructions for the assignment of an offense severity rating and an SFS are specific in that hearing examiners are not allowed to use discretion or subjective judgment in deriving them. Subjective judgment is permitted only in determining a classification when the situation is not specifically covered by the manual. Derivation of the SFS is rigidly controlled by the instructions, eliminating the use of informal definitions and procedures. All information provided by the inmate must have verifying documentation. The

Guideline Application Manual points out that the SFS may be overridden, where warranted, provided that the rationale for such action is documented.

Inter-rater reliability is not seen as a serious problem in deriving the SFS, though there have been instances in which hearing examiners have assigned different scores to the same case. The Research Unit of the Commission is currently investigating the reliability of hearing examiners in computing the SFS, severity ratings, and using the guidelines matrix.

The currently employed instrument for parole prognosis, the Salient Factor Score, was the end product of an extensive developmental process by the Parole Decision-Making Project. An experimental, 11-item scale was originally employed from October, 1972 to September, 1973, when the change was made to a 9-item scale (see Table 6). Extensive research and experience with the 9-item scale resulted in further refinement to the 7-item scale (Table 2) which has been used from 1977 to the present.

Three samples were utilized in the research design for the construction and validation of the items in the instrument. Sample A, with 902 subjects, was used as the construction sample and consisted of a 25% sampling of all persons released from federal prisons by parole, mandatory release, or expiration of sentence during the first six months of 1970. Sample B, consisting of 919 subjects, was used as a validation sample and consisted of an additional 25% sampling of inmates released during the same period. An additional validation sample (Sample C) consisted of a similar 20% sample of 662 inmates released during the second six months of 1970. The three samples were selected by including all cases whose prison identification numbers ended in selected digits. This method is assumed to reasonably represent random assignment of subjects.[7]

A staff of research clerks completed a code sheet containing 66 items of background data from the prison-parole file for each inmate in the three samples. These items included information about present offense, prior criminal record, age, education, employment record, past and projected living arrange-

ments, and prison conduct. This information was believed by staff to be predictive of release outcome. Information about performance after release was also coded using a two-year follow-up period from the date of release. If the subject was released with parole (or mandatory release) supervision, follow-up was obtained from the prison-parole file. If the subject was released without supervision or if supervision was terminated prior to the end of the follow-up period, follow-up information was obtained from the subject's "rap sheet" provided by the Federal Bureau of Investigation.[8]

The primary outcome criterion measure agreed upon by the project and parole board staff was a dichotomous favorable-unfavorable release outcome. The criteria for a favorable outcome were: (1) no new convictions resulting in a sentence of 60 days or more, (2) no return to prison for a technical violation, and (3) no outstanding absconder warrant, all within two years from date of release. The criteria for an unfavorable release outcome would be a violation of any of these three conditions. The utilization of criterion measure permitted the evaluation of outcome for all cases whether released with or without parole (or mandatory release) supervision, with a uniform two year follow-up period for each individual.[9]

After a review of the predictive power of a number of mathematical methods for combining predictive items, the project staff selected the analytical methodology commonly known among criminological researchers as the "Burgess" method. This method, which employs a number of equally weighted dichotomous items, tends to predict as well on validation samples as the more mathematically sophisticated methods, such as multiple regression or configural analysis. While the more sophisticated methods produce a higher correlation on the construction sample, there tends to be considerably greater shrinkage, that is, loss in predictive power as evidenced by a lower correlation coefficient, when applied to a validation sample. Given this equality in predictive power, the Burgess method was chosen because of its simplicity and ease of calculation in "field" usage. Errors resulting from inaccurate coding or incorrect mathematical calculation in the application of an actuarial device produce the same

7. Peter Hoffman and James Beck, "Parole decision-making: A salient factor score," Journal of Criminal Justice, Vol. 2 (1974), pp. 195-206.

8. Ibid., p. 196.
9. Ibid., p. 196.

effect as error inherent in the instrument itself. Since the Burgess method requires only dichotomous (or in this case, trichotomous) coding and simple addition, the probability of coding or tabulation error is reduced.[10]

The nine items or salient factors (and their associated dichotomous/trichotomous values) included in the research instrument (see Appendix B) were selected from the 66 variables or combinations of variables included on the coding sheet. The Salient Factor Score instrument currently in use (Table 2) employs only seven items and a wider range of values. Each of the 66 variables was cross-tabulated with the criterion measure. Those items that predicted favorable (or unfavorable) outcome after release (chi-square at the .05 level or less) were singled out for possible inclusion in the instrument. From this pool of items, the final nine were chosen by a process of elimination. Items such as race or prior arrests not leading to convictions were excluded, even though predictive, if they were judged to pose ethical problems for use in individual parole selection decisions. Factors were also excluded if they did not appear frequently enough to be useful, like history of escape, or if they appeared to overlap substantially with items already included, such as longest job held and employment during last two years. The nine items selected thus combined both statistical findings and the judgment of the researchers.[11]

In a slight departure from the Burgess method, the first two items were classified as trichotomous rather than dichotomous. They are scored 0, 1 or 2 to achieve finer discrimination and weighting for prior convictions and incarcerations. The classification with the highest proportion of favorable outcomes is given the highest number. The remaining items in the instrument are scored 0 or 1. This produces a scale with a range of possible values from 0 to 11: the higher the score, the greater the proportion of favorable outcomes predicted.[12]

This nine item instrument (Appendix B) was used to calculate a score for each case in the construction sample (Sample A with 902 subjects). A point biserial correlation of .318 between scores and outcome resulted. For the first validation sample (Sample B with 919 subjects), a point biserial correlation

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10. Ibid., pp. 196-197.

11. Ibid., p. 197.

12. Ibid., pp. 197-200.

of .283 was obtained. On the second validation sample (Sample C with 662 subjects), a point biserial correlation of .270 was found. Combining the two validation samples (N = 1,581) produced a point biserial correlation of .277. It should be noted that the maximum possible point biserial is not ± 1.00 as in the case of the Pearson product moment correlation, but varies with the proportion of success/failures in the outcome measure. For the three samples, the maximum point biserial correlation possible would be approximately .75.[13]

Table 3 displays the distribution of scores and outcomes for the construction and combined validation samples. The range of possible scores for both samples was 0-11. The validation study with the two samples did not result in any changes in the predictive items comprising the Salient Factor Score, their definitions, or weighting.

For operational use in conjunction with decision guidelines (discussed previously), the Salient Factor Score range was collapsed to form the four categories of score ranges from poor to very good shown in Tables 1 and 4. The cut-off scores for the four categories were selected by the board and project staff based upon supplemental research (to be discussed subsequently) which showed decade level breaks in the percentage of favorable outcomes on three criterion measures for each range of Salient Factor Scores. Table 4 also shows the percentage of favorable outcomes for the construction and combined validation samples for each of the four score range categories.

An alternative measure of predictive efficiency, the Mean Cost Rating (MCR), was calculated based on the collapsed scores and is also shown in Table 4. The MCR is defined as a measure of "cost" versus "utility". Utility is defined as the proportion of unsuccessful candidates eliminated when a cut-off score is used; cost is the proportion of successful candidates rejected. The MCR for this instrument produced a coefficient of .36 on the construction sample, .33 on the first validation sample, .32 on the second validation sample, and .32 on the combined validation samples.[14]

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13. Ibid., p. 200.

14. Ibid., p. 200.

TABLE 3

SALIENT FACTOR SCORE/OUTCOME DISTRIBUTION

	0	1	2	3	4	5	6	7	8	9	10	11	R	x^2	Sign. Level	
% Favorable Outcome	---	44.1%	40.0%	57.5%	60.3%	61.5%	72.0%	83.1%	79.3%	90.6%	93.0%	100.0%	.318	126.904	.001	N= 902
Construction Sample	N=0	N= 34	N= 85	N=134	N=146	N=122	N=107	N= 77	N= 82	N= 53	N= 43	N= 19				
% Favorable Outcome	25.0%	53.2%	50.0%	61.0%	66.3%	70.7%	76.3%	78.0%	84.0%	83.7%	94.7%	100.0%	.277	97.506	.001	N= 1581
Combined Validation Sample	N= 4	N= 62	N=158	N=200	N=246	N=225	N=169	N=159	N=131	N= 92	N= 94	N= 41				

TABLE 4

SALIENT FACTOR COLLAPSED SCORE/OUTCOME DISTRIBUTION

	Poor (0-3)	Fair (4-5)	Good (6-8)	Very Good (9-11)	MCR	
% Favorable Outcome	49.8%	60.8%	77.4%	93.0%	.36	N = 902
Construction Sample	N=253 (28%)	N=268 (30%)	N=266 (30%)	N=115 (13%)		
% Favorable Outcome	55.4%	68.4%	79.1%	91.2%	.32	N =1581
Combined Validation Sample	N=424 (27%)	N=471 (30%)	N=459 (29%)	N=227 (14%)		

A supplementary validation study of the Salient Factor Score was conducted with a 30% sample (N = 1,138) of federal prisoners serving maximum sentences of more than one year and one day who were released to the community during the last six months of 1971.[15] This validation study employed a two and three year follow-up period, as well as three criterion measures of favorable/unfavorable outcome: (1) new commitment, (2) new conviction, and (3) new arrest.

Table 5 displays the percent of favorable outcome by Salient Factor Score (using a three year follow-up period) for each of the three criterion measures selected. As can be readily seen, the percentage of cases with favorable outcome decreases rather consistently as one moves from higher to lower Salient Factor Scores, regardless of criterion measure used. The point biserial correlation coefficients (.32, .37, and .38) and the Mean Cost Ratings (.37, .41, and .40) obtained for the criterion measures are comparable to those of other prediction studies. This additional validation sample thus adds to the evidence that the Salient Factor Score is able to distinguish among risk groups.[16]

Implementation of the Instrument

The nine-item Salient Factor Score instrument developed by the research project was presented first to the Research Committee of the Board of Parole, and then to the full board. It was adopted for operational use with several minor modifications. As noted previously, the 0 to 11 point scale range was collapsed to form a four category risk scale of parole prognosis. The definitions of two items were also modified slightly for operational usage. For example, Item E (parole revocation) as originally coded did not include a new commitment unless it resulted in formal revocation. However, it is known that parole violation warrants are often withdrawn if a parolee receives a substantial sentence on a new charge. Consequently, a definition of "parole revoked or new

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15. The validation study is reported in Peter Hoffman, Barbara Stone-Meierhoefer, and James Beck, "Salient factor score and release behavior: three validation samples." United States Parole Commission Research Unit, Report Fifteen, August, 1977, p. 2.

16. Ibid., pp. 5-6.

TABLE 5

PERCENT FAVORABLE OUTCOME BY SALIENT FACTOR SCORE

1971 RELEASEES

(Three Year Follow-Up)

Salient Factor Score	Criterion Measure (No New Commitment)	Criterion Measure (No New Conviction)	Criterion Measure (No New Arrest)	N
Very Good (11-9)	94.9	92.7	83.1	178
11	92.0	92.0	84.0	25
10	95.5	94.0	86.6	67
9	95.3	91.9	80.2	86
Good (8-6)	75.3	70.3	61.9	344
8	80.0	78.8	70.6	85
7	74.6	69.3	63.2	114
6	73.1	66.2	55.9	145
Fair (5-4)	60.3	54.3	42.7	335
5	63.0	58.0	45.7	162
4	57.8	50.9	39.9	173
Poor (3-0)	49.8	39.9	28.8	281
3	55.3	44.0	32.6	141
2	44.1	36.0	26.1	111
1	42.9	32.1	21.4	28
0	--	--	--	1
All Scores	67.7	61.6	51.4	1,138
Mean Cost Rating (MCR)	.37	.41	.40	
Point Biserial Correlation (r_{pb})	.32	.37	.38	

commitment while on parole" was deemed more appropriate.[17] Also incorporated at this time was the provision for clinical override of the Salient Factor Score; if the examiner panel feels that the Salient Factor Score is substantially inaccurate, it may substitute its clinical judgment provided it gives a written explanation and justification.

This Salient Factor Score instrument (shown in Table 6) was used in making federal parole decisions throughout the United States between October, 1973 and March, 1977. At that time, it was replaced by the modified seven item score instrument shown in Table 2. After a review of the functioning of the original instrument by the Commission and the Research Unit, it was decided to eliminate Items G (education) and I (post-release living arrangements) since they overlapped (were correlated) with other items and thereby provided no additional increment in predictive power for parole prognosis. The modified instrument (Table 2) also expanded the weighting structure for certain items to gain finer predictive discrimination. Item A (prior convictions) was expanded to a four point score scale (0-3), and Item C (age at first commitment) to a three point score scale (0-2). In Item D (auto theft), forged or stolen checks were added, and the dichotomy of Item E (parole revocation) was expanded to include current incarceration for probation violation.

As indicated previously, a Salient Factor Score (original and revised) has been used as an aid in all federal parole decisions since October, 1973. In conjunction with offense severity, Board members and hearing examiners using the instrument to make parole decisions appear well satisfied with its performance. A few hearing examiners have expressed the view that: (1) more weight should be given to a long prior criminal record in making parole decisions, and (2) the instrument would be more powerful if inmates were not informed of the results, thus opening up screening to manipulation. In addition, hearing examiners have stated that use of the instrument provides considerable substantiation for their parole decisions while not intruding upon their sphere of competence since clinical override is available. The hearing examiners also feel that the SFS is an accurate predictor of risk (parole outcome).

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17. "Parole decision-making: A salient factor score," op. cit., pp. 200-202.

TABLE 6

9-ITEM SALIENT FACTOR SCORE

Case Name_____ Register Number_____

Item A

    No prior convictions (adult or juvenile) = 2
    One or two prior convictions = 1
    Three or more prior convictions = 0

Item B

    No prior incarcerations (adult or juvenile) = 2
    One or two prior incarcerations = 1
    Three or more prior incarcerations = 0

Item C

    Age at first commitment (adult or juvenile)
      18 years or older = 1
    Otherwise = 0

Item D

    Commitment offense did not involve auto theft = 1
    Otherwise = 0

Item E

    Never had parole revoked or been committed for
      a new offense while on parole = 1
    Otherwise = 0

Item F

    No history of heroin or opiate dependence = 1
    Otherwise = 0

Item G

    Has completed 12th grade or received GED = 1
    Otherwise = 0

TABLE 6
9-ITEM SALIENT FACTOR SCORE
Page Two

Item H

    Verified employment (or full-time school attendance)
       for a total of at least six months during the last
       two years in the community = 1
    Otherwise = 0

Item I

    Release plan to live with spouse and/or children = 1
    Otherwise = 0

Total Score--

The need for greater consistency and increased equity (reduced sentence
disparity) in parole decision-making has long been acknowledged, and the use
of the Salient Factor Score to provide decision guidelines appears to be ac-
cepted as serving this need. By articulating the weights given to the major
criteria considered for parole (the probability of recidivating or violating
the conditions of parole, and the severity of the current offense), the Parole
Commission can allow interested individuals and organizations to assess the
rationality and appropriateness of its policy regarding parole decision making.[18]

Prior to the mandated use of the Salient Factor Score for parole decision
making in the Parole Commission and Reorganization Act of 1976, the instrument
was reviewed by the agency legal staff to assure that the inmate's constitu-
tional rights were not violated. The research staff had previously eliminated
discriminatory items such as race, and arrests with no subsequent conviction.
There has been considerable litigation in the area of the parole decision
process since the introduction of the parole guidelines. Every court which
has considered challenges to the use of the guidelines has found them to be
consistent with the statutory criteria for parole. Challenges in litigation
concerning the guidelines have primarily dealt with the issue of what types
of information may be utilized in order to render a decision within or outside
the range suggested by the guidelines. Courts have held that the Parole
Commission is entitled to consider the same scope of information available to
judges at sentencing in its determination of whether the inmate should be
paroled. To prevent the possible use of inaccurate information, the Commission
apprises the inmate of all information utilized in such a decision and gives
him the opportunity to provide information in rebuttal and on appeal. The Parole
Commission and Reorganization Act specifically states that the prisoner shall be
provided with reasonable access (subject to certain exceptions) to any report or
other document that is used in making the parole release determination.[19]

In October 1974, the Commission imposed the requirement that inmates be
given reasons for parole denial. Prior to this, the Commission litigated the

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18. "Utilization of experience," op. cit., p. 57.
19. "The U.S. Parole Commission," op. cit., pp. 13-15.

question of what legal requirements applied to issuing these reasons. Since the Commission adopted the reasons requirement, the bulk of the litigation has focused upon the sufficiency of the stated reasons. The Parole Board's policy had been to first determine, and then apprise the inmate of, the applicable guideline range for his case. The Board also reviewed all relevant information to determine if a decision outside the suggested range was warranted. If such a departure appeared appropriate, the inmate was provided with the information which justified going outside the suggested range. This procedure has been written into the new parole statute and has been upheld in litigation.[20]

The Screening and Decision Process

Hearing examiners require approximately 40 minutes per case to reach a parole decision. This includes assessing the required records, calculating the Salient Factor Score, and consulting the guidelines for the normal length of sentence to be served before release. The information required to complete the SFS is contained in the inmate's record at the institution. Calculation of the score itself only requires about five minutes. All the required information is normally available, but a missing presentence investigation report can result in a delay in the parole decision.

The entire parole hearing process is carried out at the institution by the two member hearing examiner panel. There are 15 panels that conduct approximately 16,000 hearings per year. With this caseload, delays in parole decisions do occur. During the hearing, the offender plays an active role in providing information (which is verified) necessary to make a decision. As discussed previously, the inmate is informed of the parole decision, and the reasons if parole is denied. Dissatisfied inmates may ask the regional commissioner for reconsideration of a parole decision; if an inmate is still not satisfied, he may direct further appeals to the National Appeals Board in Washington, D.C.

In about 20% of the cases, discretion to render a decision outside the guidelines is exercised. Examples of customary reasons for decisions outside the guidelines are given in the "Guideline Application Manual: U.S. Parole Commission Report No. 16, November, 1977."

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20.   Ibid., p. 14.

Results and Impact

The use of the Salient Factor Score and the guidelines has been favorably received by the Parole Commission and the hearing examiners as providing a readily substantiated procedure for exercising structured discretion. The guidelines were accepted as valid as demonstrated by their inclusion in the Parole Commission and Reorganization Act of 1976. All court litigation has upheld the use of the guidelines by the Parole Commission as being consistent with the statutory criteria for parole.

The use of the Salient Factor Score (and guidelines) does increase case processing time, but it has imposed no undue administrative burdens. As with most predictive devices, outcome forecasting involves some degree of error. However, reference to the criterion measure of "no new conviction" in Table 5 shows that 92.7% of the releasees with a Salient Factor Score of 11-9 were not convicted during the third year follow-up period. In contrast, only 39.9% with scores of 0-3 were not reconvicted. Though some degree of predictive error is still present, Commission officials contend on the basis of these results that the Salient Factor Scale performs quite acceptably in discriminating high from low risk offenders.

GUIDELINES FOR DECISION MAKING (Effective 11/1/77)

[Guidelines for Decision Making, Customary Total Time To Be
Served Before Release (including jail time)]

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score)			
	Very Good 11 - 9	Good 8-6	Fair 5-4	Poor 3-0
Low Escape [open institution or program, (e.g., CTC, work release)--absent less than 7 days] Marijuana or soft drugs, simple possession (small quantity for own use) Property offenses (theft or simple possession of stolen property) less than $1,000.	6-10 months	8-12 months	10-14 months	12-18 months
Low Moderate Alcohol law violations Counterfeit currency (passing/possession less than $1,000) Immigration law violations Income tax evasion (less than $10,000) Property offenses (forgery/fraud/theft from mail/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property with intent to resell) less than $1,000 Selective Service Act violations	8-12 months	12-16 months	16-20 months	20-28 months
Moderate Bribery of a public official (offering or accepting) Counterfeit currency (passing/possession $1,000 to $19,999) Drugs: Marijuana, possession with intent to distribute/sale (small scale, e.g., less than 50 lbs.) "Soft drugs", possession with intent to distribute/sale (less than $500) Escape (secure program or institution, or absent 7 days or more--no fear or threat used)	12-16 months	16-20 months	20-24 months	24-32 months

(continued)

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score)			
	Very Good 11 - 9	Good 8-6	Fair 5-4	Poor 3-0
(Moderate--continued) Firearms Act, possession/purchase/sale (single weapon: not sawed-off shotgun or machine gun) Income tax evasion ($10,000 to $50,000) Mailing threatening communication(s) Misprision of felony Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property) $1,000 to $19,999 Smuggling/transporting of alien(s) Theft of motor vehicle (not multiple theft or for resale)	12-16 months	16-20 months	20-24 months	24-32 months
High Counterfeit currency (passing/possession $20,000 to $100,000) Counterfeiting (manufacturing) Drugs: Marijuana, possession with intent to distribute/sale (medium scale, e.g., 50 to 1,999 lbs) "Soft drugs" possession with intent to distribute/sale ($500 to $5,000) Explosives, possession/transportation Firearms Act, possession/purchase/sale (sawed-off shotgun(s), machine gun(s), or multiple weapons) Mann Act (no force - commercial purposes) Theft of motor vehicle for resale Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property) $20,000 to $100,000	16-20 months	20-26 months	26-34 months	34-44 months

(continued)

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score)			
	Very Good 11 - 9	Good 8-6	Fair 5-4	Poor 3-0
Very High Robbery (weapon or threat) Breaking and entering (bank or post office--entry or attempted entry to vault) Drugs: Marijuana, possession with intent to distribute/sale (large scale, e.g., 2,000 lbs. or more) "Soft drugs", possession with intent to distribute/sale (over $5,000) "Hard drugs", possession with intent to distribute/sale (not exceeding $100,000) Extortion Mann Act (force) Property offenses (theft/forgery/ fraud/embezzlement/interstate trans- portation of stolen or forged secur- ities/receiving stolen property) over $100,000 but not exceeding $500,000	26-36 months	36-48 months	48-60 months	60-72 months
Greatest I Aggravated felony (e.g., robbery: wea- pon fired--no serious injury) Explosive detonation (involving poten- tial risk of physical injury to person(s)--no serious injury occurred) Robbery (multiple instances--2-3) Hard drugs (possession with intent to distribute/sale--large scale, e.g., over $100,000) Sexual Act--force (e.g. forcible rape	40-55 months	55-70 months	70-85 months	85-110 months

(continued)

OFFENSE CHARACTERISTICS: Severity of Offense Behavior (Examples)	OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score)			
	Very Good 11 - 9	Good 8-6	Fair 5-4	Poor 3-0
Greatest II Aggravated felony--serious injury (e.g., injury involving substantial risk of death, or protracted dis- ability, or disfigurement) Aircraft hijacking Espionage Kidnapping Homicide (intentional or committed during other crime)	Greater than above-- however, specific ranges are not given due to the limited number of cases and the extreme variation possible within the category.			

Notes:
1. These guidelines are predicated upon good institutional conduct and program performance.
2. If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense be- haviors listed.
3. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
4. If an offense behavior involved multiple separate of- fenses, the severity level may be increased.
5. If a continuance is to be given, allow 30 days (one month) for release program provision.
6. "Hard drugs" include heroin, cocaine, morphine or opiate derivatives, and synthetic opiate substitutes. "Soft drugs" include, but are not limited to, barbitur- ates, amphetamines, LSD, and hashish.
7. Conspiracy shall be rated for guideline purposes accord- ing to the underlying offense behavior if such behavior was consummated. If the offense is unconsummated, the conspiracy will be rated one step below the consummated offense.

APPENDIX B

SALIENT FACTOR SCORE ITEMS

(9-Item Research Instrument)

A. Prior Convictions

	2	1	0	x^2	Significance Level
% Success	88.5% N = 113	72.5% N = 222	60.1% N = 567	38.561	.001

No prior convictions (adult or juvenile) = 2
One or two prior convictions = 1
Three or more prior convictions = 0

B. Prior Incarcerations

	2	1	0	x^2	Significance Level
% Success	80.9% N = 278	66.4% N = 244	56.6% N = 380	42.924	.001

No prior incarcerations (adult or juvenile) = 2
One or two prior incarcerations = 1
Three or more prior incarcerations = 0

C. Age at Commitment

	1	0	x^2	Significance Level
% Success	71.0% N = 635	56.6% N = 267	17.083	.001

Age at first commitment (adult or juvenile) 18 years or older = 1
Otherwise = 0

D. Auto Theft

	1	0	x^2	Significance Level
% Success	72.9% N = 630	52.6% N = 272	17.083	.001

Commitment offense did not involve auto theft = 1
Otherwise = 0

E. Parole Revoked

	1	0	x^2	Significance Level
% Success	73.4% N = 617	52.3% N = 285	38.299	.001

Never had parole revoked = 1
Otherwise = 0

F. Drug History

	1	0	x^2	Significance Level
% Success	70.0% N = 714	54.3% N = 188	15.975	.001

No history of opiate or barbiturate usage = 1
Otherwise = 0

G. Grade Claimed

	1	0	x^2	Significance Level
% Success	72.8% N - 265	64.2% N - 637	5.886	.05

Has completed 12th grade or received GED = 1
Otherwise = 0

H. Employment

	1	0	x^2	Significance Level
% Success	72.2% N = 467	60.9% N = 435	1.2.324	.001

Verified employment (or full-time school attendance) for a total of at
least six months during last two years in the community = 1
Otherwise = 0

APPENDIX B
SALIENT FACTOR SCORE ITEMS
(9-Item Research Instrument)
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I. <u>Living Arrangement</u>

	1	0	x^2	Significance Level
% Success	82.5% N = 177	62.9% N = 725	23.720	.001

Release plan to live with spouse and/or children = 1
Otherwise = 0

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SITE VISIT REPORT

DECISION POINT: PAROLE RELEASE

MICHIGAN DEPARTMENT OF CORRECTIONS

LANSING, MICHIGAN

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SITE VISIT: June 14 - 16, 1978

INTERVIEWERS: Saul Geiser, Ph.D.
               Marvin Bohnstedt, Ph.D.

CONTACT PERSON: William L. Kime
                Deputy Director, Program Bureau
                Michigan Dept. of Corrections
                (517) 373-0273

Overview

The Michigan Department of Corrections has recently instituted a new classification system for screening offenders committed to the state's prisons. The most important feature of the system is that it is designed to identify offenders who pose a high risk of committing violent crimes. Historically, the prediction of violence or dangerousness has proven a very difficult problem, and some leading research authorities have recently advocated abandoning the effort. Nevertheless, preliminary results coming out of Michigan have been encouraging and have rekindled national interest in the possibility of developing classification systems which can more accurately identify the dangerous offender. In view of the potential significance of the Michigan program, this report provides a closer look at its development, implementation, operation, and impact.

It should be emphasized at the outset that the classification system is still in somewhat of a shakedown phase. The system was initially developed for use in parole decision-making, and it has since been extended to a variety of other types of correctional decisions as well, including determination of custody level, camp placement, and eligibility for workpass and community residential centers. However, this report will focus primarily on the parole decision process.

The Michigan Parole Board is one of the few civil service boards in the United States. The seven member body is formally a part of the Department of Corrections, but it is autonomous in the sense that it possesses final authority over parole release decisions. Under the Michigan penal code, which is best characterized as a modified indeterminate sentencing system, the Board may parole a prisoner at any point between his maximum and minimum terms. Maximum terms for all offenses, with the exception of a few very serious crimes, are established by the legislature. Minimum terms are fixed by the sentencing judge, who may at his discretion set as the minimum sentence up to two-thirds of the maximum. In addition, there are a variety of other complexities in Michigan's sentencing system which affect parole decision-making. Early paroles (prior to the minimum term) may be granted with the concurrence of both the Board and the sentencing court. On the other end, prisoners with life or very long sentences (but excluding first-degree murderers) may be paroled after ten years if the sentencing

court enters no objections. Finally, prisoners who have accumulated "good time" may have this deducted from both their minimum and maximum terms. These complexities aside, however, the main function of the Board is to determine when between the minimum and maximum to set the release date.

Given the fact that the prediction of violent behavior is both a controversial research area and one that has thus far achieved very limited results, Michigan's decision to reopen this line of inquiry deserves some explanation. In addition to the desire to afford the public better protection against dangerous offenders, two other policy considerations were also important in prompting Michigan officials to develop a predictive system: (1) prison overcrowding, and (2) the prospect of determinate sentencing.

Like those in many other states, Michigan prisons are badly overcrowded. Despite efforts to develop community residential programs as alternatives to incarceration, Michigan's prison population has continued to grow in recent years even beyond existing bed space capacities. In developing a new classification program, therefore, one important aim was to relieve the problem of prison overcrowding by identifying "high risk," dangerous offenders and selectively retaining them in the system, while allowing "low risk," non-dangerous offenders (by far the most numerous category) to be paroled as soon as possible. Like corrections officials in other progressive states, Michigan officials believed that too many offenders who pose little or no social threat are needlessly locked up, a procedure which is both wasteful of resources and ineffective in reducing crime. As a result, their intention was to develop a classification system based on the principle of selective incarceration of the "high risk" offender, while permitting earlier release and/or community placement for offenders who represent little threat to public safety.

At the same time, however, Michigan officials were well aware that the prediction of violence is a highly difficult and controversial subject due primarily to the problem of "false positives." In the technical language of prediction research, "false positives" refer to individuals who are predicted to be violent but subsequently turn out not to be. The problem is that throughout the history of predictive research, violence has been vastly "over-predicted" so that even the best prediction instruments identify three to four "false positives" for every correct prediction, or "true positive." This problem has led many leading authorities, most notably Norval Morris, to argue that prediction

should be totally abandoned as a basis for criminal justice decision-making since decisions on that basis are more often unjustified than not: "As a matter of justice we should never take power over the convicted person based on uncertain predictions of his dangerousness."[1]

Nevertheless, while aware of such objections, Michigan officials were more persuaded by a number of counter-arguments. First, as already noted, a predictively based classification system for reducing prison overcrowding possesses great potential value. Second, countering Morris' argument that predictively based decisions are legally unjustifiable, corrections personnel noted that the proposed classification system would be applied only to those who had already been legally convicted and could not extend their terms beyond the maximum prescribed by law. Thirdly, preliminary research findings, to be described more extensively below, were very encouraging and suggested that given new research techniques the level of predictive accuracy might be improved significantly beyond that which other researchers had previously reported.

But of increasing importance to Michigan officials more recently has been what they perceive as the alternative to a predictive classification system-- namely, determinate sentencing. Michigan, like many other states, had been considering proposals for legislatively-fixed prison sentences as a departure from the existing indeterminate-sentence system, where the sentencing judge and the parole board exercise considerable discretion over the length of prison terms. Corrections officials were opposed to these proposals, however, fearing that they would be ineffective, would exacerbate the problem of prison overpopulation, and would unduly restrict the scope of correctional authority. Their argument has been forcefully articulated by Perry Johnson, Director of the Department of Corrections, and his deputy, William Kime:

> [To] abandon dangerousness entirely as a criterion for incarceration
> is not a step which either can or should be taken in view of the real
> world alternatives. The public demands and deserves protection from
> crime. If the law enforcement community cannot provide this by acting

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1. Norval Morris, "The Future of Imprisonment: Toward a Punitive Philosophy",
    Michigan Law Review, Vol. 72, No. 6, May, 1964, p. 1173.

selectively, then we are certain to see a state of repressive legislation which applies generally. We will see an increase in mandatory prison terms and in their length. In Michigan, and presumably elsewhere, about one parolee in 100 will commit a murder or very serious violent crime. When prison terms in general are made longer, we will be locking up not two or three, or even ten, to prevent the crime of that one, but 99. And even without repressive legislation, correctional systems are already holding many whose incarceration serves no apparent need. It is not a question of accepting the cost of uncertain prediction but a weighing of that cost against that of the realistic probable alternatives. If we opt for locking up two or three or four to prevent the crimes of one, we think it is preferable in ethical, humane, and practical terms to generally increased incarceration . .[2]

Instrument and Its Development

In 1974, the Michigan Department of Corrections initiated a research study aimed at identifying offenders who pose a high risk of committing violent crimes. This research effort has proceeded on a more or less continuous basis up to the time of this writing, making it difficult to summarize in any very concise fashion. The following paragraphs will therefore describe only the major highlights of the risk-classification study. Readers interested in a more detailed description of research procedures and techniques are referred to Dr. Edith Flynn's monograph, "The Michigan Department of Corrections Classification for Risk System--A Case Study," forthcoming.

The Michigan study was characterized by rigorous observation of established standards of prediction research. The data base was provided by case records of all inmates paroled between January and December of 1971 (N=2200). This population was then randomly divided into two equal sub-samples. The first was a "construction" sample used to construct the prediction instrument, and the second was a "validation" sample used to test how well the instrument works on a fresh population. Based on previously published prediction studies, researchers then identified over 300 potential predictor variables for testing that related to parolees' criminal and social backgrounds. Considerable care was taken to ensure that these variables were reliably coded, and variables with less than 95% inter-rater reliability were dismissed from consideration. After

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2. NIC Screening/Classification "Hearings," p. 19.

coding, a variety of statistical procedures, ranging from simple contingency tables to more sophisticated techniques, were applied to the data in order to determine which of the potential predictor variables were most closely associated with the commission of violent crimes while on parole. In addition, the study utilized another noteworthy research technique previously employed by a number of others. In coding criminal offenses, the Michigan researchers did not use the crime for which the offender was formally convicted, but instead went back to descriptions of the actual circumstances of the crime contained in presentence investigation reports in order to ascertain whether violence was involved. As is well known, most felony convictions occur as a result of plea bargaining where in return for a guilty plea the offender is charged with a lesser offense than the actual circumstances of the crime would indicate. This practice has been an obvious source of inaccuracy in previous prediction research which has relied largely on formal conviction data. Thus, in going beyond this formal conviction data to the "real" offense, Michigan researchers hoped to correct the deficiencies of previous research and to zero in more accurately on the issue of violence. At the same time, however, basing offender classification on crimes that are not actually proved raises very serious constitutional issues, which will be discussed more extensively below.

Another somewhat novel feature of the research methodology was the use of the Automatic Interaction Detector (AID) computer program, developed at the University of Michigan. AID is a variant of configural analysis, a statistical procedure which seeks out tree-like configurations of attributes having maximum predictive power. Configural analysis was first introduced during the 1960's as a means of overcoming "interaction effects" and "overlap" frequently encountered in the use of multiple regression techniques, where statistical interaction among potential predictor variables often confounded the analysis.

The AID program works essentially as follows: the sample is first dichotomized according to the presence or absence of the single most effective predictor variable. The resulting two sub-samples are then re-analyzed separately to determine which of the remaining predictor variables works best for each sub-sample, which are dichotomized yet again, this time resulting in four sub-samples. Using an iterative procedure, the process is repeated again and again until there are no further gains in predictive power. The main difference between configural analysis and previous techniques is that once a population is divided into risk

groups by one variable, each of the resulting groups is then analyzed separately. This method thus allows for the introduction of different predictor variables to further differentiate the groups since no assumption is made that what works for one category will necessarily work for the other. Michigan's use of the AID program represents one of the first large scale applications of configural analysis by a correctional agency.

Prior to the use of the AID program, preliminary research identified seven key variables associated with a high risk of committing a violent crime while on parole:

1. Previous commission of a violent crime.

2. Previous commission of robbery.

3. Single marital status.

4. Prior juvenile commitment.

5. Under 15 at first arrest.

6. Raised predominantly by mother.

7. More than half of present term spent under involuntary segregation.

Race had also been identified as a statistically significant predictor, but it was dropped for legal and policy reasons. Offenders possessing certain combinations of the above characteristics had about three and one-half times the rate of assaultive crime while on parole (37.5%) than the base rate for the sample as a whole (10.5%). These results were successfully replicated with the validation sample, and a first screening form employing the above variables was devised for use by intake screening personnel at Michigan's Reception and Diagnostic Center (see Appendix A).

However, the final version of the classification instrument (see Appendix B) differed from the initial version as researchers attempted both to simplify the instrument and to icrease its predictive power by means of the AID program. Definitions of variables were modified in several instances, and variable six, "raised predominantly by mother," was dropped out in the AID analysis. The prior offense categories of robbery, sex assault, and murder were grouped into a single variable, making it the single most predictive variable. Also, number seven,

"time spent in involuntary segregation," was changed to "serious institutional misconduct," a less arbitrary and more equitable classification variable.[3]

As a result of these changes, three variables--prior commission of robbery, sex assault, or murder; serious institutional misconduct; and first arrest before fifteenth birthday--are used under the present classification scheme for determining whether an offender is a "very high assaultive risk." A follow-up study using the AID system to analyze the entire 1971 parole population indicated that the predictive accuracy of the "very high risk" category is now slightly improved (to 40%, as compared to 37.5% initially), but because the entire population was used in devising the final version of the instrument, no independent validation was possible. Michigan has received an LEAA grant for a validation study, but until that study is completed the 40% figure (implying only a 1.5 to 1, false-positive to true-positive ratio) should probably be approached with some caution.[4] If the previous history of prediction research is any guide, one would expect to observe some shrinkage in predictive power in the validation study.

Michigan's new classification system cost approximately $300,000 to develop. According to deputy William Kime, this figure includes all research and development costs although it does not include funds for the forthcoming LEAA validation study. This cost-projection does include, however, additional research relating to the prediction of property crimes, which Michigan has pursued simultaneously with research on assaultive risk using the same data and analytic procedures (see Appendix C for property risk screening form). This instrument, too,

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3. Serious misconduct or security segregation. This variable will be coded "yes" if, during any sentence for which he is still serving, the resident has been (a) found guilty of major misconduct which is nonbondable under current department-wide policy by the disciplinary hearing committee;that is,found guilty of homicide, assault, intimidating or threatening behavior, sexual assault,fighting, inciting to riot or strike, rioting or striking, or possession of dangerous contraband,or escape, and attempt to escape; or (b) was placed in administrative segregation by the security classification committee.Involuntary segregation for the resident's own protection is not to be counted in this category;neither is segregation within R&GC only.

4. Another important measure of predictive accuracy is percentage of explained variance. Michigan researchers claim "betwen 30 and 40 percent" which, if correct, would compare very favorably with previous research. However, there are questions concerning the exact percentage and its computation,so that it too should probably be approached with some caution pending a more complete evaluation.

is now being used in parole decision-making, as will be described below in the section on screening and decision processes.

Implementation

Although Michigan's classification program was based on solid research and well articulated policy, the implementation of the program has encountered some difficulties. As the site visit team has observed in other jurisdictions, the step from the design of a classification instrument to its actual implementation is frequently a point where unanticipated problems arise. In the case of Michigan, the three most important problems encountered in implementation have been staff resistance, inadequate case data, and legal challenges.

Staff Resistance. During interviews with Dr. John Prelesnik and his staff at the Reception and Diagnostic Center (RDC) where all commitments to the state prison system are initially screened, the site visit team encountered a negative reaction to the new classification system, a reaction which Deputy Kime had predicted would occur. In part, no doubt, this reaction stems from the RDC staff being mainly clinical psychologists who were understandably skeptical about "the computer boys coming in to tell us how to do diagnosis." This type of "turf defense" is especially common where an attempt is made to introduce classification instruments among staff who are accustomed to exercising professional discretion and who have a strong professional identity. Notwithstanding their possibly defensive reaction, however, RDC staff presented some valid concerns about the new classification program and how it was introduced.

First of all, staff were especially concerned about the lack of communication between central research personnel who developed the instrument, and the RDC staff who are supposed to use it. RDC staff felt that the classification system might have been meaningfully improved were they afforded the opportunity to provide input and make suggestions. Although researchers did solicit staff input initially, none of the present staff were employed at RDC at the time of the research design, and the result is that present staff perceive the classification system as an imposition. Further complicating the situation was the

fact that changes were made between the first and second versions of the instrument, leading to complaints about "shifting definitions" and reinforcing the RDC staff's perception of the instrument as a "clerical nuisance." In sum, it appears that the implementation phase might have been much smoother had research personnel and line staff established a closer working relationship.

A second concern voiced by RDC staff pertains to specific problems with some of the predictor variables included in risk-screening form. One problem, for example, is how to determine the "real offense." As previously noted, the Michigan classification system does not rely on official conviction data, but considers actual descriptions of the crime to determine whether the "real" offense fits the description of robbery, sex assault, or murder, on the one hand, or any assaultive felony on the other. RDC staff, then, are interested in the formulation of more explicit coding instructions and guidelines, so that their classification decisions will be more clear cut in cases where ambiguity arises between conviction data and actual descriptions of the crime. The Department has responded to RDC staff concerns by issuing a policy directive which states that the offender is to be given "the benefit of the doubt" in cases where there is conflicting or ambiguous information.

Inadequate Case Data. It is a truism that classification can only be as good as the information upon which it is based. Michigan's classification system relies almost exclusively on information contained in presentence investigation reports, prepared initially by probation officers to assist judges in sentencing, and then sent to the Reception and Diagnostic Center for use by their staff; the results of this screening are then forwarded to the institution and eventually the parole board. Obviously, the presentence reports are the keystone of the classification system, and their quality and completeness are vital to its effectiveness. This is especially so because RDC staff have little time or resources for independent verification of the data included in the reports.

Unevenness of quality in the Pre-Sentence Investigation Reports (PSIRs) from different jurisdictions creates obstacles to effective classification, and is one of the RDC's chief concerns. According to RDC staff, the quality and format of the reports vary widely from one part of the state to another. The problem is most prevalent in Wayne County (the Detroit area) which commits a very high proportion of offenders to the state prison system. In Wayne County, most probation officers are under county rather than state jurisdiction, making it diffi-

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cult for the Department to effect changes. The Department has made recent efforts to tighten up the PSIRs through introduction of a standardized reporting format, but Deputy Kime states that such problems in the PSIRs affect only a small percentage of cases.

Another related problem is the incompleteness of the reports. Occasionally, information concerning an offender's juvenile record is unavailable (specifically, whether an offender was arrested before his 15th birthday) because court records can be sealed. Such a situation could create inaccuracies since the above information is particularly relevant in placing an offender in the "very high risk" category. The result is that some cases will be shown inaccurately as a lower risk than would otherwise be the case.

In the final analysis, the problems of uneven quality and incompleteness of the PSIRs derive from a larger problem: they are being used for a purpose for which they were never intended. Originally conceived as an aid to assist judges in sentencing decisions, the PSIRs are now being pressed into service for use in prediction instruments with very stringent data requirements. However, this is a problem encountered by many researchers, especially those doing prediction studies.

Legal Challenges. A third problem encountered during the implementation phase was a legal challenge to the new classification system in the form of a class action suit charging a violation of inmates' due-process rights. The suit objected to the Department's use of the "very high risk" classification to restrict inmates' opportunities for release without benefit of such procedural safeguards as prior notice, provision for impartial hearings, right to counsel, written findings, and right to appeal. Further, the suit pointed up other problems, such as individuals who had been granted special parole or community placement prior to the new classification program, but who had subsequently been classified as "very high risks" as a result of the new system and thus denied these dispositions.

The Department responded promptly and positively to these offender grievances. The class action suit stimulated the Department to introduce additional and more stringent due-process safeguards. Rather than fighting the case, the Department entered into negotiations with the inmates' counsel which resulted in a consent decree that largely resolved the issue in favor of the inmates. The Department then agreed to notify in writ-

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ing all inmates who are classified as "high" or "very high risk" within 30 days of the classification, such notification to include an explanation of both how the classification is done and how it may affect the individual's chances for release. Moreover, those classified as "high" or "very high risk" may request an administrative hearing for the purpose of challenging the classification, such hearing to be held within 90 days after receipt of the request. Finally, if the inmate is not satisfied with the results of the· hearing, he may appeal through the Department's established four-step griev- ance procedure. At no step in this process may an offender's case be heard by individuals who originally performed or were consulted during the classifi- cation.

Screening and Decision Process. Present screening and decision pro- cedures are relatively straightforward. Screening is performed by staff at the Reception and Diagnostic Center. All incoming offenders are rated on both the "Assaultive Risk Screening Sheet" and the "Property Risk Screening Sheet" based on information in the offender's pre-sentence investigation re- port. Offenders who are rated either "very high" on assaultive risk (infor- mally referred to as "VHR"), or "high"on both assaultive risk and property risk ("H & H") are required to have their cases heard before an executive session of the parole board.

A significant aspect of the system is that one variable, "serious institutional misconduct," is especially important because it is a prerequisite to placing the offender in the "high" and "very high" risk categories. Consequently, RDC staff write "potential high risk" or "poten- tial very high risk" on the screening sheet and show it to the inmate with the warning that his record qualifies him for those categories in all re-· spe‾ts other than misconduct. Should the offender then actually receive a misconduct designation, this is added to the record by the institutional · staff and forwarded to the parole board.

Executive sessions of the parole board,which require the presence of the full seven-member board, are very similar to other parole hearings. The case file is read by the board, followed by discussion and a vote requiring a majority of four. In addition to risk, the board considers many other fac- tors in its decision, including prior record, progress in rehabilitative pro- grams, reports of institutional and diagnostic staff, and so forth. There is

an informal presumption by the board that high-risk cases should not be par- oled unless positive factors in the offender's record indicate strongly to the contrary. Observation of board hearings and interviews with board members suggest that the board tends to be very conservative with high-risk cases, an attitude that has been reinforced by the board's having been "burned" by one or two "VHR" cases who were paroled, and then committed new offenses. As a result, most "VHRs" are routinely denied parole and given a twelve-month "pass." Because each case must be reviewed at least once a year, the twelve-month pass is the most severe disposition that the board can make. In May, 1978, for example, the month immediately prior to the site visit, sta- tistics showed that of 40 "VHR" and "H & H" cases heard in executive session, only 15 were given a parole date.

Results and Impact

It is extremely difficult to evaluate the impact of Michigan's classifi- cation system both because it is still new and because the necessary data are presently unavailable. Though the Department is now collecting these data, a definitive assessment is impossible at this point. Nevertheless, because of the potential programmatic significance of the Michigan system as a possible model for other jurisdictions, some provisional conclusions are in order.

Effects on Prison Overcrowding. As noted at the onset, one of the pri- mary objectives of the new classification program was to reduce prison over- crowding by means of selective incarceration of the high-risk, dangerous of- fender, while permitting earlier release of the low-risk, non-dangerous of- fender. However, preliminary results are difficult to assess because of con- flicting data. On the surface, the program appears to have had only limited success, for Michigan's prison population has continued to expand under the new classification program, even to the point where plans are now being made to increase prison capacity. The Department's statistics indicate that the prison population has increased to over 15,028 in 1979, up from about 13,600 in 1977. Average length of incarceration has also been increasing, despite efforts to "liberalize" parole and community placement for low-risk offenders. Moreover, the modal, or most frequent parole pass, has increased

from six months prior to the classification program to 12 months at present.

One must be careful in interpreting these developments, however, due to a number of confounding factors. Michigan officials contend that the problem of overcrowing might have been much worse had not the classification program been in operation. Also, it does seem fairly certain that prison population would have increased anyway, despite the possible effects of the classification program: the increasing number of commitments and longer sentences from the courts, coupled with related developments which reflect the current "hard-line" philosophy toward criminal justice (not only in Michigan but nationwide) have contributed to overcrowding in prisons. The mere fact that prison population has increased, therefore, does not mean that the classification program is not successful.

What is needed is closer analysis of how the classification system affects disposition of both the "high risk" and "low risk" offender. Although the policy of "selective incarceration" is premised on the twin objectives of stricter treatment of the former and more lenient treatment of the latter, the preliminary impression gained during the site visit was that the classification system has thus far been effective in achieving only one of these objectives--stricter treatment of the high-risk offender. The parole board appears to have become more conservative in its disposition of this type of offender, with the result that some institutional officials have begun to perceive the build up of high-risk offenders as a potential management problem.

With respect to the low-risk offender, however, policy implementation seems less effective. Although low-risk offenders are far more numerous than high-risk offenders (43% vs 11% of the inmate population, respectively, according to the Department's figures),[5] only about 1,500 inmates (or about 10% of the total prison population) are currently assigned to community-corrections centers. Moreover, the fact that the modal parole pass has increased from 6 to 12 months during the time the program has been in operation is still another indication that the system places unequal emphasis on the high-risk offender at the ex-

5. William Kime, "The Summary of the Parolee Risk Study," (Michigan Department of Corrections Program Bureau, January 10, 1978) pp. 4-5.

pense of those in the low-risk categories.

Crime-Suppression Effects. The second main objective of Michigan's classification program is to reduce recidivism among parolees, particularly violent recidivism, and thereby provide enhanced public protection against crime. Once again, however, the available data do not permit a clear and unequivocal assessment of the extent to which this objective may have been achieved. Although the Department is planning an evaluation study on this issue, the first results will not be available until some time next year.

Nevertheless, Perry Johnson, Director of the Michigan Department of Corrections, has provided an estimate of the expected effects of the classification program upon violent crime in an article entitled "The Role of Penal Quarantine in Reducing Violent Crime."[6] The article is a well written, closely reasoned defense of risk classification, especially as an alternative to determinate sentencing, and deserves close reading by all who are concerned about the future role of corrections within the criminal justice system as a whole.

The article examines the pros and cons of several different approaches to sentencing, including proposals for determinate sentencing, the "corrections model," and the "judicial model." The article attempts to determine what impact each approach would have on the rate of violent crime. In addition, it attempts to ascertain the costs of each approach by determining its probable effect on the size of prison populations and the per capita cost of keeping each prisoner. According to Johnson, for example, both the "corrections model" and the "judicial model" compare quite favorably with determinate sentencing. By identifying inmates whose risk potential is four times that of the average and selectively incarcerating that group, approaches based on risk classification would theoretically afford four times the public protection, and at lower cost, than approaches such as determinate sentencing which are based on the premise of generally increased incarceration as a preventative to crime. As is typical of cost-benefit analyses, however, John-

6. P. Johnson, "The Role of Penal Quarantine in Reducing Violent Crime," Crime and Delinquency, Vol. 24, No. 4 (October 1978), pp. 465-485.

son's analysis is rather complicated and requires a number of assumptions which would unfortunately involve a more detailed explication than is possible in this report. The reader is referred to the original text for the full analysis.

Leaving aside the debate over determinate sentencing, however, let us look more closely at the "corrections discretion model" since it closely approximates what Michigan's classification system will be like once it is fully implemented. Under this model, it is assumed that offenders classified as high-risk would be denied community placement or parole release for at least five years, medium-risks for two, while low-risks would serve only one year before release from prison. Based on the 1971 risk study, Johnson then computes the number of persons who would be held in prison under this model; high-risk offenders, for example, comprised 18% of the 1971 sample, which when multiplied by average annual prison intake and again by five (average number of years of incarceration), provides a projection of 4,170 high-risk offenders who would be on the prison count at any given time (.18 x 4,635 x 5 = 4,170; see Appendix D). Next, Johnson multiplies the violent recidivism rate for each risk group by the number imprisoned, giving an estimate of the number of violent crimes that would be prevented annually under the policy of selective incarceration. These add up to 673 prevented crimes for all risk groups combined. Finally, he subtracts from this figure the number of crimes prevented under pre-existing practices, which were computed in essentially the same manner but using the average violent recidivism rate for all parolees. This results in a total of 187 crimes that presumably would be prevented annually under the "corrections discretion model," a figure representing 3.8% of annual violent crime convictions in Michigan. Thus it is argued that the classification system will reduce violent crime by about 4%.

However, this estimate of the effects of the "corrections discretion model" on the recidivism rate may be inaccurate due to the author's assumption that no risk screening took place, if even in an informal fashion, under pre-existing practices. This assumption is reflected, among other places, in the use of the average annual violent recidivism rate for all parolees in computing crime prevention under pre-existing practices. Yet, even before the advent of the classification system, the board took risk into consideration, albeit in an intuitive, common sense manner. The board routinely considered factors now included in the classification instrument (e.g., previous commission of violent felones, juvenile record, institutional misconduct, marital

status) in decisions to grant or deny parole. Although this type of informal screening may not have been as accurate as the current, actuarially-based approach, some degree of "selective incarceration" undoubtedly resulted. It follows, therefore, that the 4% figure cited by Johnson probably overestimates the extent to which violent crime might be prevented by the classification system. Once, again, however, we must caution that hard evidence is lacking on this issue, so that a more definitive assessment must await future research.

FIGURE VI-4 - ASSAULTIVE FELONY PREDICTION SCREENING FORM (first version).   VI- x

MICHIGAN DEPARTMENT OF CORRECTIONS

INITIAL SCREENING PAROLE RISK POTENTIAL

Resident's Name	Number

YES   NO

IS RESIDENT SERVING ON A NON-ASSAULTIVE CRIME?

WAS HE EVER MARRIED?

If Both are YES, Resident is LOW RISK; screen for Very Low Risk.

DOES HE/SHE HAVE A JUVENILE RECORD?
(Commitment or Probation)

YES   NO

If NO, he is Very Low Violence Risk.

Please Check

If Both are No, Resident is HIGH RISK; screen for Very High Risk.

WAS HE:

RAISED PREDOMINANTLY BY MOTHER ALONE?

or

IN INVOLUNTARY SEGREGATION MORE THAN 50% OF THIS TERM?

or

NOW SERVING ON ROBBERY AND HAD A JUVENILE RECORD (Check if Both)
(Juvenile Probation, Commitment or Arrest by Age 14)

YES

If any are checked, he/she is a Very High Risk.

Please Check

VERY LOW

VERY HIGH

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ASSAULTIVE RISK SCREENING SHEET

CSO-353 12/77

RESIDENT'S NAME		NUMBER
SCREENED BY	LOCATION	DATE

INSTRUCTIONS: Starting at left, check [✓] "yes" or "no" at each item. This directs you to next item. When a risk category is reached at right, circle that category. If information is missing or conflicting, circle insufficient information box and refer to classification director. See definitions on reverse side.

ASSAULTIVE RISK CATEGORY

Crime Description Fits Robbery, Sex Assault or Murder

Serious Institutional Misconduct

First Arrest Before 15th Birthday

VERY HIGH ASSLT. RISK

HIGH ASSLT. RISK

Reported Juvenile Felony

Crime Description Fits Any Assaultive Felony

MIDDLE ASSLT. RISK

Ever Married

LOW ASSLT. RISK

VERY LOW ASSLT. RISK

NOTE: If HIGH or VERY HIGH risk, notice of risk screening MUST be given to resident within 30 days.

NOTICE OF HIGH OR VERY HIGH RISK:

☐ Not Applicable

☐ Sent _____
                Date   Signature

INSUFFICIENT INFORMATION

DISTRIBUTION: Original - Central Office File
                1 copy - Institutional File
                1 copy - Counselor's File
                1 copy - Resident

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RESIDENT'S NAME

NUMBER

SCREENED BY

LOCATION

DATE

INSTRUCTIONS: Starting at left, check [✓] "yes" or "no" at each item. This directs you to next item. When a risk category is reached at right, circle that category. If information is missing or conflicting, circle insufficient information box and refer to classification director. See definitions on reverse side.

PROPERTY
RISK
CATEGORY

HIGH

PROPERTY
RISK

NOTE: If HIGH risk, notice of risk screening MUST be given to resident within 30 days.

Serious Institutional Misconduct — YES / NO

Reported Juvenile Felony — YES / NO

First Arrest Before 15th Birthday — YES / NO

Drug Use Problem — YES / NO

MIDDLE

PROPERTY
RISK

LOW

PROPERTY
RISK

NOTICE OF HIGH RISK:

☐ Not Applicable

☐ Sent _____
Date   Signature

**INSUFFICIENT
INFORMATION**

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TABLE VI-7
THE CORRECTIONS DISCRETION MODEL

VI- x:

CORRECTIONS DISCRETION MODEL

Violence Risk Group	Annual Violence Conviction Rate	Average Annual Intake Resulting In 1975 Prison Population	If We Held In Prison For	We Would Have In Prison	Preventing This Many Violent Felony Convictions
High	10.3%	834 (18% of 4635)	5 years	4,170	430 (Repeat Rate X Number Held in Prison)
Medium	4.5%	2,364 (51% of 4635)	2 years	4,728	213
Low	2.1%	1,437 (31% of 4635)	1 year	1,437	30
			2.33 years	10,335	673

Corrections Discretion Model prevents 673 violent felony convictions
Present practice prevents (4.5% of 10,800) or 486 violent felony convictions

Improved Public Protection = 187

4016 = 1975 violent crime conviction
.81 = Adult share of 1975 violent crime arrests
4958 = Total violent crime dispositions including juveniles (.81x = 4016)
137 = Improved public protection
3.8% = Impact on violent crime in 1975

SOURCE: Perry M. Johnson, Michigan Department of Corrections. "The Role of Penal Quarantine in Reducing Violent Crime," Crime and Delinquency, Vol.24, No.4 (Oct. 1978), pp.465-485.

SITE VISIT REPORT

DECISION POINT: PAROLE RELEASE

MINNESOTA CORRECTIONS BOARD

ST. PAUL, MINNESOTA

SITE VISIT: April 19 - 21, 1978

INTERVIEWERS: Peggy Smith, Ph.D.
              Marvin Bohnstedt, Ph.D.

CONTACT PERSON: Mary Welfling
                Research Analyst
                Tele: (612) 296-0667

Overview

In 1973 the Minnesota Legislature replaced its part-time parole board
with a full-time paroling authority now known as the Minnesota Corrections
Board (MCB). None of the new board appointeees had prior experience in parole
decision making, and no criteria or guidelines were available to assist the
decision process. Earlier in 1973, Legal Assistance for Minnesota Prisoners
(LAMP) had filed a suit in federal court contending that the absence of cri-
teria for parole decisions resulted in an arbitrary and capricious exercise of
discretion. In fact, some powerful local factions were calling for total elim-
ination of the parole board. Consequently, in February, 1974 (one month after
MCB's inception) the Minnesota Board submitted a grant proposal to the
Governor's Commission on Crime Prevention and Control (later changed to
the Crime Control Planning Board) requesting assistance in the develop-
ment of parole decision making guidelines. Their intent was to develop
a method that would increase consistency and equity in judgments without
eliminating the indeterminate sentencing practice in the state. A grant
was subsequently awarded beginning in October, 1974 for that purpose.

Staff hired with grant funds to complete the project worked closely with
the MCB in reviewing various decision making models. Of those reviewed, the
guidelines used by the U. S. Parole Commission appeared to be the most consis-
tent with local decision making policies. Project staff therefore initiated
research necessary to develop a guidelines system patterned after the U. S.
Parole Commission model, but compatible with practices in Minnesota. The re-
sulting instrument was validated and then implemented state-wide beginning in
May, 1976.

Using the guidelines, and information provided by correctional casework-
ers regarding aggravating or mitigating circumstances, the MCB decides length
of sentence to be served by each prison inmate (between 900 and 1,000 felons
annually). In addition to its primary function of deciding parole release
dates, the MCB also decides parole revocations (approximately 400 cases per
year), approves parole plans, and authorizes work release programs.

The MCB chairman is appointed by the Commissioner of Corrections; four
other members are appointed by the governor with approval of the Senate. The
Department of Corrections provides the MCB with necessary support services

including 23 corrections caseworkers who are under the direction of a super-
vising caseworker, and who perform the actual risk assessment screening.
There are also two senior staff members in the central office, and a part-
time staff member at each institution assigned to coordinate rehabilitative
plans. A research analyst and part-time assistants are also on staff. Addi-
tional but more indirect support to the MCB comes from the field parole offi-
cers who make recommendations about parole revocation. The attorney general's
office has also aided the MCB by consulting in the development of the
guidelines and defending the instrument in court. The work of the MCB is
also affected by the Ombudsman's Office, which has authority to investigate
and negotiate recommendations for prisoner assistance, and by LAMP, a state-
funded agency operating as a prisoner advocate.

The MCB serves the entire State of Minnesota (population 4.2 million).
Half of the residents are concentrated in the metropolitan area of St. Paul
and Minneapolis, and about 250,000 reside in the Duluth area. The balance
of the State's population, nearly one-half, is primarily rural. In ethnic
composition, the state is 88% Anglo, 6% American Indian, 6% Black, and less
than 1% Mexican-American. Minnesota has a relatively low crime rate, and
according to FBI national averages, is the fifth "safest" state in the nation
(computed according to population, both total numbers and density). Minnesota
is (a) the safest state from homicides, (b) second safest from assaults, (c)
third safest from robbery, (d) fourth safest from burglary, and (e) seventh
safest from both larceny and auto theft. Nevertheless, since 90% of convicted
felons in Minnesota are released on probation, individuals treated in correc-
tional institutions represent serious offenders.

The Instrument and Its Development

Three separate elements went into the formulation of the guidelines.
The first, a seriousness of offense scale, was developed both by MCB members
and judges who separately sorted offense titles into categories of serious-
ness. Project staff then compared these subjective ratings and developed a
nine category severity index based on the congruence among raters. A second
component was the development of an actuarial risk assessment device. In de-
veloping this instrument, predictor variables were first determined by reviewing
the literature on parole and prediction studies over the last 20 years. Fifty-

three predictor variables were selected including current and prior criminal
record, correctional record, demographic data, and social history (See Appendix
A). Next, staff randomly selected slightly over 500 cases from 1971-72 parole
decisions for a "construction" sample, and another group of just over 500 cases
for a "validation" sample. After examining the number of new felony convictions
within two years of release, variables were selected and examined statisti-
cally to determine the extent to which they individually and collectively
predicted outcome. The project staff used both Burgess (equal weighting) and
regression methods (differential weighting) for constructing the instrument,
and finally selected the Burgess method because it was least complicated yet
sufficiently predictive.

Along with accuracy of predictive power, pragmatic, legal, and ethical
concerns dictated the final choice of variables. Family criminality was ex-
cluded on ethical grounds although it had high predictive power. Educational
attainment was dropped to accommodate caseworkers who found it difficult to
equate and time-consuming to verify. Juvenile records were also excluded after
a six-month trial period because they were frequently inaccessible, a situ-
ation which introduced inconsistencies into scoring. Furthermore, LAMP raised
legal issues concerning the use of juvenile records, and correctional staff
also objected to the use of juvenile records on ethical grounds. Age of
the inmate at first admission was deleted despite its predictive value be-
cause of concerns about equity and institutional management. Thus, the
final prediction scale was the result of both systematic research and prag-
matic considerations.

A third element that entered into the formulation of the new guidelines
was the need to determine when to parole for each combination of offense and
level of risk. Since the board was not trying to alter sentence time, but
merely to introduce consistency, average times were computed for offenders
with similar backgrounds of risk and severity in past parole release decisions.
Guideline times were derived for each of the 45 combinations of risk (five
categories) and seriousness of offense (nine categories). Completion of the
three elements described above resulted in a matrix instrument with severity
of offense on one dimension, a rating of risk level on the other dimension,
and recommended time to parole at the intersection of offense and risk (see
Appendix B and also Appendix C--Risk of Failure Worksheet). As suggested

earlier, the MBC hoped that use of the instrument would increase consistency and equity in judgment without sacrificing the state's indeterminate sentence plan.

Implementation

The Governor's Commission on Crime Prevention and Control (LEAA) provided funding for the development and implementation of the instrument. The total grant amount was $170,000 over a three-year period, of which only $140,000 was spent. Most of the funds were used to support the research necessary in developing the instrument. The remainder was spent primarily in training Department of Corrections' staff in evaluation and monitoring, and in gaining the acceptance of the local criminal justice community. In order to gain public acceptance, information about guidelines was widely disseminated in advance, and a series of regional meetings were held with judges, prosecutors and defense attorneys.

Judges were also exposed to guidelines in advance through corrections conferences. During the implementation stage, both the research analyst and MCB chairman accepted a number of public speaking engagements with private associations -- a factor they believe was significant in gaining public acceptance. In addition, the governor was kept advised of implementation progress and was highly supportive. For example, when implementation was delayed because legislation was passed supporting determinate sentencing and abolition of the parole board, the governor vetoed the bill and helped to implement guidelines to improve decision making and the existing indefinite sentencing plan. Prior to implementation, a comprehensive orientation was also conducted with all parole and probation officers in the state in order to train caseworkers in the use of guidelines. In addition, a liaison staff member was appointed in each institution to answer any questions which might arise concerning implementation. In the early stages of implementation, caseworkers were encouraged to submit questions to the research analyst who then forwarded recurring questions to the parole board for clarification and interpretation. Caseworkers were also surveyed on several occasions to elicit questions about the guidelines and related issues needing clarification.

The time-table of implementation events was as follows: During the first 18 months (beginning December 1974) consultations were conducted with parole authorities, predictive research literature was

reviewed, and negotiations were held with the parole board to establish guidelines and matrix time limits for each cell. Guidelines were implemented in May, 1976. During the next six to eight months after implementation (until December, 1976), numerous criminal justice agencies and attorneys were oriented to the guidelines. During this time period, modifications in the guidelines were accomplished based on feedback received from concerned agencies and individuals. From January, 1977 to July, 1977, monitoring and evaluation was conducted. Funding of the implementation stage terminated in July, 1977.

Screening and Decision Processes

Correctional caseworkers working in the five state penal institutions complete the risk assessment instrument, in addition to their case management duties. The caseworkers are solely responsible for screening, and consult the following documents (in addition to conducting personal interviews) to complete the risk assessment worksheet:

1. Department of Corrections Source File.

2. FBI rap sheet.

3. Pre-sentence investigation report.

4. Transcript of judge's comments at sentencing.

MCB does check the caseworkers' completion of the worksheet by consulting the hearing packets which contain all the information required to calculate the risk score and offense severity levels. Paperwork connected with screening takes about 15 minutes, and the interview with the inmate takes another 30 minutes. Including background investigation, total processing time for a new admission averages about two hours, a reduction from four hours under former procedures involving more subjective assessments. Initial assessments are normally completed within two months. In about 20-25% of the cases, source documents are missing and a continuance is requested until a later date. The average caseworker screens six to eight new admissions per month, and all caseworkers at the state prison together screen 70 to 100 new

admissions per month. These statistics do not include the several categories of offenders excluded from decisions under the matrix guidelines. Persons in maximum security custody, those with disciplinary reports pending, or those serving disciplinary segregation sentences are not assigned a parole release date until their status changes. Persons serving sentences for first degree murder are also denied a parole release date until they have served the mandatory minimum sentence. In cases where the statutory sentence imposed by the judge conflicts with matrix guidelines, the statutory sentence is binding.

If the inmate is eligible for a release date, a hearing is held usually within two months of admission. Prior to that time, the inmate is given a copy of the matrix scored for his or her case. At the hearing, two or three members of the parole board review and discuss the case summary, source documents, and the risk assessment instrument in the presence of the caseworker. Next, the information is reviewed with the inmate, who is allowed to challenge or clarify relevant information. The inmate is then informed of length of sentence according to guideline matrix time, and of any special conditions applied to his/her parole.

The criterion variables and sources of information utilized in the decision maximize objectivity in screening; yet, the opportunity for subjective assessments is preserved, both at the caseworker screening level and at the parole board decision level. Caseworkers, for example, can point out to the board particular mitigating or aggravating circumstances that they see as important in a case. The board does, however, have access to all case information and retains the authority to depart from the established matrix guidelines in cases they consider unusual, although in the latest analysis 81% of the decisions were within matrix guidelines. Of the 19% departing from guidelines, about half were mandatory departures (involving sentences imposed by the judge) and the other half were discretionary departures taken by the parole board for unusual circumstances.

Following the initial hearing, the inmate may choose to negotiate a Mutual Agreement Project (MAP) contract, outlining rehabilitative, educational, or vocational objectives to prepare himself for re-entry. Participation in MAP contracts is voluntary, and the inmate may have a maximum of six to ten months reduced from his sentence time by successful completion of a MAP

contract; the average reduction is 4.0 months. In order to monitor progress, there is an interim annual review for inmates incarcerated longer than a year, but usually this is simply a paper review. Two months prior to the target release date (or earlier if the MAP contract is successfully completed), the inmate, caseworker, and the field agent who will supervise upon release,present a preliminary parole plan to the Board at a re-entry hearing. If the plan is approved, the inmate and counselor develop specific details and present a specific release plan at the final hearing about five days before the target release date. At this final hearing, release on the target date is approved if all details of the specific plan are consistent with the general plan. If the specific plan is not approved, an additional hearing is held and an acceptable plan negotiated.

Only under three conditions (which the inmate controls) is the target release date changed: (a) if the inmate received disciplinary action for a criminal act while confined, (b) if a MAP contract is successfully completed, and (c) if time off for good behavior is calculated (though this happens infrequently). Hence, once the target release data is established at the initial hearing, the inmate knows the date of release, and together with his or her caseworker can establish re-entry plans.

Results and Impact

As suggested earlier, the primary objective of the guidelines is to improve the consistency and equity of parole decisions. One of the prime questions of interest in this respect is the extent to which the MCB departs from its own guidelines. Between January 15 and August 15, 1977,the MCB assigned target release dates to 859 inmates. Of these, 164 or 19% were departures from the guidelines. However, a certain number of the departures involved cases in which (1) the MCB could not apply the guideline time because the inmate's sentence expired too early, or (2) the MCB had made a prior commitment (before implementation of the guidelines) which was inconsistent with the guideline time. These were "mandatory departures" and contrast with "discretionary departures" in which the Board optionally departed from the guideline time. Table 1 shows the reasons, direction, and amount of departures. Table 1 shows that 67 (41%) of the departures were the result of assigning release dates later than indicated by the guidelines,and 97 (59%) were the result of

assigning release dates earlier than indicated by the guidelines. The net effect of guideline departures was to slightly increase the average period of incarceration above that indicated by the guidelines.

TABLE 1

DEPARTURE FROM PAROLE GUIDELINE

TIME VALUES

Reason for Departure	Above Guidelines		Below Guidelines	
	Number of Cases	Average Months	Number of Cases	Average Months
Sentence				
Guidelines beyond expiration	-	-	52	14.7
Judge's request	1	6.0	10	10.9
Mandatory minimum	7	6.0	-	-
Extended term/				
habitual offender	2	27.0	-	-
Criminal History				
Extensive	29	33.7	-	-
None or limited	-	-	15	9.4
Professional criminal	4	7.8	-	-
Great Bodily Harm Offense	10	30.5	1*	5.0
Institutional Misbehavior	7	5.9	-	-
Prior MCB Commitment	2	2.0	9	10.3
Miscellaneous	5	24.2	5	12.1
	67	23.6	97	12.7

*The inmate suffered permanent injury while committing an aggravated assault.

The MCB also attempted to assess guidelines impact on equity of decision making -- which is defined as the extent to which inmates with similar backgrounds are treated comparably. The research team measured equity by comparing the standard deviations in time served for two groups of offenders: those classified into similar risk of failure and severity of offense

categories before implementation of guidelines, and those similarly classified after guidelines implementation. The limited findings completed at the time of our survey indicate that for similar categories of offenders MCB decision making has become more equitable since the implementation of guidelines.

Unfortunately, unless a released inmate violates parole and appears before the board for parole revocation, feedback is not available to screeners or decision makers regarding case outcomes. Recidivism data are not generally available, in part because the guidelines have only recently been implemented, but also because changes in recidivism rates were not an expected outcome of the guidelines. The instrument was designed to improve decision consistency, and to improve decision accuracy in identifying high, medium, and low risk inmates.

Several advantages of the guidelines are political in nature. The MCB Chairman indicates that the guidelines, which were initially implemented in response to political attacks on the parole board, are now well received, even by former critics. The legislature recently enacted a law which empowers the new Sentencing Guidelines Commission to recommend guidelines to the courts, a move which the MCB chairman sees as evidence of support for the guidelines concept. As of May 1, 1980, the sentencing judge in each case will establish terms of imprisonment in Minnesota; the Corrections Board will no longer set release dates. The role of the parole board could be eliminated altogether, or perhaps better integrated with decisions made by the courts. But no matter what the future outcome the fact remains that the use of guidelines has stalled a move toward determinate sentencing which had been prevalent in the state at least since 1973.

According to the MCB Chairman, the effect of guidelines has been positive, and it is generally believed that more rational and more consistent decisions are now being made. One observer also indicated that guidelines increase the "comfort level" of parole board members and allow them to respond to criticism by pointing out that they tried reasonably to assess important factors according to a logical, predetermined set of criteria. By increasing the "comfort level" of parole board members and providing a rational, objective foundation for decisions, guidelines are perceived as preventing a radical shift to a conservative stance when "bad press" results from incorrect decisions.

Agency caseworkers were initially skeptical of the guidelines, primarily because of anxiety about the transitional state of their jobs. Resistance was nominal, however, and apparently was conjoined with resistance to change in general, and was not an independent expression of hostility to the guidelines concept. The parole board held firmly to the concept of guidelines and resistance soon diminished. The parole board's successful effort to upgrade the prison case workers' status also helped gain acceptance of the guidelines. Pay was increased, and other incentives added in order to make the institutional caseworker position more attractive and competitive with assignments in community corrections. Turnover was therefore reduced and the availability of an adequately trained personnel assured.

Since guideline implementation, the caseworker's role has also shifted dramatically. Establishing release dates soon after admission allows more efficient planning for re-entry and results in savings in caseworker time, savings which can be utilized in more effective case management and planning. Since they are no longer required to act as "parole brokers," caseworkers can now focus on re-entry plans and rehabilitation. As suggested earlier, screening time has also been cut in half by the guidelines. Screening now takes an average of two hours as compared with the four hours required before the guidelines were introduced.

Commentary

The MCB has successfully implemented matrix guidelines which incorporate both risk assessment (as defined by past criminal behavior) and severity of offense into the process of arriving at decisions regarding time to parole. There now appears to be a high level of satisfaction within the agency due to several factors: (1) personnel favoring guidelines are highly respected; (2) caseworkers are happy with the changes in their role resulting from the guidelines; (3) screening operations are now simplified for caseworkers; and (4) the parole board successfully upgraded pay and other benefits of the institutional caseworker.

General acceptance in the criminal justice community has resulted from the fact that: (1) decision criteria are objectively verified; (2) discretionary power has been limited, but not destroyed; (3) inmates are fully aware of the criteria used in reaching decisions, and they may challenge the

information on which decisions are based; and (4) evidence exists which suggests that decisions are now more equitable. Complaints are still occasionally registered over the low incarceration limits in some matrix cells (a situation which minimizes opportunities for plea bargaining), and over uncertainty about the aggravating and mitigating circumstances considered in decisions. There is also resistance in some quarters to indeterminate sentencing in general.

The guidelines were successfully implemented in part because of the total support of the governor and the Commissioner of Corrections, and in part because of careful training and explanation to both those who use the instrument and those affected by it. The objectives for which the guidelines were developed have apparently been realized. Decisions are now more consistent, and support for the parole board and its decisions has continued in spite of forces which favor a determinate sentencing policy.

PAROLE PREDICTION STUDY

Name _____

A. **Identification**

1. Card # 1 (1)   2. RIN |__|__|__|__|__|__| (2-7)   3. __ (8)   4. DOB |__|__|__|__|__|__| (9-14)

B. **Criminal History**

1. **Juvenile**

    a. |__|__| (29-30) Age, 1st Sust. Petition

    b. |__|__| (31-32) Age, 1st Committment

    c. ___ (33) Total # of Commitments

    d. |__|__| (34-35) Months Incarcerated

    e. ___ (36) # Prob. Failures

    f. ___ (37) # Parole Failures

2. **Adult**

    a. |__|__| (38-39) Age, 1st Conviction

    b. |__|__| (40-41) Age, 1st Committment

    c. ___ (42) Total # Felony Conv.

    d. ___ (43) # Incarcerations

    e. |__|__|__| (44-46) # Incarcerations, Months

    f. ___ (47) # Prior Prob. Failures

    g. ___ (48) # Prior Parole Failures

    h. |__|__|__| (49-51) Crime-Free Period, Months

3. **Prior Disciplinary Violations and Escapes**

    a. ___ (52) # Predatory Violations

    b. ___ (53) # Non-Predatory Violations

    c. ___ (54) # Escapes, Abscondings, Bail Violations, etc.

4. **Disciplinary Violations & Escapes, this Commit.**

    a. ___ (55) # Times in Lock-Ups

    b. |__|__| (56-57) # Days in Lockup

    c. ___ (58) # Times Privilege Loss

    d. |__|__| (59-60) # Days, Privilege loss

    e. ___ (61) # Predatory Violations

    f. ___ (62) # Non-Predatory Violations

    g. ___ (63) # Escapes Attempted & Successful

C. **Committing Offense Data**

1. Card # 2 (1)   2. |__|__|__|__|__|__| (2-7) RIN

3. Group ___ (8)

4. Primary Committing Offense

    a. |__|__|__|__| (9-12) Offense Code

    b. |__|__|__|__| (13-16) Adm Date

    c. ___ (17) # Priors

    d. ___ (18) Type of Sentence

    e. |__|__|__| (19-21) Sent., Months

5. Other Committing Offense

    a. |__|__|__|__| (22-25) Offense Code

    b. |__|__|__|__| (26-29) Adm. Date

    c. ___ (30) # Prior, this Offense

    d. ___ (31) Type of Sentence

    e. |__|__|__| (32-34) Sent, Months

5. Inst. # |__|__|__|__|__|__| (15-20)   6. Race ___ (21)   7. Sex ___ (22)   8. Parole Date |__|__|__|__|__|__| (23-28)

6. ___ (35) # Committing Offenses

7. |__|__|__| (36-38) Mo. Incar., this Commitment

D. **Background**

1. ___ (39) Marital Status

2. ___ (40) Living Arr. at Conviction

3. ___ (41) Family Criminality

4. ___ (42) History, Alcohol Abuse

5. History, Drug Abuse

    a. ___ (43) Hashish/Marijuana

    b. ___ (44) Stimulants, Hallucinogens

    c. ___ (45) Sedatives

    d. ___ (46) Opiates

    e. ___ (47) Other

    f. ___ (48) Sniffing

6. |__|__| (49-50) Highest Grade Level

7. |__|__| (51-52) # mo., Gainful Employmnet, last 2 years.

8. |__|__| (53-54) Longest Job, last 2 years.

9. ___ (55) History, Use Aliases

E. **Outcome**

1. ___ (56) No Conviction, Revocation

2. ___ (57) Parole Revocation, Technical

3. ___ (58) Parole Rev., Alleged New Felony

    |__|__|__|__| (59-62) Offense Code

4. ___ (63) Conviction, Misdemeanor

    |__|__|__|__| (64-67) Offense Code

5. ___ (68) Conviction, Gross Misdemeanor

    |__|__|__|__| (69-72) Offense Code

6. ___ (73) Conviction, New Felony

    |__|__|__|__| (74-77) Offense Code

PAROLE RELEASE DATE MATRIX (effective 7-1-77)

Severity Level	Offenses	Number "Yes" Responses on Worksheet: 0 / Predicted Group Failure Rate: 11% / Risk of Failure Level: I.	1-2 / 28% / II.	3-4 / 35% / III.	5 / 49% / IV.	6 / 63% / V.	
I.	DUMV; Possession of a Controlled Substance; Forgery, Aggravated Forgery, Uttering a Forged Instrument	4-12	7-12	9-12	11-17	18-28	ELIGIBLE FOR MAP (Except where noted)
II.	Aggravated Criminal Damage to Property—no weapon; Burglary—no weapon—not in dwelling; Negligent Fires; Possession of Burglary Tools; Receiving Stolen Property; Arson—Third Degree; Theft—$100 to $2500; Theft by Check; Terroristic Threats; Defeating Security on Personality; Damage to Public Property	7-12	9-12	11-17	18-24	25-36	
III.	Theft—more than $2500; Burglary—weapon—not in dwelling; Burglary—no weapon—dwelling; Escape from Custody; Aggravated Criminal Damage to Property—weapon; Indecent Liberties—no injury*; Criminal Sexual Conduct—Fourth Degree*; Possession of Controlled Substance with Intent to Sell; Dangerous Weapon—machine gun; Felon in Possession of Pistol; Arson—Second Degree; Prostitution—other acts prohibited	9-12	11-17	18-24	25-32	33-45	
IV.	Burglary—weapon—dwelling; Simple Robbery; Aggravated Arson; Arson—First Degree; Aggravated Assault; Indecent Liberties—injury*; Kidnapping—no injury; Criminal Sexual Conduct—Third Degree*; Attempted Murder—Second Degree; Third Degree; Incest*; Sexual Intercourse with Child—over age 16*; Confining own Child; False Imprisonment; Burglary with Tool; Theft from Person; Sale of a Controlled Substance; Prostitution—Soliciting or Inducing Person Under 18 to Practice	11-17	18-24	26-32	34-40	47-53	
V.	Aggravated Robbery; Manslaughter—Second Degree*; Criminal Negligence*; Attempted Murder—First Degree; Conspiracy to Commit Murder—First Degree; Sexual Intercourse with Child—age 14 to 16*	18-24	26-32	39-45	51-60	67-76	
VI.	Manslaughter—First Degree; Criminal Sexual Conduct—First Degree; Second Degree; Kidnapping—injury; Sodomy; Sodomy with Child; Sexual Intercourse with Child—age 10 and under, and age 11 to 13	42	50	60	75	92	NOT ELIGIBLE FOR MAP
VII.	Murder—Third Degree	72	86	109	135	170	
VIII.	Murder—Second Degree	86	108	145	194	240	
IX.	Murder—First Degree	204	241	301	355	life	

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*Not Eligible for MAP Contract - Any inmate whose offense involved injury to the victim will not be eligible for MAP. Persons convicted of sex offenses or where, regardless of offense title, a reading of the description of the offense indicates that it was really of a sexual nature will not be eligible for MAP.

MINNESOTA CORRECTIONS BOARD – RISK OF FAILURE WORKSHEET

Inmate _____ Inst. # _____ Date of Birth _____

Admission Offense	Adm. Date	Sentence	Cc/Cs	Exp. Date

State Time Already Served _____ Recorded Jail/Wkhse Time _____

ITEM	YES	NO
1. The inmate has a prior conviction for exactly the same offense as any offense for which the inmate is now under sentence.		
2. The inmate was 19 or younger at the time of the first felony conviction.		
3. The inmate has a total of three or more felony convictions, including convictions for the current sentence.		
4. The inmate has one or more prior adult commitments to state correctional institutions.		
5. The inmate has two or more prior probation or parole failures as an adult.		
6. The inmate's current sentence includes one or more burglary convictions.		

Sev. Level _____ Risk Level _____ Matrix Time _____ Total # Yes

AGGRAVATING CIRCUMSTANCES   MITIGATING CIRCUMSTANCES

MCB COPY

CASEWORKER_____
DATE_____

REASONS FOR DEPARTURE   INFORMATION USED FOR DECISION

_____

| CERTIFICATION | W/IN [   ]   DEP [   ]

TYPE OF HEARING   MCB MEMBERS
___New Admission   ___MULCRONE   _____ # MOS. ASSIGNED BY MCB
___Annual Review   ___GREEN   _____ # MOS. SERVED IN STATE INST.
___Special Review   ___SKWIERA   _____ # MOS. JAIL CREDIT
                         ___MELCHERT   _____ # MOS. LEFT TO PAROLE
                         ___BYRNES   _____ TRD (date comp. from_____)
DISTRIBUTION   ___LINDE
1 · Inmate   ___RYAN   MAP ELIGIBLE ___ YES ___ NO
1 · Institution
1 · C.O. File
1 · Research

CORR 388 (Rev. 11/76)   C.O. FILE

                                    MEMBER_____ DATE_____

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NEVADA DEPARTMENT OF PAROLE

AND PROBATION

SITE VISIT: September 8, 1978

INTERVIEWER: Gary Taylor, Ph.D.

CONTACT PERSON: Tracy Fisk
                 Training Officer
                 Adult Parole and Probation Department
                 Tele: (702)885-5040

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Overview

In 1967, the State of Nevada changed from an indeterminate to a determinate sentencing practice. Legislative guidelines on length of sentence for various crimes remained general (such as 1 to 10 years for burglary), but judges were expected after 1967 to specify the actual years or months to be served in each case. With this change in judicial practice, it became apparent that considerable disparity existed in the sentences levied by different courts in the state. Individuals arrested for similar crimes who had similar backgrounds would often receive disparate sentences, depending on the judge hearing the case.

Pre-sentence investigation reports in Nevada play an important role in the sentencing decision. These reports typically offer a specific recommendation regarding the type, length, and characteristics of an appropriate sentence. Judges are free to decide contrary to the reports' recommendations, but the court is often influenced by the parole and probation department's findings and suggestions. Unfortunately, it became apparent after 1967 that the recommendations presented to the court by individual probation officers were as inconsistent as the final decisions themselves. Probation officers were apparently influenced by their knowledge of the attitudes of the judge hearing the case, local community concerns, and individual bias.

The instrument described in this report was created by the parole and probation department in order to reduce this bias in recommendations by limiting the discretion permitted officers preparing pre-sentence reports. Developers also hoped that the device would help focus attention on the seriousness of an individual's prior arrest history, not the number of prior arrests. There was a tendency before using the instrument to place too much emphasis on the length of a criminal record (nuisance factor), rather than the seriousness of past offenses (menace factor). The resulting instrument is used in pre-sentence reports prepared in about 220 felony and gross misdemeanor cases each month. In all cases, the information summarized by the instrument is presented to a judge who uses it in making sentencing decisions.

The Nevada Department of Parole and Probation is organized as an extension of the court, but with a director appointed by the governor. Department policy is therefore somewhat independent of the judiciary. Funds for the department are allocated out of the state budget. The approximately 125 officers in the department supervise individuals granted either probation or parole in the state, and/or these officers conduct extensive pre-sentence investigations including, as suggested above, recommendations to the court regarding appropriate sentences. Department personnel are hired through a civil service procedure and have qualifications similar to their counterparts in other jurisdictions.

The state has a population of approximately 500,000, situated primarily in two urban centers. The majority of the state is rural with a very low population density. Interestingly, the majority of offenders in Nevada are not residents, but rather individuals either passing through or attracted to the state on a short-term basis by the gaming industry.

Instrument and Its Development

The impetus behind the development of the instrument was Mr. A. A. Campos, Director of the Nevada Department of Parole and Probation. Mr. Campos, recognizing the disparity among officers in sentence recommendations, was impressed by a 1974 article in _Federal Probation_. The article by P. B. Hoffman and L. K. DeGostin suggested that agencies use a matrix format in determining parole release dates. The suggested matrix includes risk, as measured by the Salient Factor Score on one dimension and seriousness of offense on the other. Guidelines regarding time of parole are given by the matrix at the intersection of risk level and crime severity. Mr. Campos recognized that a matrix format of the type outlined by Hoffman and DeGostin could also apply to sentence recommendations.

About this time, a particularly knowledgeable inmate at the Nevada State Prison was complaining about inequities in Nevada's sentencing patterns. Mr. Campos approached him with a request that the inmate develop an instrument and procedure of the type described by Hoffman and DeGostin which could be used as an aid in reducing sentence disparity. This assignment was completed on a work release basis which allowed the inmate the opportunity to interact directly with parole/probation staff. Essentially, the instrument now in use was created by this inmate and subsequently modified through an iterative process

CONTINUED

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involving informal interactions with administrators and line officers in the parole and probation department. Mr. Campos suggests that limited resources and time pressures on department personnel were (and are) such that the instrument would not have been created without this rather unorthodox, but effective, use of an inmate's skills.

As suggested above, the instrument was developed on the basis of an intuitive, subjective process. Factors considered in deterimining risk, weights applied to those factors, and the general mechanics of the matrix process were developed subjectively. No attempt was made to derive factors statistically, nor has there been subsequent research to validate the accuracy and reliability of the instrument. There was likewise no attempt to study instruments used elsewhere.

The instrument first estimates an offender's potential risk to the community. This is determined by a point system based on eight elements concerning an offender's background and current offense (see Appendix I). On the basis of these eight elements, an offender is classified as a "very high", "high", "moderate", or "low" risk. Once the risk category is determined, a two-axis matrix (Appendix II) is consulted to determine the length of sentence which will be recommended to the court. The matrix assesses the risk classification on one dimension, and offense on the other. Next to the offense type in the matrix is the number of years possible (by legislative edict) for the particular crime. At the intersection between risk classification and offense type is a recommended length of sentence including an average figure, as well as high and low outside limits.

It is possible to make a recommendation that falls outside the general guidelines in specific cases. Such discretion, however, must be substantiated by a narrative summary indicating reasons for departing from the guidelines. The deviation must also be approved by both the unit supervisor and the parole and probation department director. Informal observation by department administrators suggests that deviations from guidelines occur in less than 5% of the cases.

Once length of sentence has been determined by use of the matrix, the officer preparing the pre-sentence report makes a subjective decision regarding whether probation is to be recommended, and what part of the total sentence,

if any, should involve incarceration. Conditions of probation such as restitution are also determined on the basis of officer judgment. The matrix instrument is utilized only informally at this time. In other words, the point system applies only to length of sentence, not type or characteristics of the recommended sentence. For the latter purpose, a set of guidelines (Appendix III) was developed. However, these guidelines do not constitute an instrument by our definition.

Implementation

The instrument has been in use state-wide since 1976. It was introduced to staff initially in rough draft form in order to allow those who would use it the opportunity to recommend changes. Once finalized, a short (1½ hour) training session was given to all staff concerning how to use the new procedure, followed by discussions between the department administrator and unit supervisors regarding experience of line staff with the guidelines. Currently, the only training relative to the device is an informal explanation given to new officers primarily through a training manual.

Implementation was deliberately low key and limited to the parole and probation department. Judges were not formally advised by the parole and probation department regarding the new procedure, although some judges have been subsequently apprised of the system. The community at large has likewise not been informed of the instrument, and offenders are not aware that the form is employed during screening. In addition, the instrument results are imbedded in pre-sentence reports, rather than highlighted. Offenders, for example, are labeled as high, medium, or low risk in the report, but the point total or other indications of a structured process for arriving at the label are not given. The reasoning behind this low key implementation strategy seems to be that anything which has attention called to it will no doubt attract criticism.

However debatable the merits of this philosophy may be, the instrument has in fact rarely been criticized. Developers assumed that the guidelines would need to be revised periodically; therefore, a procedure calling for annual or "as needed" review was established. Two years later, however, it

has not been necessary to change the device. Staff using the instrument and those aware of the factors it considers are reasonably satisfied with both the content and process of the guideline procedure. In spite of the fact that it was not submitted to legal review, the instrument has so far also remained free of legal complications even though the guidelines potentially impact due process and offender rights.[1]

The above description of instrument acceptance relates to the current situation, not necessarily to the situation at the point of implementation. As is common, some staff members initially complained about the additional paperwork required, while others resented somewhat the limitations on officer discretion represented by the guidelines. Resistance from staff dissipated rapidly with time, however. Complaints have also diminished with time from judges and district attorneys who originally felt that sentence recommendations should be solely their province, not the responsibility of the parole and probation department.

The instrument described here was created and implemented at very little cost. The exact cost is not known, but it represents a negligible amount and would certainly be within the budget of virtually any probation department. The guidelines are also inexpensive to use since information needed is routinely collected during the pre-sentence investigation process. The extra time required to complete the risk assessment and consult the matrix is estimated to be less than five minutes. Consequently, there is virtually no additional cost involved in adding the use of the guidelines to existing procedures.

Screening and Decision Process

The screening and decision process has been alluded to in preceding sections. To summarize the procedure, officers make a risk classification on the basis of an eight-item list of weighted background variables. A person is rated from "low" to "very high" risk on the basis of total points received on the

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1. This point could be argued. Influence on due process or offender rights occurs only if the pre-sentence recommendations actually affect a judge's decision. There is little doubt that the pre-sentence report itself affects judicial decisions, but the extent to which the sentence recommendations alone does so is less clear.

eight background items. Information in making the classification is obtained from criminal background and interview data generated by a traditional pre-sentence investigation process. After the risk classification is determined, an officer consults a matrix table and recommends a sentence length based on both risk and the seriousness of the offense on which convicted. He then refers to a general list of guidelines to subjectively determine a recommendation regarding how the time should be served, and any special conditions to be imposed.

In effect, the instrument impacts one decision only, namely the length of sentence that will be recommended by the probation department to the court. It influences only indirectly the probation officer's recommendation of whether probation should be granted, and whether restitution or other special conditions should be ordered. It likewise has only indirect influence on the actual sentence decision itself since the judiciary is free to contradict the probation department recommendation (actually, parole and probation administrators estimate that judges generally concur with probation recommendations in about 80% of the cases). Although the risk classification instrument does not formally influence these decisions, information summarized by the instrument is available when decisions are made regarding how closely individuals should be supervised while on probation, and the security level needed for individuals housed in detention facilities. Instrument results, therefore, can at least indirectly influence the basically subjective decision process at these two decision points.

Decisions made by parole and probation officers regarding sentence recommendations are routinely reviewed by unit supervisors prior to submittal to the court, and any differences of opinion are informally resolved at the draft report level. Offenders can not appeal the recommendation prior to delivery of the pre-sentence report to the court, although copies are routinely made available to defense counsel. An opportunity is given at the time of sentencing to present arguments against the report. The hearing judge, of course, makes a final decision regarding the sentence which can then be appealed through normal judicial channels.

Results and Impact

In the absence of formal evaluative research, the impact and results of

using the instrument can only be estimated through the subjective opinion and observation of local authorities. In their opinion, however, several benefits have resulted. First of all, the objective of increasing consistency in pre-sentence recommendations seems to have been achieved. There is a general feeling, unsubstantiated by research, that the same case will receive the same recommendation no matter which officer is responsible, or where in Nevada the report is prepared. Administrators also feel that officers preparing pre-sentence reports now weight more heavily the risk to society represented by an offender, and give less weight to the nuisance factor involved with individuals arrested for many relatively minor offenses. This prioritization counters a tendency prior to implementation of the instrument to give more attention to the number of prior arrests than to the seriousness of an offender's crime history.

Statistics have been collected by the parole and probation department on the nature of sentences ordered by different judges in different sections of the state. These statistics suggest that consistency in the length and type of sentences ordered for similar offenses has improved considerably since the instrument has been employed. Of course, if this improved consistency is due to the instrument, it would represent an indirect influence; as indicated earlier, judges do not actually use the device, and its results are imbedded in pre-sentence reports rather than spelled out. On the other hand, judges are under some pressure to follow probation department recommendations simply because of the amount and quality of data on which the reports are based. If probation recommendations are more consistent, it is reasonable to assume that the same would be true of judicial decisions.

Parole and probation department officials have also observed an increase in the number of sentences of less than three years. Such sentences were rare prior to the instrument but now account for as much as 20% of all sentences. The instrument may not be directly responsible for this shift, but it is reasonable to assume that it has influenced the trend. The risk scale emphasizes the fact that many individuals may not represent a genuine threat to society. Moreover, the presence of predetermined sentence recommendations based on both risk and seriousness of offense may make it more comfortable for officers to recommend less severe sentences.

As suggested earlier, the instrument is well received in the parole and probation department and among the judges aware of its use. Newer officers find the guidelines particularly helpful because they help guide recommendations when the officer is still unsure of himself. Experienced officers also report that a standard is helpful when determining which sentence to recommend. Initial resistance to the increased paperwork involved quickly dissipated, as did resistance to the limitations on discretion imposed by the device. In this latter respect, the instrument was developed intentionally to limit but not eliminate discretion. Officers appreciate the fact that they can deviate from the guideline if they show cause. Although deviations are rare (less than 5% of the time), having this option has no doubt increased officer acceptance of the process.

Commentary

Several aspects of the instrument described above make it unique. First, it is the only device that we were able to locate which was specifically designed for use in pre-sentence reports. The matrix design is similar to sentencing guidelines formats and parole release decision matrices used in several jurisdictions, but the application of this design at the point of pre-sentence investigation appears to be unique. The instrument also represents the only device that has come to our attention which was created by an inmate. In fact, the whole developmental effort was low budget,[2] which may have limited its technical quality, but places the approach within the reach of virtually any probation department. Finally, the instrument was implemented on a low key basis with little attempt to gain the acceptance of the judges whose work is influenced by it. The merits of this implementation strategy are debatable, but in fact, the instrument seems to be well received and little criticized.

Concrete evidence is lacking, but subjective opinion and informal observation suggest that the instrument has had a positive impact on sentencing in Nevada. It has apparently resulted directly in increased consistency of pre-sentence recommendations, and indirectly in more consistent sentences themselves.

2. A graduate student or similarly qualified person could do the job at relatively little cost to the sponsoring agency. Inmate assistance is not essential.

Although this result can not be known conclusively in the absence of research evidence, it may have also resulted in a trend toward less severe penalties. These apparent outcomes and the positive reaction of staff to the instrument suggest that the device has utility, and that a similar approach may be of value in other agencies.

Weaknesses of the process in Nevada include the instrument's limited application. The same or a similar form could be used to assist decisions regarding level of probation supervision required in individual cases, and for decisions regarding the security level required of those placed in detention facilities. At the moment, the device is applied to felonies only, but it should be possible to expand its use to include gross misdemeanor cases. The instrument is also limited to decisions regarding sentence length. With some effort, it could possibly be modified in form to assist in decisions regarding whether probation or jail time is to be recommended. An additional weakness involves the lack of research evidence in the development and revision of the instrument. Research is expensive, but it should be possible to evaluate the process using part-time graduate students or inmate help, and yet maintain the low budget advantage suggested earlier.

Whatever its weaknesses, the instrument is well received in Nevada. There are no plans to eliminate or even revise the device. Those responsible for it further indicate that, if given the opportunity, they would not change any aspect of its development or implementation if they had it to do over again.

DEPARTMENT OF PAROLE AND PROBATION

OFFENDER CHARACTERISTICS AND RISK FACTOR TABLE

LOW	MODERATE	HIGH	VERY HIGH
10-8	7-6	5-4	3-0

OFFENDER'S NAME:_____ CASE NO._____

1. No prior convictions = 2 points....................._____
   One prior conviction = 1 point
   Two or more prior convictions = 0

2. No prior incarcerations = 2 points..............._____
   One prior incarceration = 1 point
   Two or more prior incarcerations = 0

   (a) If previously incarcerated, offender has..._____
       remained in free community for three or
       more years continuously since last
       incarceration = 1 point
       Otherwise = 0 points

3. Age at first commitment - 18 years..............._____
   or older = 1 point
   Otherwise = 0

4. Offense did not involve personal injury to......._____
   victim = 1 point
   Otherwise = 0

5. Offense did not involve use of a weapon = 1 point_____
   Otherwise = 0

6. Verified employment (or full time school........_____
   attendance) for a total of at least six months
   during the year immediately preceding offense
   = 1 point
   Otherwise = 0

7. Offender has not been previously convicted......._____
   of same offense = 1 point
   Otherwise = 0

8. Never had parole or probation revoked..........._____
   or been committed for new offense while on
   probation or parole = 1 point
   Otherwise = 0

OFFENDER CHARACTERISTICS
RISK FACTOR:

OFFENSE BEHAVIOR

MODERATE SEVERITY

		LOW	MODERATE	HIGH	VERY HIGH
Accessory to a Felony	1-5	12(18)24	18(30)36	24(36)48	36(48)60
Bigamy	1-6	12(18)24	18(30)36	24(42)60	36(54)72
Concealed Weapon	1-6	12(18)24	18(30)36	24(42)60	36(54)72
Controlled Substance: Possession (value less $500)	1-6	12(18)24	18(30)36	24(42)60	36(54)72
Controlled Substance or Narcotics: Sales (by dependent user to support own habit-value less than $500)	1-20	12(24)30	24(36)48	36(54)72	60(78)96
Counterfeiting (value less than $10,000)	1-10	12(24)30	18(30)42	36(48)60	48(66)84
Credit Card (value less than $2,500)	1-10	12(24)30	18(30)42	36(43)60	48(66)84
Defrauding Innkeeper	1-10	12(24)30	18(30)42	36(48)60	48(66)84
Falsifying Evidence	1-10	12(24)42	18(30)42	36(48)60	48(66)84
Felony Non-Support	1-6	12(18)24	18(30)36	24(42)60	36(54)72
Embezzlement (less than $10,000)	1-10	12(24)30	18(30)42	36(48)60	48(66)84

MODERATE SEVERITY		LOW	MODERATE	HIGH	VERY HIGH
Forgery (less than $2,500)	1-10	12(24)30	18(30)42	36(48)60	48(66)84
Gambling Fraud (less than $1,000)	1-6	12(18)24	18(30)36	24(42)60	36(54)72
Burglary (less than $2,500)	1-10	12(24)30	18(30)42	24(42)60	48(66)84
Grand Larceny (less than $5,000)	1-10	12(24)30	18(30)42	36(48)60	48(66)84
Pandering (without force)	1-6	12(18)24	18(30)36	24(36)48	36(48)60
Statutory Rape	1-10	12(24)30	18(30)42	36(48)60	48(66)84
Stock Fraud (less than $10,000)	1-10	12(24)30	18(30)42	36(48)60	48(66)84
Stolen Property Possession/Receipt/Transfer (value less than $5,000)	1-10	12(24)30	18(30)42	36(48)60	48(66)84
Theft of Livestock (value less than $5,000)	1-10	12(24)30	18(30)42	36(48)60	48(66)84

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HIGH SEVERITY

		LOW	MODERATE	HIGH	VERY HIGH
Abortion	1-10	24(36)48	36(54)72	48(72)96	60(90)120
Aiding or Concealing Escaped Prisoner	1-10	24(36)48	36(54)72	48(72)96	60(90)120

HIGH SEVERITY		LOW	MODERATE	HIGH	VERY HIGH
Annoyance or Molestation of Minor Child Under 18	1-6	24(30)36	30(36)48	36(48)60	42(60)72
Bomb Threats	1-6	18(24)30	24(36)42	30(42)54	36(54)72
Bribing Public Officials	1-10	24(36)48	36(54)72	48(72)96	60(90)120
Bribing Witness	1-10	24(36)48	36(54)72	48(72)96	60(90)120
Soliciting Bribes	1-10	24(36)48	36(54)72	48(72)96	60(90)120
Burglary (value exceeds $2,500)	1-10	36(42)48	42(54)72	48(72)96	60(90)120
Controlled Substance Possession (value exceeds $500)	1-6	36(42)48	42(48)60	48(60)66	54(66)72
Controlled Substance: Sales (value more than $500, less than $2,500) Non-addicting drugs	1-20	24(48)60	36(50)84	48(84)120	60(120)180
Counterfeiting (value exceeds $10,000)	1-10	36(42)48	42(54)72	60(78)96	72(96)120
Credit Card (value exceeds $2,500)	1-10	36(42)48	42(54)72	60(78)96	72(96)120
Gross or Open Lewdness	1-6	12(18)24	18(30)42	24(42)54	30(54)72

HIGH SEVERITY		LOW	MODERATE	HIGH	VERY HIGH
Indecent or Obscene Exposure	1-6	12(18)24	18(30)42	24(42)54	30(54)72
Incest	1-6	18(30)36	24(36)42	30(48)54	36(54)72
Larceny From A Person	1-10	18(30)36	24(36)42	48(72)96	60(90)120
Manufacture and Importation of Deadly Weapons	1-6	18(24)30	24(36)42	30(48)54	36(54)72
(If causes fatal injury)	1-10	24(36)48	36(54)72	48(72)96	60(90)120
Lewd with Minor Under 14	1-10	24(36)48	36(54)72	48(72)96	60(90)120
Manslaughter Involuntary	1-6	12(24)30	18(30)36	24(36)42	30(48)72
Narcotics: Possession (by dependent user where value exceeds $500)	1-6	24(30)36	30(42)48	36(48)60	42(54)72
Statutory Rape (defendant over 25)	1-10	36(42)48	42(54)72	60(78)96	72(96)120
Narcotics: Sales (by dependent user where value exceeds $500). Addicting Hard Narcotics	1-20	48(66)84	60(84)108	72(96)120	84(144)180

HIGH SEVERITY		LOW	MODERATE	HIGH	VERY HIGH
Narcotics: Sales (by non-user value less than $500)	1-20	48(66)84	60(84)108	72(96)120	84(144)180
Embezzlement (value exceeds $10,000)	1-10	36(42)48	42(54)72	60(78)96	72(96)120
Escape	1-10	12(24)36	18(36)60	30(60)90	48(84)120
Explosives: Manufacture/ Possession/Disposal	1-6	18(24)30	24(36)42	30(42)54	36(54)72
Explosives: Transportation for Illegal Purposes	2-10	36(42)48	42(54)72	60(78)96	72(96)120
Extortion	1-10	24(36)48	36(54)72	48(72)96	60(90)120
Forgery (value exceeds $2,500)	1-10	36(42)48	42(60)72	60(78)96	60(90)120
False Fire Alarms (where death or great bodily harm ensues)	1-5	18(24)30	24(36)42	30(48)54	36(48)60
Furnishing Narcotics/ Intoxicants/Controlled Substance to Prisoners	1-20	24(42)60	36(60)84	48(84)120	60(144)240
Ex-Felon in Possession of a Firearm (previous conviction for crimes other than crime against person)	1-6	12(18)24	18(24)30	24(30)36	30(42)48

HIGH SEVERITY		LOW	MODERATE	HIGH	VERY HIGH
Gambling Fraud (value exceeds $1,000)	1-6	24(30)36	30(42)48	36(48)60	42(54)72
Grand Larceny (value exceeds $5,000)	1-10	36(42)48	42(54)72	60(78)96	72(96)120
Pandering (with force)	1-10	36(42)48	42(54)72	60(78)96	72(96)120
Perjury	1-10	18(30)36	30(42)54	48(66)84	60(90)120
Robbery (no weapon)	1-15	18(30)36	30(48)60	42(66)84	54(78)96
Setting Spring Gun or other Deadly Weapon (if causes fatal injury)	1-10	48(60)70	60(78)96	72(90)108	84(102)120
Stock Fraud (value exceeds $10,000)	1-10	36(42)48	42(54)72	60(78)96	72(96)120
Stolen Property: Possession/Receipt/ Transfer (value exceeds $5,000)	1-10	36(42)48	42(54)72	60(78)96	72(96)120
Arson, 1st Degree	1-15	60(78)96	72(96)120	84(120)144	96(144)180
Assault (aggravated)	2-10	48(60)72	60(78)96	72(90)108	84(108)120
Battery	2-10	48(60)72	60(78)96	72(90)108	84(108)120

HIGH SEVERITY		LOW	MODERATE	HIGH	VERY HIGH
Robbery (with weapon)	1-15	48 (66) 84	60 (84) 108	72 (108) 144	84 (144) 180
Mayhem	1-10	48 (60) 72	60 (78) 96	72 (90) 108	84 (102) 120
Controlled Substance: Sales (where value exceeds $2,500) Non-addictive	1-20	96 (103) 120	108 (120) 144	120 (144) 180	144 (192) 240
Ex-Felon in Possession of Firearm (where previously convicted of crimes against person)	1-6	36 (42) 48	42 (54) 60	48 (60) 66	54 (66) 72
Manslaughter Voluntary	1-10	48 (60) 72	60 (78) 96	72 (90) 108	84 (102) 120
Narcotics: Sales (where by non-user and value exceeds $500) Addictive	1-20	96 (108) 120	108 (120) 144	120 (144) 180	144 (192) 240

FACTORS INFLUENCING
SENTENCE RECOMMENDATION

Positive	Negative
1. Prior convictions have been for unsophisticated crimes or to support drug habit.	1. Will have several charges dismissed at time of sentencing.
2. Long period of stable residence pattern and behavior in community prior to current offense.	2. Extensive prior arrest record.
3. Attitude indicates remorse and desire to change anti-social behavior	3. Health or emotional problem.
4. Appears to be little likelihood of repetition.	4. Offense required stealth and premeditation.
5. Extended stable behavior pattern while on bail.	5. Current and prior offense behavior suggest predilection for violence.
6. Development of exceptional positive program.	6. Extended prison sentence will serve well-being of community and contribute to the deferrence of similar crimes by others.

FACTORS INFLUENCING
SENTENCE RECOMMENDATION

Positive	Negative
7. Unusual family needs/ devotion.	7. Negative behavior in jail or while on bail.
8. Current conviction of a very minor nature, could have easily been handled as gross misdemeanor or even misdemeanor.	8. Subject convinced others to participate in criminal activities drug use etc.
9. Defendant played minor or lessor role in offense.	9. Reduced charge.
10. Good military history.	10. Subject known to be an active criminal/major drug dealer.
11. Cooperation with authorities.	11. Poor military record included incarcerations.
12. Extreme youth or advanced age of defendant or special conditions of health.	12. The severity of the crime and its impact upon the victim and the community.
	13. The seriousness of injury suffered by the victim.
	14. The youth or advanced age of the victim, particularly in assault and rape cases.

SITE VISIT REPORT

DECISION POINT: PAROLE RELEASE

OREGON PAROLE BOARD

SALEM, OREGON

SITE VISIT: March 27 - March 30, 1978

INTERVIEWERS: Saul Geiser, Ph.D.

Marvin Bohnstedt, Ph.D.

CONTACT PERSON: Ira Blalock
Chairman
Oregon Parole Board
Tele: (503) 378-2334

Overview

Parole Boards have lately come under increasing fire from critics both inside and outside the criminal-justice system. Led initially by prisoners' groups who viewed parole boards as the symbol and linchpin of the indeterminate-sentencing system, critics have centered on the arbitrary and capricious manner in which parole decisions are reached. Critics are particularly alarmed by the lack of explicit and consistent rules for determining length of incarceration and parole eligibility. On the judicial front, a series of court decisions beginning with Morrissey have sought to introduce stronger due-process safeguards in parole decision-making, thereby limiting the almost unfettered discretion parole boards have historically exercised. Adding still more fuel to the fire are controversial new research findings which purport to show that rehabilitative programs don't work. "If prisons don't rehabilitate," as one version of this argument runs, "then what is the sense of basing parole decisions on rehabilitative criteria?" Finally, state legislatures have now picked up the cause, and most of the new determinate-sentencing bills either passed or pending in many states would drastically curtail the role of parole boards, if not abolish them outright. From a variety of sources, then, there is mounting criticism of the functions, procedures, and even the rationale for parole boards, with the result that their role within the criminal-justice system is perhaps now more tenuous than at any point since their inception.

It is against this background that the recent experience of the Oregon Board of Parole assumes special importance. As in many other states, Oregon's Board had been the target of considerable public debate. The Oregon legislature was considering more determinate sentencing and the possibility of eliminating the Board entirely. Determinate-sentencing legislation had been drafted which, if passed, would have reduced the role of the parole board. In mid-1975, a new Board chairman was appointed, and major reforms were introduced into Oregon's parole system. Although the new system has been in operation only a short time, making a definitive assessment impossible, preliminary observations suggest that the Board has begun to play a novel and progressive role within the state's

criminal-justice system as a whole. Far removed from its previously defensive posture as a symbol of the indeterminate sentence and discretionary justice, the Board has now become an aggressive force for introducing greater uniformity, equity, and determinateness in sentencing and release decisions. How and why this has happened is the subject of the following report.

Instrument and Development

Ira Blalock presently serves as chairman of the Oregon Board of Parole. When appointed to the Board in 1975, Blalock was determined to effect basic reforms in parole policy and procedure. He was concerned, he explains, "to be fairer, to make more explicit the criteria that the Parole Board used, and in general to make Board decisions more predictable and reliable."

Prior to Blalock's appointment, the Board lacked any systematic procedure for deciding if and when an inmate would be paroled. The administrative rules under which the Board operated stated only that "the Board will evaluate the readiness of the inmate for release, including, but not limited to, personal history factors, offense committed, institutional adjustment, personality changes, and the attitude of the community." The idea that there is an optimal point of "readiness" for parole is, of course, one of the hallmarks of the rehabilitative approach to parole decision-making. But several of the Board members had begun to have serious doubts about the usefulness of rehabilitative criteria in parole decisions, finding the concept of parole "readiness" too vague and imprecise to provide a fair and reliable basis for such determinations. When asked to describe how the Board decided an inmate was "ready" for parole, one Board member replied, only half in jest, "by pumpkin thumping."

In addition to establishing more explicit and justifiable standards for decision-making, the Board was also concerned about a number of other problems associated with Oregon's parole system. One problem was the approach to parole decisions, which sometimes forced an inmate to participate in as many as four or five parole hearings before finally being released. Not only was this procedure inefficient because of the large number of reset

hearings involved, but many Board members also believed it was unfair to prisoners and that some procedure should be devised to inform prisoners initially of the length of sentence they could expect to receive.

Still another problem was the lack of uniformity in the sentences imposed by the Oregon courts. In reviewing the cases of offenders convicted in different parts of the state, the Board often encountered extreme disparities. Board member Chalmers Jones gives the example of a man sentenced to 12 years for shooting a cow in Eastern Oregon, a staunchly conservative region, while a man convicted of shooting his wife in Western Oregon would be apt to receive a lighter sentence. In view of such disparities, the Board was concerned with developing guidelines to ensure that length of incarceration would be more consistent with the actual seriousness of criminal conduct.

The principal objectives of Blalock and the Board in 1975 were to make parole policy more explicit, determinate, and equitable. Blalock had been impressed by similar efforts at parole reform at the federal level--particularly the Federal Parole Guidelines, developed by the NCCD in conjunction with the U.S. Board of Parole. His initial design was based almost entirely on the federal model. The Federal Guidelines utilize a "matrix" device for determining when an individual is eligible for parole. The "matrix" is constructed from two axes: the vertical axis consists of a "seriousness-of-offense scale," while the horizontal axis consists of a "Salient-Factor" scale. These two axes or scales form an actuarially-based set of predictor variables designed to measure the probability that an offender will recidivate if released. Within the cells of the matrix are time-to-be-served ranges, derived through statistical analysis of past Board decisions. The matrix is used as follows: a case is located on both the offense-severity and Salient-Factor scales and the range of time to be served is read at the intersection of the two coordinates. Usually an offender's parole date will be set within the indicated range, at the high or low end depending upon the special circumstances of the case. Decision-makers are permitted to go outside the presumptive ranges only when there are compelling reasons of either an aggravating or mitigating nature. The advantages of the matrix are that it makes decision criteria more explicit and visible, and that it

structures discretion, without entirely eliminating it, by providing uniform time-to-be-served ranges for all cases of the same type.

Implementation

Blalock unveiled a first version of the Oregon Guidelines in November, 1975. The original matrix closely followed the Federal Guidelines, giving approximately equal emphasis to severity of offense and offender "risk" in the determination of length of time to be served. Since their first appearance, however, the Oregon Guidelines have undergone extensive modification and refinement and have evolved in a manner quite different from the Federal Guidelines.

Whereas the Federal Guidelines are based on extensive research of both parole board decisions and parolee performance, the revised Oregon Guidelines, presented in Appendix A, are not. Rather, the "matrix" format was simply borrowed from the federal model and then adapted to local conditions on an ad hoc, trial-and-error basis. In one respect, this would appear to represent a weakness, since it may be argued that the Oregon Guidelines lack a proper empirical foundation. But in another respect, the lack of a research base may well have been a blessing in disguise. Where research staff exercise primary control over the development of classification instruments, one frequently encounters problems of implementation and even outright resistance from those criminal justice practitioners who are intended to use the instruments, since the priorities of the researchers are often quite different from those of line-staff. The resistance of parole boards to the use of the earlier, Burgess-type prediction tables is a case in point. But in Oregon the experience was entirely the opposite. A key point that emerged from our interviews was the high degree of participation of diverse individuals and groups in the development and refinement of the Oregon Guidelines, a factor which goes far in explaining the relative ease with which the reforms were implemented. The following discussion examines the most important individuals and groups who participated in the development of the Oregon Guidelines.

Under the leadership of Blalock, the Parole Board itself played a major role. Moreover, since by Oregon statute the Administrator of Corrections is

an ex officio member of the Board, correctional personnel were also aware of the reforms from the outset. As Board members gained experience with the use of the original matrix, they were able to identify problematic areas and suggest improvements. An example of this process is the evolution of the original offense-severity scale, which posed problems initially because of the manner in which it lumped together a number of crimes which were perceived by Board members to represent different degrees of gravity. In attempting to apply the matrix to individual cases, the Board often felt obliged to deviate from the indicated time-to-be-served ranges so that their decisions would more realistically reflect the seriousness of the conduct in question. In reviewing the overall pattern of deviations, however, the Board readily identified the source of the problem, and a refined offense-severity scale has subsequently eliminated much of the initial difficulty (see Appendix B).

A second group who participated in the development of the Oregon Guidelines were the Parole Analysts, headed by John Tuthill, Parole Evaluation Supervisor. Parole Analysts are employed by the Corrections Division to collect information on cases and prepare summary reports for the Board; these are the personnel who actually fill out and score the matrix on each case. Like the Board, the Analysts also experienced initial difficulties in using the matrix, and therefore proposed changes which were subsequently incorporated within the classification instrument. The original Criminal History/Risk Assessment scale, for example, included some items that the Analysts found difficult either to verify or score in a sizeable proportion of cases, a situation which led to the elimination of these items from later versions of the Guidelines (see Appendix C).

Another important faction in the development of the Guidelines consisted of outside experts, principally Peter Hoffman, who had been associated with the development of the Federal Guidelines, and Andrew von Hirsch, academic theoretician of the "just-deserts" philosophy of sentencing which will be discussed more extensively below. The influence of these individuals was the chief factor in determining the extent of the role theory and research would play in the development of the Oregon Guidelines.

A fourth group that played a particularly significant role in developing the Guidelines was the Advisory Commission on Prison Terms and Parole Standards, established by the Oregon legislature in 1977, and consisting of the five Parole Board members, five Circuit Court Judges, and the Assistant Director for Corrections. The Commission was especially useful in soliciting the input and cooperation of the state judiciary, who, as might be expected, had some initial reservations about the Parole Board "tampering" with sentencing decisions.

The final important influence on the development of the Guidelines was not a group but a statute: Oregon's Administrative Procedures Act (APA). APA requires that a formalized rule-making process be followed in the proposal and adoption of all administrative rules. The basic idea of APA is that although the legislature is responsible for developing general policy, the development of specific rules for implementing policy is better accomplished through non-legislative means. APA provides for elaborate rule-making machinery, the notification of interested parties of proposed rules or rule changes, and public hearings in which testimony is taken. In general, APA is also scrupulously concerned with the formulation of administrative rules that are explicit, uniform, and responsive to both legislative intent and affected interest groups. In the development of the Guidelines, APA has focused careful attention on how the general criteria used in the matrix are to be applied to specific cases. What, for example, constitutes a "drug abuse problem," and what should count as a "prior incarceration?" Legislators may have little time or inclination to deal with such specifics, but unless formalized rules are developed to cover them, considerable subjectivity and disparity will enter into screening decisions. As Mr. Blalock emphasized strongly in our interviews with him, whatever success the Oregon Guidelines may have thus far enjoyed is due not only to the matrix format itself, but equally to the APA in generating a body of explicit and binding rules for determining how the screening instrument is applied to specific areas.

In addition to developmental differences, the Oregon Guidelines differ from the Federal Parole Guidelines in another significant respect--their

underlying philosophy and rationale. The Oregon Guidelines have been heavily influenced by the controversial "just-deserts" philosophy of sentencing. "Just-deserts" refers to the principle that "the punishment should fit the crime," or, in the language of Oregon's new parole statute, that "punishment [should be] commensurate with the seriousness of the prisoner's criminal conduct." "Just-deserts"--sometimes also referred to as the "justice model"--has been gaining increasing currency in criminological literature as an alternative to the criteria which have traditionally guided sentencing and parole-release decisions. Inspired particularly by the writings of Norval Morris, David Fogel, and Andrew von Hirsch, adherents of this position maintain that severity of criminal conduct should be the primary consideration--and some would argue the exclusive consideration--in decisions affecting the duration and severity of criminal punishment.

The principle of just-deserts provided the cornerstone of Bill No.2013, drafted jointly by Blalock and von Hirsch to provide statutory authorization for the Oregon parole reforms. In 1977, Bill No. 2013 began hearings in the House Judiciary Committee and the Governor's Task Force on Corrections, and it was passed by the legislature and became effective October 4, 1977. The key provisions of the bill are worth quoting at length:

Rules on duration of imprisonment; objectives, considerations in prescribing rules.

(1) The commission shall propose to the board and the board shall adopt rules establishing ranges of duration of imprisonment to be served for felony offenses prior to release on parole. The range for any offense shall be within the maximum sentence provided for that offense.

(2) The ranges shall be designed to achieve the following objectives:

   (a) Punishment which is commensurate with the seriousness of the prisoner's criminal conduct; and

   (b) To the extent not inconsistent with paragraph (a) of this subsection:

   (A) The deterrence of criminal conduct; and

   (B) The protection of the public from further crimes by the defendant.

(3) The ranges, in achieving the purposes set forth in subsection (2) of this section, shall give primary weight to the seriousness of the prisoner's present offense and his criminal history. (Oregon Revised Statutes, Section 144.780)

Perhaps the most obvious feature of the statutory language is its radical departure from the philosophy of rehabilitation which had previously guided parole decision-making. Rather than "readiness" for parole, "severity of criminal conduct" is now the primary criterion in release decisions. Length of incarceration is, at least in theory, no longer contingent upon an inmate's "adjustment" or "progress" in rehabilitative programs but hinges instead on more demonstrable aspects of an individual's past criminal behavior.

Another traditional concern in parole decision-making, the assessment of offender "risk," is also given short shift under the revised statute. Although the statutory language permits the Board to consider "the protection of the public from further crimes by the defendant" as one criterion in release decisions, it explicitly subordinates this criterion to the "just-deserts" principle and in addition emphasizes that primary weight must be given to prior criminal behavior rather than predicted future criminality.

It is on this point that the Oregon Guidelines differ most sharply from the Federal Parole Guidelines. Whereas the Federal Guidelines give roughly equal weight to offense severity and the prediction of future recidivism in the determination of time to be served, the Oregon Guidelines have evolved much further in the direction of a "pure" just-deserts system, where length of incarceration depends almost entirely on demonstrated past criminal behavior, including both the instant offense as well as prior criminal history. As Blalock explains, "In all candor, we're not really interested in prediction. Our matrix is more gauged to figure out whose present crime and prior criminal history merit particular punishments." Board member Chalmers Jones is even more blunt: "The Guidelines were not designed with prediction in mind. The

idea that criminality can be accurately predicted is totally foolhardy.
It's a bit of mischief that can be entertained, but that's all it will ever
be."

Nevertheless, though a number of traditional risk-assessment variables
have been dropped from the matrix in an effort to achieve more of a "just-
deserts" emphasis, a number of others still remain. The Board has eliminated
several social-history factors used in earlier versions of the matrix, including
employment record, school attendance, and marital status, factors often found
in standard risk-assessment instruments. (Blalock again: "Why? Well just
because we felt we shouldn't punish someone because he didn't get married.")
The present Criminal History/Risk Assessment scale, which constitutes
the horizontal axis of the matrix, is shown in Appendix C. Briefly, it
includes (a) prior felony or misdemeanor convictions as an adult or juvenile,
(b) prior incarcerations as an adult or juvenile, (c) age at first commitment
of 90 days or more, (d) escape or probation/parole failure, (e) admitted or
documented heroin or opiate-derivate abuse or documented alcohol problem, and
(f) verified period of 5 years conviction-free in the community prior to the
instant crime. Yet while all of these factors (with the possible exception of
"e", substance abuse) relate to an offender's prior criminal record, some
of the items would appear to be at least equally oriented to the prediction
of future criminality. In particular, items (c) age at first commitment, (d)
escape or probation/parole failure, and (f) conviction-free period would fall
in this category. From a strict "just-deserts" standpoint, age at first
commitment, for example, should have no bearing on length of sentence: why
should two individuals whose prior records are identical, save for the fact
that one was younger when he committed his crimes, receive different punish-
ments? Some Board members are discomfitted by such apparent contradictions
and anticipate still further modifications of the Guidelines in the direction
of a purer "just-deserts" system.

Screening and Decision Process

How do the Guidelines actually work in practice? The matrix itself is of
course only a piece of paper, a standardized form for classifying offenders.

But even the best-designed forms do not by themselves ensure the success
of a classification system. At least as much depends upon the manner in
which the personnel who use the instrument are organized to go about their
work and the procedural safeguards that are introduced to ensure that the
instrument is systematically applied. In this respect, Oregon can provide
some valuable pointers to other practitioners in the criminal-justice
system.

One of the most important features of the Oregon system is that classi-
fication is sharply segregated from actual decision-making. Classification--
the process by which offenders are rated on the offense-severity and criminal-
history scales--is the exclusive function of the Parole Analysts employed
on a full-time basis to screen all cases preparatory to their initial parole
hearing. Eight Analysts presently perform this task, directed by John Tuthill,
Parole Evaluation Supervisor. Tuthill explains that the most demanding and
time consuming aspect of the Analysts' work is verifying the information
required by the matrix. While the actual scoring of the matrix takes only
a matter of minutes once the necessary data has been compiled, the process
of compiling and cross-checking the data on an individual case often takes
up to 90 days. Nevertheless, because the offender's parole set is directly
influenced by this data, factual accuracy is considered of paramount importance
and the time is viewed as well spent.

The classification process works as follows: when an offender is committed
to a state institution, the Analyst first reviews the pre-sentence investiga-
tion report and then interviews the inmate at the institution where he or
she is held. The Analyst explains that the information collected during the
interview will be used for the parole analysis report upon which the parole
date is based. The Analyst asks about the inmate's arrest record, instant
offense, alcohol and drug involvement, and any psychological problems. The
Analyst then returns to headquarters and begins correspondence by mail and
telephone to verify the information to be used in the report.

The primary data are the arrest and conviction record contained
in the Oregon State Bureau of Police "rap sheet." This information is verified
with the agencies shown to have arrested or convicted the individual. In
addition, the Analyst may travel to the State Hospital or State Police Office

to collect further data. All of this information is accumulated in the Corrections Division Administrative Office file in the "dome building" at Salem.

Finally, the inmate is notified of his or her initial hearing date and given a copy of the parole analysis report, including the scored matrix. This affords the inmate the opportunity to review the report for inaccuracies prior to the initial hearing and to protest any such inaccuracies at that time. The result is that by the time of the initial hearing, the classification process is basically completed. The offense-severity and criminal-history scales have been scored and verified for accuracy, and thus the offender's presumptive time-to-be-served range is already known. However, the hearing panel may change the score on either axis of the matrix due to clinical error, new information, or other special circumstances.

The importance of this sharp separation between classification on the one hand, and decision-making on the other, may be illustrated by comparison with the procedures followed under the Federal Guidelines, where the two functions are combined. In the federal system, hearing examiners often complete the matrix and render their decision in a single process. As a recent article in the Yale Law Review points out, this procedure permits a considerable degree of "fudging" to take place. For example, in order that their decisions fall within the indicated Guideline ranges, thereby avoiding the necessity of providing a written explanation of their actions, hearing examiners frequently adjust either the offense-severity or Salient-Factor scores so that the indicated time to be served falls into line with the sentence that the examiners subjectively believe is appropriate. While their decisions appear to be determined by the matrix, in fact the matrix score has been manipulated to justify what is essentially a subjective decision. Clearly, this defeats the intended purpose of the Guidelines concept.

In contrast, under the Oregon Guidelines this kind of "fudging" is not at all in evidence since classification variables are more explicitly defined (under APA) and carefully verified (by the Analysts), and the matrix itself is completed prior to its utilization by decision-makers. Decision-makers may still, of course, go outside the indicated ranges if circumstances warrant, although even these deviations are rigorously constrained by administrative rules which specify the amount of permissible deviation, require written explanations, and provide for appeal hearings. In practice, then,

the Oregon system appears to come much closer to the intended objective of the original Guidelines concept--"to structure discretion without entirely eliminating it"--than the federal system, despite the formal similarities in the screening instruments that the two systems employ.

Results and Impact

What effect have the Guidelines had? It is too soon to give a definitive answer to this question, since the Guidelines have been in operation a relatively short time and the Board is only now beginning to develop a monitoring system to provide the necessary data for evaluation. Moreover, Oregon has experienced a number of other changes coincident with the Guidelines which also affect parole policy and procedure, so that it is difficult to separate the effects of the Guidelines per se from the effects of these contemporaneous developments. Nevertheless, though a definitive assessment is obviously impossible at this point, some provisional remarks are in order.

Rate of parole. A significantly higher proportion of inmates are being paroled under the Guidelines system than were being paroled previously. Prior to the use of Guidelines, in the years 1972 to 1975, the percentage of inmates paroled (versus those discharged after serving their complete sentences) was within the range of about 67% to 69%. In contrast, over 85% of the institution population presently receive paroles, while less than 15% go on to discharge. It would be incorrect, however, to infer that this change is a direct consequence of the Guidelines themselves. What must also be taken into account is the change in parole policy which accompanied the introduction of the Guidelines: parole release was reconceived as a "presumptive" decision. This meant that the Board presumed all inmates would be paroled unless negative factors in an inmate's record dictated the contrary. In other words, the Board was no longer concerned with proving an inmate was eligible to receive parole, but rather with proving that he was not eligible. Thus, the higher percentage of paroles under the Guidelines actually reflects more a policy change than an effect of the Matrix per se. Though this policy change has been "built in" to the Matrix--in the presumptive time-to-be-served ranges--

so that the higher rate of paroles may in a narrow sense be said to result from the application of the Guidelines, this change must in no way be considered a _necessary_ result of the Matrix-type approach. If other time ranges had been selected, it would have been entirely possible for the rate of paroles to have decreased.

Length of incarceration. A second area of change--and one that has generated some controversy--concerns trends in the average length of time served. Some correctional officials believe that length of incarceration has increased substantially under the Guidelines. Bob Watson, Administrator of Corrections, estimated that average time served had increased by as much as 4 months. However, his executive assistant, Neil Chambers, presented figures which indicated both that the change had been much less, and that there was no consistent pattern. Chambers' statistics show that for all parolees released in the second half of 1976, average length of time served was 18.9 months, dropping to 18.3 months in the first half of 1977, then climbing again to 20.3 months in the second half of 1977, the latest date for which figures were available. However, as pointed out by Blalock, Chambers' data include only parolees and exclude inmates who serve their maximum term before release. Since inmates who serve their maximum term are bound to pull up the average, and given the fact that the rate of parole has increased dramatically (thereby reducing the number who "max out"), it is entirely possible that average time served for _all_ prisoners may have dropped, not risen, under the Guidelines. Unfortunately, data are not yet available with which to resolve this issue.

Even assuming that such a trend could be demonstrated, however, the question would remain as to what extent it was attributable to the Guidelines. Though some critics of the Guidelines approach have suggested that their application across the board will inevitably produce longer prison terms-- a general criticism that has been lodged against almost all determinate sentencing approaches--there are indications that, in Oregon at least, factors other than the Guidelines themselves have been more important in influencing average length of incarceration before parole. Two such external factors are the increasing length of sentences being imposed by the Oregon courts and the "stacking" effect. First of all, the length of court-imposed prison sentences has been steadily increasing since 1972/73 in Oregon,

coincident with the nationwide trend. In the second place, an unusually high proportion of non-serious, non-person offenders were committed to Oregon prisons in 1972/73, also coincident with the nationwide, "get-tough-on-crime" emphasis of the late Nixon administration. These offenders have now begun to work their way out of the system, with the result that serious offenders have again begun to "stack up" or increase as a proportion of institutional population. This, too, would tend to increase average length of incarceration, due to the longer sentences and parole normally received by person-offenders.

In sum, though there _appears_ to be somewhat of an increase in average time served before parole under the Guidelines, this change is not especially pronounced and could well be cancelled out by the declining number of inmates who now serve their maximum terms. Moreover, changes that have occurred in length of incarceration before parole are probably more the result of external factors than of the Guidelines themselves.

Recidivism. Data on recidivism among parolees released under the Guidelines are not yet available. Following the national standard, Oregon uses a three-year time period as a basis for calculating its recidivism rate, so that the first recidivism data for offenders released under the Guidelines will not become available until sometime in 1979. Nevertheless, based on subjective impressions, some correctional officials do believe there will be an increase in recidivism, albeit a small one, under the Guidelines. Mr. Tom Toombs, Deputy Administrator of Corrections, indicated that because a significantly higher proportion of inmates are paroled under Oregon's new "presumptive" parole policy, there is some concern among correctional staff that a greater number of "poor risks" are also being released. However, Board members point out that such considerations are built into the criminal-history scale and result in later release for those who would be considered "poor risks." As a result, the Board expects to see little net change in the overall amount of recidivism.

Moreover, though other jurisdictions consider recidivism one of the main performance indicators in parole decision-making, Oregon officials question the validity of using recidivism as a measure of the success or failure of the

Guidelines program. The recidivism issue must be viewed in the context of the larger policy objectives of the Parole Board--their rationale for introducing the Guidelines. As has been discussed previously, the main objective of the Board is to improve the consistency and uniformity of the decision process; the prediction of recidivism is relegated to a distinctly secondary concern. For this reason, Oregon correctional officials believe it is inappropriate and unfair to judge the success or failure of the Guidelines program on the basis of parolee recidivism alone.

Sentence disparity. A final issue, and perhaps the most important one, given the objectives of the Guidelines Program, is the extent to which the program has reduced disparities in length of incarceration. This, after all, is the "bottom line" in evaluating the success or failure of the program, since the primary thrust of the "just deserts" approach is to introduce greater equity and uniformity in sentencing and parole-release decisions. Unfortunately, however, the Board has yet to compile and analyze the hard data necessary to address this issue.

Nevertheless, based on interviews with Board members, inmates, judges, and others concerned with the issue, the site visit team formed a strong subjective impression that the program has made considerable headway toward eliminating the gross disparities which apparently existed prior to the intro- duction of the Guidelines. Prima facia evidence for this assertion derives from observation of the Guidelines in operation. The explicitness of the screening criteria employed, the rigor of the screening process itself, and the mandatory use of screening results in actual decision-making--all contrast sharply from descriptions and accounts of the situation prior to the Guidelines, where the criterion of parole "readiness" provided only a vague and very loose framework for structuring decisions. But beyond the screening procedures them- selves, the site visit team was equally impressed by the strong commitment of Board members to controlling sentence disparity,and in their own assessment the Board has made significant progress in this respect. Still, these impressions can hardly be considered definitive, and a more conclusive assess- ment must await the collection of hard data.

Even when such data become available, however, the Board will need to [3] confront the problem of how to define and measure sentence "parity" and "disparity."

As with the parable of the elephant and the blind man,"parity" and "disparity" appear differently to different people. A good example is provided by the complaints of some inmates in the Oregon penitentiary who argue that it is unfair to take prior record into account in deciding release dates because this amounts to "double jeopardy," punishing an individual twice for the same crime. In their view (one that seems to be shared, incidentally, by some hard- line advocates of legislatively fixed sentences), only the instant offense should be used as a basis for sentencing, and all who commit the same crime should receive identical punishment. Yet while this definition of sentence "parity" or "equity" might seem superficially plausible, others would challenge it as being overly simplistic. As Leslie Wilkins has argued, to base sentences exclusively on the circumstances of the instant offense is "to attempt to equalize something that is inherently unequal." The line between illegiti- mate "disparity" and legitimate individual "variance" in sentencing decisions is not easy to draw. According to this view,differences in prior record as well as in other aspects of offenders' backgrounds and circumstances may legitimately create individual variance in sentencing decisions, insofar as these differ- ences may be construed as aggravating or mitigating the instant offense.

As this is intended to suggest, "equity" and "disparity" are not as simple to define as might first appear. One of the major tasks that lies ahead for criminal justice researchers is to devise methods by which these concepts can be more precisely measured, so that the impact of various approaches to sentencing reform can be effectively monitored and compared.

Commentary

It is appropriate to say a word about the broader significance of the Oregon experience, particularly in view of what many criminal justice practitioners perceive as an ominous national trend in the direction of legislatively fixed sentences. At the time of writing, five states had al- ready passed determinate sentencing statues, and such legislation has been proposed in at least 30 others. Understandably, many correctional and parole authorities have been put on the defensive, viewing these developments as a threat to their sphere of influence and expertise, if not their very existence. In contrast, the Oregon Parole Board has moved in an aggressive fashion, taking upon itself the responsibility for ensuring greater determinancy and

uniformity in sentencing and parole decisions. As a result, the demand for legislatively fixed sentences has been largely forestalled in Oregon, at least for the foreseeable future. If for no other reason, this alone should give cause for criminal justice practitioners to pay closer attention to the Oregon experience.

Oregon illustrates that an effective parole-classification system may well prove a workable alternative to other approaches to sentencing reform, for it seems clear that such reform is coming, in one form or another. The real question is what form it will take and what impact it will have upon existing criminal justice organizations. Although there are many variations among the reform proposals that have been put forward, it is possible to distinguish three main approaches:

● <u>Legislative</u>, including proposals for fixed, mandatory, or presumptive sentencing.

● <u>Judicial</u>, including proposals for sentencing councils and, more recently, sentencing guidelines.

● <u>Administrative</u>, of which Oregon's program is an example.

The legislative approach has, of course, received the most attention. Yet, while it is still too early to evaluate the results in those states that have passed determinate sentencing legislation, many in the correctional community anticipate significant problems. First, it seems likely that more offenders will be incarcerated and for somewhat longer periods of time, thereby exacerbating the already serious problem of prison overcrowding. Second, determinate sentencing legislation is likely to make it more difficult to manage prison populations, since correctional authorities will have fewer incentives and disincentives at their disposal with which to control prisoners' behavior, particularly their participation in treatment and vocational programs. Third, sentencing is perceived as too inflexible, both with respect to its adminstration and, even more importantly, with respect to the elusive goal of "equitable" punishment which, after all, is the primary objective of the reform effort. Is

it really "equitable" to impose flat sentences across the board for all convicted of the same crime, while largely ignoring the past and present circumstances of the offender?

The second main approach to standardizing sentencing relies on judicial self-reform, specifically through the development and adoption of more explicit sentencing guidelines. This approach has been most recently advocated by Wilkins and Hoffman who have developed a Sentencing Guidelines matrix which is very similar to the Federal Parole Guidelines. Although experience with the use of Sentencing Guidelines is also too limited for a proper evaluation, preliminary indications cast doubt on the potential of this approach for significantly reducing sentence disparity. The main problem is that Sentencing Guidelines lack "teeth," that is, an effective enforcement mechanism. Judicial compliance with the Guidelines is largely voluntary, so there is little to constrain a judge from going outside the Guidelines or ignoring them entirely should he or she so desire. An additional difficulty stems from the decentralized character of the court system, which serves to prevent uniform application of Sentencing Guidelines on a statewide basis. The development and implementation of Sentencing Guidelines must proceed in a "bottom-up," district by district fashion, so that the sentence disparity often encountered <u>between</u> districts in the same state may not be adequately addressed.

Although the first two approaches to sentence reform have received serious attention, the third, reduction of sentence disparity at point of parole release, has not. Parole boards have stood for so long as the symbol of the indeterminate sentence, that it is perhaps difficult to conceive of them performing any other role. Yet the Oregon experience compels one to cast off such preconceptions and view the parole function in a new light. From this vantage, the Parole Guidelines approach has much to recommend it, including:

(1) <u>Centralization</u>. Because parole boards review the cases of offenders committed to prison from all parts of the state, they are in a unique position to monitor disparities in length of sentence. Moreover, both the administrative machinery and the information base necessary

to perform this centralized monitoring function already exist in most states, so that major administrative changes or expenditures would be unnecessary. While the idea of the parole authority acting as a "Board of Equalization" for sentencing decisions may at first seem farfetched, there are precedents not only in Oregon, but also in California where the new Community Release Board (old Adult Authority) presently performs this function under the new determinate sentence law.

(2) Enforceability. As an administrative body, the parole board is much more susceptible to external constraints than the judiciary, and as a result, decision guidelines can be more readily enforced. Thus, short of the extreme measure of legislatively fixed terms, Parole Guidelines appear to hold significantly more promise than Sentencing Guidelines for controlling excessive discretion and disparity. Ahtough historically parole boards have been granted almost unfettered discretion, Oregon illustrates that this need not necessarily be the case: a clearly defined legislative mandate together with a well developed body of administrative law can go far to eliminate unwarranted discretion in parole decision-making.

(3) Flexibility. Perhaps the chief advantage of the Oregon approach, however, especially in comparison with legislatively fixed sentences, is its greater flexibility. Because the Parole Guidelines are administrative law, standards have evolved in an incremental and cumulative fashion. This evolution has given those who administer the standards the chance to see what rules and procedures work and do not work satisfactorily and then make changes and amendments as experience dictates. In addition, the Guidelines have rendered the whole issue of equitable sentences more open to judicial inspection and review, so that the Oregon appellate courts will undoubtedly be influential in developing this body of rules and procedures still further in the traditional case-by-case fashion associated with the evolution of common law. Legislatively fixed sentences, in sharp contrast, do not

permit this kind of flexible, cumulative legal development; fixed sentences are promulated through "one-shot" legislation which, once passed, may prove very difficult to modify.

In emphasizing what appear to be the potential advantages of the Oregon model, it is also necessary to point out its limitations; the Oregon Parole Guidelines are no panacea for all that ails the criminal justice system, nor even for the more specific problem of reducing sentence disparity. For the Parole Guidelines do not address what is obviously the most difficult and intractable aspect of sentencing reform--the determination of who is to be incarcerated in the first place, or what is commonly known as the "in/out decision." Nationally, only a small percentage of convicted felons are committed to prison, the vast majority instead receiving probation or other non-incarcerative dispositions. The criteria upon which "in/out decisions" are based are the least visible and most susceptible to the vagaries of politics, public opinion, prosecutional discretion, and individual differences in judicial temperament. Yet the Oregon reforms deal only with the problem of reducing disparity in the length of incarceration, leaving untouched the more important issue of disparity in decisions about whether an offender will be imprisoned at all.

Despite this significant limitation of the Oregon model, it is a limitation that applies equally to the other major approaches to sentence reform that have thus far been proposed, including both legislatively fixed terms and Sentencing Guidelines. All three focus primarily on the "back-end" of the criminal justice system, that is, on the issue of length of incarceration; they fail to provide satisfactory answers to the question of how to eliminate disparity earlier in the "funnel" of criminal justice. The truth is that all of these measures attack only the symbolic tip of the iceberg, and none will affect more than a small percentage of those convicted of crimes for which they could be imprisoned.

Nevertheless, though the symbolic importance of the issue has been somewhat exaggerated in the heat of the debate over determinate sentencing, uniformity of prison sentences remains a very real issue for inmates, correctional

officials, parole boards, and, increasingly, state legislatures. Criminal justice practitioners, researchers, and policy-makers would therefore be advised to keep close watch on the future of the Oregon experience. If this approach proves a truly effective and workable means of standardizing prison terms, it could pre-empt current demands for more drastic, Draconian measures.

APPENDIX A

OREGON GUIDELINES MATRIX

TIME TO BE SERVED UNDER RULE 254-135-020

CRIMINAL HISTORY/RISK ASSESSMENT SCORE

	11-9	8-6	5-3	2-0
	Excellent	Good	Fair	Poor

OFFENSE SEVERITY RATING	(All ranges in Categories 1-6 shown in months)			
Category 1	-6	-6	6-12 (4-8)*	12-22 (8-18)
Category 2	-6	6-10 (4-8)	10-18 (8-14)	18-28 (14-24)
Category 3	6-10 (4-8)	10-16 (8-12)	16-24 (12-20)	24-36 (20-32)
Category 4	10-16 (8-12)	16-22 (12-18)	22-30 (16-24)	30-48 (24-42)
Category 5	18-24 (12-20)	24-30 (20-26)	30-48 (26-40)	48-72 (40-62)
Category 6	36-48	48-60	60-86	86-144
Category 7**				
Subcategory 2	8-10 yrs	10-13 yrs	13-16 yrs	16-20 yrs
Subcategory 1	10-14 yrs	14-19 yrs	19-24 yrs	24-Life

*Months in parentheses represent range for youthful offenders (21 or younger at time of conviction).

**The range for murders committed after December 7, 1978 shall be 25 years as required by ORS 163.115.

OFFENSE SEVERITY SCALE

Part I

OFFENSE SEVERITY UNDER RULE 254-135-005

OFFENSE	RATING	FELONY CLASS
163.095 - Aggravated Murder	7	A
163.115 - Murder	7	A
166.005 - Treason	7	A
163.118 - Manslaughter I	6	A
163.235 - Kidnapping I	6	A
163.375 - Rape I (Subcategory 1)	6	A
163.405 - Sodomy I (Subcategory 1)	6	A
164.415 - Robbery I (Subcategory 1)	6	A
163.185 - Assault I (Subcategory 1)	6	A
164.325 - Arson I (Subcategory 1)	6	A
163.185 - Assault I (Subcategory 2)	5	A
164.325 - Arson I (Subcategory 2)	5	A
164.415 - Robbery I (Subcategory 2)	5	A
162.165 - Escape I	5	B
164.225 - Burglary I (Subcategory 1)	5	A
163.175 - Assault II	4	B
163.225 - Kidnapping II	4	B
163.365 - Rape II (Subcategory 1)	4	B
163.395 - Sodomy II	4	B
164.225 - Burglary I (Subcategory 2)	4	A
167.017 - Compelling Prostitution	4	B
164.405 - Robbery II	4	B
167.207(4) - Criminal Activity in Drugs (Subcategory 1)	4	A
163.275 - Coercion (Subcategory 1)	4	C
164.075 - Theft by Extortion (Subcategory 1)	4	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 1)	4	A
475.995 - Unlawful Delivery of a Controlled Substance to a Minor (Subcategory 1)	4	A,B
163.125 - Manslaughter II	3	B
162.015 - Bribe Giving	3	B
162.025 - Bribe Receiving	3	B
167.207(1) - Criminal Activity in Drugs (Subcategory 1)	3	B
163.425 - Sexual Abuse I	3	C

OFFENSE	RATING	FELONY CLASS
164.225 - Burglary I (Subcategory 3)	3	A
163.365 - Rape II (Subcategory 2)	3	B
164.215 - Burglary II (Subcategory 1)	3	C
164.055 - Theft I (Subcategory 1)	3	C
164.125 - Theft of Services (Subcategory 1)	3	C
164.085 - Theft by Deception (Subcategory 1)	3	C
165.013 - Forgery I (Subcategory 1)	3	C
475.992(1) - Manufacture or Delivery of Controlled Substance (Subcategory 2)	3	A,B,C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit Substance (Subcategory 1)	3	A
475.995 - Unlawful Delivery of a Controlled Substance to a Minor (Subcategory 2)	3	A,B
162.065 - Perjury	2	C
162.155 - Escape II (Subcategory 1)	2	C
162.205 - Failure to Appear I	2	C
162.265 - Bribing a Witness	2	C
162.275 - Witness Receiving Bribe	2	C
163.145 - Criminally Negligent Homicide	2	C
163.205 - Criminal Mistreatment	2	C
163.257 - Custodial Interference I	2	C
163.275 - Theft by Coercion (Subcategory 2)	2	C
163.355 - Rape III	2	C
163.385 - Sodomy III	2	C
163.535 - Abandon Child	2	C
164.055 - Theft I (Subcategory 2)	2	C
164.095 - Theft by Receiving	2	C
164.135 - Unauthorized Use of a Motor Vehicle (Subcategory 1)	2	C
164.215 - Burglary II (Subcategory 2)	2	C
164.315 - Arson II	2	C
164.395 - Robbery III	2	C
165.013 - Forgery I (Subcategory 2)	2	C
163.175 - Assault III	2	C
167.207(4) - Criminal Activity in Drugs (Subcategory 3)	2	A
167.207(1) - Criminal Activity in Drugs (Subcategory 2)	2	A
164.125 - Theft of Services (Subcategory 2)	2	C
164.075 - Theft by Deception (Subcategory 2)	2	C
165.095 - Sports Bribery	2	C
165.090 - Sports Bribe Receiving	2	C
166.270 - Ex-convict in Possession	2	C
166.410 - Sale related (firearms)	2	C
166.220 - Carrying a Weapon With Intent to Use	2	C
167.012 - Promoting Prostitution	2	C

OFFENSE	RATING	FELONY CLASS
167.278 - Obtaining Drugs Unlawfully	2	B
496.992(3) - Poaching (Subcategory 1)	2	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 3)	2	A,B,C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit Substance (Subcategory 2)	2	B,C
475.992(4) - Possession of a Controlled Substance (Subcategory 1)	2	B,C
475.995 - Unlawful Delivery of a Controlled Substance to a Minor (Subcategory 3)	2	C
162.185 - Supplying Contraband	1	C
162.325 - Hindering Prosecution	1	C
163.515 - Bigamy	1	C
163.525 - Incest	1	C
163.555 - Criminal Nonsupport	1	C
164.065 - Theft: Lost, Mislaid	1	C
164.075 - Theft by Deception (Subcategory 3)	1	C
164.125 - Theft of Services (Subcategory 3)	1	A -$200 (Misd.) C +$200
164.365 - Criminal Mischief I	1	C
165.022 - Forged Instrument I	1	C
165.032 - Forgery Device	1	C
165.055 - Fraudulent Use of a Credit Card	1	A -$200 (Misd.) C +$200
165.070 - Fraudulent Communication Device	1	C
167.127 - Promoting Gambling	1	C
167.137 - Possession of Gambling Records I	1	C
167.212 - Tampering with Drug Records	1	C
- Welfare Fraud	1	C
- Felony Traffic	1	C
133.723 - Interception of Communication	1	C
496.992(3) - Poaching (Subcategory 2)	1	C
167.207(1) - Criminal Activity in Drugs (Subcategory 3)	1	A
164.215 - Burglary II (Subcategory 3)	1	C
164.135 - Unauthorized Use of a Motor Vehicle (Subcategory 2)	1	C
162.155 - Escape II (Subcategory 2)	1	C
475.992(1) - Manufacture or Delivery of a Controlled Substance (Subcategory 4)	1	A,B,C
475.992(3) - Unlawful Creation or Delivery of a Counterfeit Substance (Subcategory 3)	1	B,C
475.992(4) - Possession of a Controlled Substance (Subcategory 2)	1	B,C
475.993 - Violation of Controlled Substance Act by Registrants	1	C

Conspiracy has the same offense severity as the crime conspired to.

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HISTORY/RISK ASSESSMENT SCALE

CRIMINAL HISTORY/RISK ASSESSMENT UNDER RULE 254-135-010

ITEM	SCORE
(A) No prior felony or misdemeanor convictions as an adult or juvenile:*	3
One prior conviction:	2
Two or three prior convictions:	1
Four or more prior convictions:	0
(B) No prior incarcerations (i.e., executed sentences of 90 days or more) as an adult or juvenile:	2
One or two prior incarcerations:	1
Three or more prior incarcerations:	0
(C) Age at first commitment of 90 days or more:**	
26 or older:	2
19 through 25:	1
18 or younger:	0
(D) Never escaped, failed parole or probation:***	2
One incident of the above:	1
Any two or more incidents of the above:	0
(E) Has no admitted or documented heroin or opiate derivative abuse problem, or has no admitted or documented alcohol problem:	1
One or more of the above:	0
(F) Verified period of 5 years conviction free in the community prior to present offense:	1
Otherwise:	0

TOTAL HISTORY/RISK ASSESSMENT SCORE:

*Do not count convictions over 20 years old, convictions that have been pardoned, or juvenile or adult "status offenses" (runaway, truancy, incorrigibility, drunk in public).

**If no prior commitment, use age at present conviction.

***Count probation failure only if it resulted from new crime; count any parole failure.

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SITE VISIT REPORT

DECISION POINT: SENTENCING

PHILADELPHIA COURTS

SITE VISIT: May 30 - June 1, 1978

INTERVIEWERS: Peggy Smith, Ph.D.

             Garry Kemp

CONTACT PERSON: Saundra Di Illio
                Adult Probation Department
                Philadelphia Court of Common Pleas
                Court Research Analyst
                Tele: (215) 686-7367

Overview

The Court of Common Pleas, City and County of Philadelphia, Pennsylvania, is currently testing sentencing grids to assess their feasibility in judi- cial decision making. The Philadelphia Courts have worked closely with the Criminal Justice Research Center (CJRC) in Albany, New York as an "observer" court, and have followed similar strategies to those implemented in other jurisdictions under Albany's direction.

The Philadelphia sentencing guidelines combine an "offender score" with an "offense score" to locate a cell on a matrix table which indicates sentence decisions assigned to similar cases in the past. Sentencing guide- lines are regarded as an information tool only. They are being tested to assess their effectiveness in reducing sentencing disparity. The project has tested the guidelines in all courtrooms, and implementation will involve the entire judiciary.

The Court of Common Pleas, the court of general trial jurisdiction in the City and County of Philadelphia (which have the same boundaries), operates under the supervision of the State Supreme Court. It tries criminal cases which carry a maximum potential prison sentence of five years or more, and civil cases involving more than $1,000. The Court is one of two court levels in Philadelphia; the other is a Municipal Court. The organizational chart (see Appendix A) shows that the Common Pleas Court is directly responsible to the Pennsylvania Supreme Court, with appellate level courts in between for initial judicial appeals. Within the Common Pleas Court, there are three primary judicial divisions: (1) Orphans' Court, (2) Trial Court, and (3) Family Court. Most of the judges represent the Trial Court Division (54), with the rest distributed between the Family Court Division (20), and the Orphans' Court Division (7).

The sentencing guideline program is supported by a research staff that is part of the Research, Planning, and Training Unit of the Adult Probation Department, which is also part of the Court of Common Pleas. Ms. Saundra Di Ilio, Research Analyst in the research portion of the unit, is currently working with the Judicial Advisory Committee to implement sentencing guidelines.

The geographic area served by the jurisdiction is the City and County of Philadelphia. The 1970 census reports the population as approximately 1.95 million residents. This population is concentrated in an all-urban area on the border of New Jersey. The residents can be divided into two predominant ethnic groups: anglos 67%, and blacks 33%. The crime rate for the Philadelphia area in 1975 was as follows:

TABLE 1

PHILADELPHIA CRIME INDEX

(SMSA estimated population of
4.93 million people)

		Rate per 100,000 Population
Total crime index =	211,633	4,289.8
Violent crime =	25,097	508.7
Property crime =	186,536	3,781.1

These figures compare to the nationwide average as follows:

TABLE 2

NATIONAL CRIME INDEX

	Rate per 100,000 Population	
	Philadelphia Area	U.S. as a Whole
Total crime index =	4,289.8	5,281.7
Violent crime =	508.7	481.5
Property crime =	3,781.1	4,800.2

These statistics show that the Philadelphia area has an overall lower crime rate than the U. S. as a whole (-18.8%), even though violent crime is slightly higher (+5.4%) and property crime is substantially lower (-21.3%).

Within the Court of Common Pleas, three programs handle criminal cases: (1) homicide, (2) major felony, and (3) felony non-jury. These programs adjudicated a total of 8,729 defendants during 1977. The largest number of cases were handled by the felony non-jury program (6,952), with the major felony program disposing of 1,413 cases and the homicide program 364. Mild fluctuations took place in case disposal between the years of 1976 and 1977, as illustrated by Table 3 below:

TABLE 3

CASES PROCESSED, 1976 AND 1977

	Cases Pending			Cases Disposed Of		
	1976	1977	% Diff.	1976	1977	% Diff.
Homicide Program	768	663	-13.7	460	389	- 1.2
Major Felony Program	2,192	2,234	+ 1.9	1,472	1,362	- 6.2
Felony Non-Jury Program	10,837	8,817	-18.7	8,304	6,988	+ 2.7

Although only slight changes took place in dispositions over the last two years, new cases received have declined, especially in the homicide and felony non-jury program.

There are four main sentencing decision options for the Court of Common Pleas: (1) to incarcerate in county jail or prison, (2) to sentence to probation, (3) to suspend sentence, and (4) to assess fines, costs, or require restitution. The number of cases sentenced under each sentencing option is shown in Table 4 on the following page.

TABLE 4

SENTENCES IMPOSED, 1977

Type of Sentence	Number of Defendants	%
Prison	2,499	46.2%
Probation	2,814	52.0%
Suspended Sentence	63	1.2%
Fines, Cost Restitution	33	.6%
Total	5,409	100.0%

Table 4 shows that an almost equal number of defendants receive prison as probation, with slightly more receiving probation (+5.8%). In Common Pleas Court, relatively few sentences are suspended or settled by fines since most of these cases are felonies.

Figure 1 (on the following page) illustrates the flow of cases through the Court of Common Pleas.

In 1976, the judiciary began developing and testing guidelines independently of legislative authority. A Judge's Advisory Committee was formed for the purpose of testing the guidelines concept. However, since that time, Senate Bill No. 195 has been enacted (November, 1978) which establishes authority for the Pennsylvania Sentencing Commission to adopt sentencing guidelines. (The Sentencing Commission has not yet been appointed.) The law further states that the court is required to give reasons for the sentences it imposes. If a sentence is imposed outside of the guidelines, for example, the court is required to submit a written statement of reasons for deviation from the guidelines. It is important to recognize that the Philadelphia pilot study began prior to the aforementioned legislation due to concerns of the judiciary. Nevertheless, the guidelines being tested in Philadelphia are consistent with the intent of the enacted legislation.

FIGURE 1

CASE FLOW

CITY AND COUNTY OF PHILADELPHIA, PENNSYLVANIA

Municipal Court
(Lower Trial Court)

Court of Common Pleas
(Court of Highest Trial Jurisdiction)
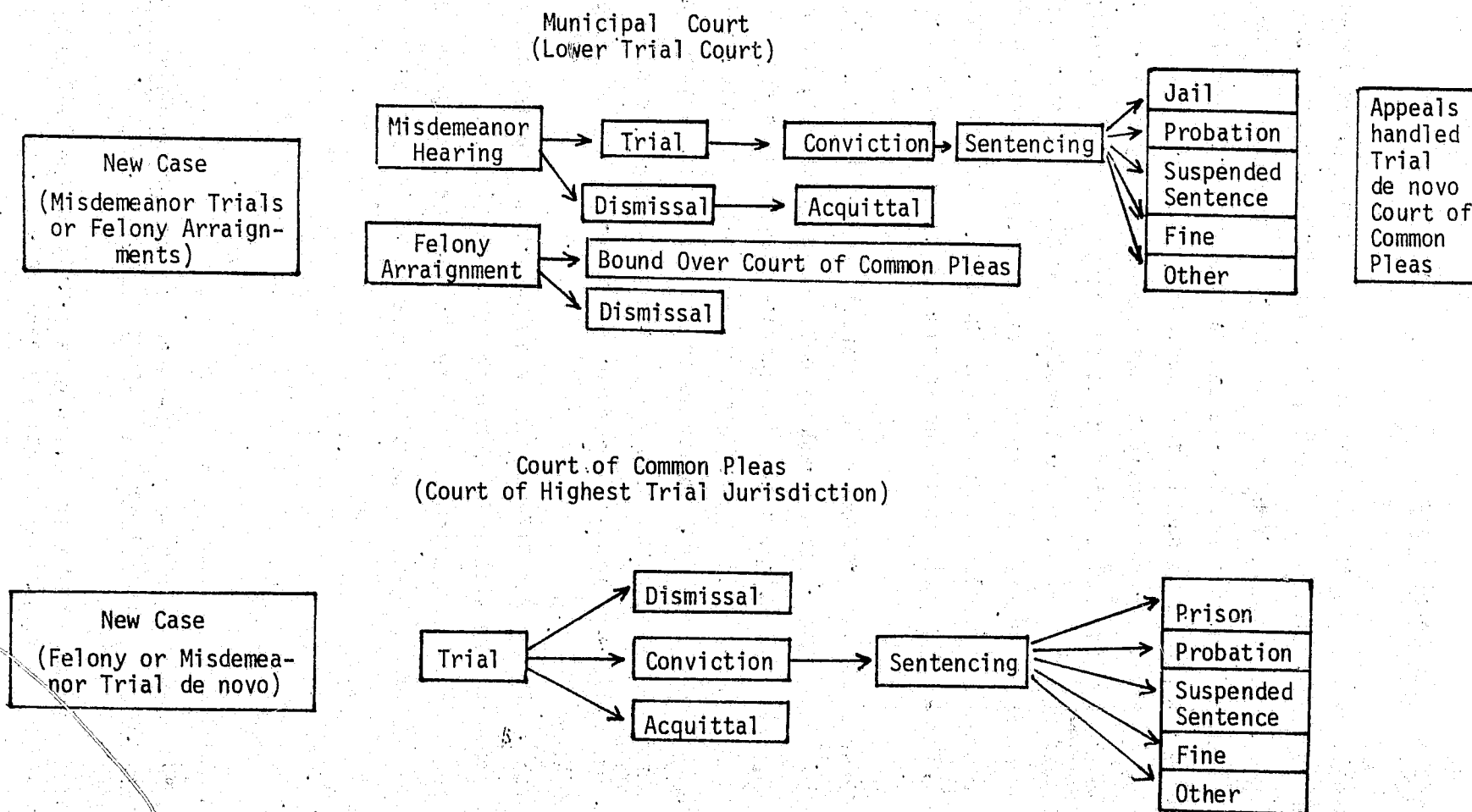
The Instrument and Its Development

The guidelines consist of a series of four sentencing grids prepared for different offense categories. Each grid constitutes a matrix table with an offense score and an offender score along the two axes. Sentencing times within each cell of the matrix indicate a range of sentences based upon the median recently assigned in this jurisdiction.

Ms. Di Ilio, Court Programs Analyst, has worked closely with Mr. Jack Kress and the Albany Criminal Justice Research Center (CJRC) in developing grids and procedures similar to those introduced in Albany, Denver, Chicago, and Newark. Mr. Kress and Ms. Di Ilio have also prepared a paper describing the scoring process, variables employed, and the use of sentencing guidelines. Much of the information in the following section is taken directly from that paper.[1]

The Offense Score is composed of four variables, the first of which is seriousness of offense. Seriousness is determined by ranking the crimes within each statutory classification; for example, murder is given a rank of "8", and a misdemeanor not against a person is scored "1" (see Appendix C). This offense ranking is modified by adding points for victim injury, weapon usage, and victim classification. Table 5 on the following page shows how these items are used. The highest number of points which may be assigned is "12"; the lowest is "1".

Variables making up the Offender Score include total number of prior adult incarcerations, relationship to the criminal justice system at the time of arrest, prior adult convictions, prior felony convictions against a person, and employment history. Table 6 shows how these items are scored.[2]

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1. For further detail, the reader is referred to Sentencing Guidelines: Judicial Reform in the Philadelphia Court of Common Pleas by Jack Kress and Saundra Di Ilio.

2. Variables have been modified following analysis of the 1977 data. However, the new variables are not yet available.

TABLE 5

OFFENSE SCORE

		Points
Item 1:	Seriousness	
	Offense Class	1-8
Item 2:	Victim Injury	
	Death	+2
	Injury	+1
	No Injury	0
Item 3:	Weapon Usage	
	Yes	+1
	No	0
Item 4:	Victim Classification	
	Private Citizen	+1
	Organization or Institution	0

TABLE 6

OFFENDER SCORE

		Points
Item 1:	Prior Adult Incarcerations	
	3 or more	+3
	2	+2
	1	+1
	0	0
Item 2:	System Relationship	
	Supervision by criminal justice agency	+1
	No Supervision	0
Item 3:	Prior Adult Convictions	
	3 or more	+3
	2	+2
	1	+1
	0	0
Item 4:	Prior Felony Person Convictions	
	3 or more	1
	None	0
Item 5:	Employment History	
	Employed at arrest	-2
	Employed in past	-1
	Not employed	0

The highest number of points an offender may receive is "7", the lowest is "-2".
To summarize, the sentencing grid has two axes: the Offense Score lies on the
vertical axis, and the Offender Score on the horizontal axis. There are four
separate sentencing grids: Felony 1 and Murder, Felony 2, Felony 3, and Mis-
demeanors.[3]

The variables currently used have evolved after a period of refinement

_____

3. A detailed explanation is given in Manual for Use of Sentencing Grids-
Felonies, Phila. Sentencing Guideline, Jan. 1978.

and testing. For example, information on drug and alcohol problems was
seldom available so this variable was dropped. Parole and probation re-
vocations were dropped because they proved to be unreliable. Judges also
decided against including juvenile records because they regarded them as an
improper consideration.

Research leading to the development of the current instrument was begun
in December, 1976. The research staff collected and analyzed 93 items of
information hypothesized as relevant to sentencing decisions. The items
were selected largely on the basis of CJRC experience in other jurisdictions.
Items collected fall into three categories: (1) information concerning
the instant offense, such as victim injury and weapon usage; (2) information
concerning the offender's criminal record, such as prior arrests and convic-
tions; and (3) information concerning the offender's background and social
stability, such as marital status and employment history.

One thousand cases sentenced in 1975 were randomly selected by the court's
computer for the construction sample. As a result of missing or incorrectly
coded data, 45 cases were dropped from the original sample during the data
cleaning period, leaving 955 cases in the construction sample.

Analysis proceeded in several stages, beginning with selection of vari-
ables believed important to the sentencing decision. Researchers then ran cross-
tabulations with each variable against the "in/out" decision, or dependent
variable. More variables were excluded from further analysis at this stage.
The research team next used multiple regression analysis to decide which vari-
ables would be retained for eventual use, and what relative importance would
be assigned to each. Stepwise multiple regression is a "search" technique
which identifies independent variables (information obtained from case
files and pre-sentence reports) which predict variation in the dependent vari-
able (sentencing decisions). The resulting regression equation, which ex-
presses the relationship between the independent and dependent variables, is
used to predict the sentencing decision. The research analyst then ran re-
gressions using three dependent variables: (1) the "in/out" decision, (2)
the minimum sentence, and (3) the maximum sentence. She also ran regressions
on all independent variables with the exception of the seriousness of offense.
Fifteen variables usually entered the equation with the same variables enter-
ing for all three dependent variables, although they entered in a different

order. The research team then tested different combinations of variables
to determine which equations best predicted sentencing decisions in Phila-
delphia.

The research team next presented two models to the Judge's Advisory
Committee, one using rankings based on a statutory classification of crimes
as to seriousness, the other using rankings of the Trial Division judges.
The committee used several criteria to eliminate variables from the models.
First, arrests were eliminated because by law they are excluded from judicial
consideration without a conviction. Secondly, some variables were dropped
at the outset because of missing information and the concerns noted above.

After the variables and weightings were adopted, the research analyst
began a validation process. She identified a random sample of 250 cases
receiving sentencing dispositions in 1977, and compared the instrument's
predictions with actual sentencing decisions. The validation check showed
that sentence severity has increased since 1975 both in terms of "in/out"
decision and in length of sentence. The predictive power of the instrument
is presently 79% with respect to the "in/out" decision. Variables are
currently being modified following analysis of the 1977 data.

Implementation

In introducing sentencing guidelines, the judiciary's main concern was
reducing disparity in sentencing. Judges saw sentencing guidelines as an
information/tool which would assist them in making more consistent decisions,
and yet still preserve judicial discretion. A Judge's Advisory Committee
was formed, court funds made available, and the research program leading to
sentencing guidelines was implemented.

During the testing phases, participating judges have rendered decisions
based on traditional considerations. The worksheet is scored afterwards
to derive comparative guideline predictions. Thus, the sentencing decision
is made independently of the guidelines, prior to scoring and consulting
them.

Testing and implementation has proceeded in four stages. The initial
pilot program that began in March, 1978 involved ten judges. It used "in/out"

grids only and did not consider length of sentence. These initial grids
were based on the construction sample of cases sentenced in 1975. During
the second phase, sentence length was added to the guideline grids and
tested first in these same ten courtrooms. The range of sentence length was
derived from the median sentence imposed in the 1975 construction sample.
The third phase involved a revision of the guideline sentence time, based
on analysis of the 1977 validation sample. Finally, guidelines based on
the 1977 validation sample were tested in all 45 courtrooms. Full imple-
mentation of the guidelines program is scheduled for March 1, 1979.

Screening and Decision Processes

As indicated above, judges currently make sentencing decisions independ-
ently of the guidelines ,and in advance of scoring the worksheets. During
the pilot study, cooperating judges compute offender and offense scores them-
selves. After the judge decides the sentence he will impose, he prepares
a worksheet (see Appendices D and E) utilizing information from case files.
Pre-sentence investigation reports are sometimes used but are available in
only about 40% of cases. The judge then compares his decision with that
suggested by the grids to see if there is departure.

Scoring takes about five minutes per case, and an average of 450 cases
are sentenced per month. After the pilot study when implementation becomes
system-wide, scores will hopefully be computed by clerical assistants prior
to sentencing, and then considered by judges in rendering decisions. However,
the guidelines are not intended to remove judicial discretion, but merely to
serve as an informational tool.

The coding manual explicitly specifies scoring criteria, and several
precautions have been taken to minimize variation in scoring. For instance,
a series of training and orientation sessions were held at several points
during implementation to familiarize all judges with the scoring procedures
and use of the grids. In addition, those judges on the Advisory Committee
who are involved in the pilot study hold meetings to discuss questions of
interpretation, and establish policy concerning scoring and other issues.
Finally, the Advisory Committee and research team developed an explicit scor-
ing manual for judges in order to minimize disparity in scoring. The above

measures have minimized variations in scoring among judges in the pilot
study, and the research analyst monitors scoring for consistency.

The intent of the sentencing guidelines program has never been to examine
the sentencing records of individual judges. Normal judicial review for the
state of Pennsylvania is in effect. Initial appeals on sentencing decisions
are reviewed by the Superior Court of Pennsylvania (appellate court), and
subsequent appeals must go to the Pennsylvania Supreme Court and/or the
Supreme Court of the United States for final resolution. However, monitoring
procedures will assure appropriate use of guidelines by providing feedback
to judges.

Results and Impact

Since sentencing guidelines are not fully utilized at this time, impact
is unknown. Ultimately, the judges hope that the guidelines will reduce sen-
tencing disparity. However, they were never intended to either increase or
decrease the ratio of incarcerations or average length of incarcerations.

Commentary

The judges who were interviewed did not feel it was possible to separate
the goals of consistency, equity, and accuracy of decision making; all are
compatible and desirable in their view. They anticipate that using sentencing
guidelines as an information tool will assist all three of these objectives.
On the issue of which variables should be selected, the initial choice was
made by the research analysts; the final decision was then made in consulta-
tion with the judges' advisory committee. However, at least two judges
stated their personal view that prior convictions should be an important
consideration, and this, of course, is consistent with the scoring derived
from research.

Judges further indicated they would not want to see guidelines restrict
judicial discretion. They did not express any view on whether sentencing
guidelines should be imposed by statute, but they did express the belief that
the Pennsylvania State Legislature would soon pass a new sentencing law (Senate
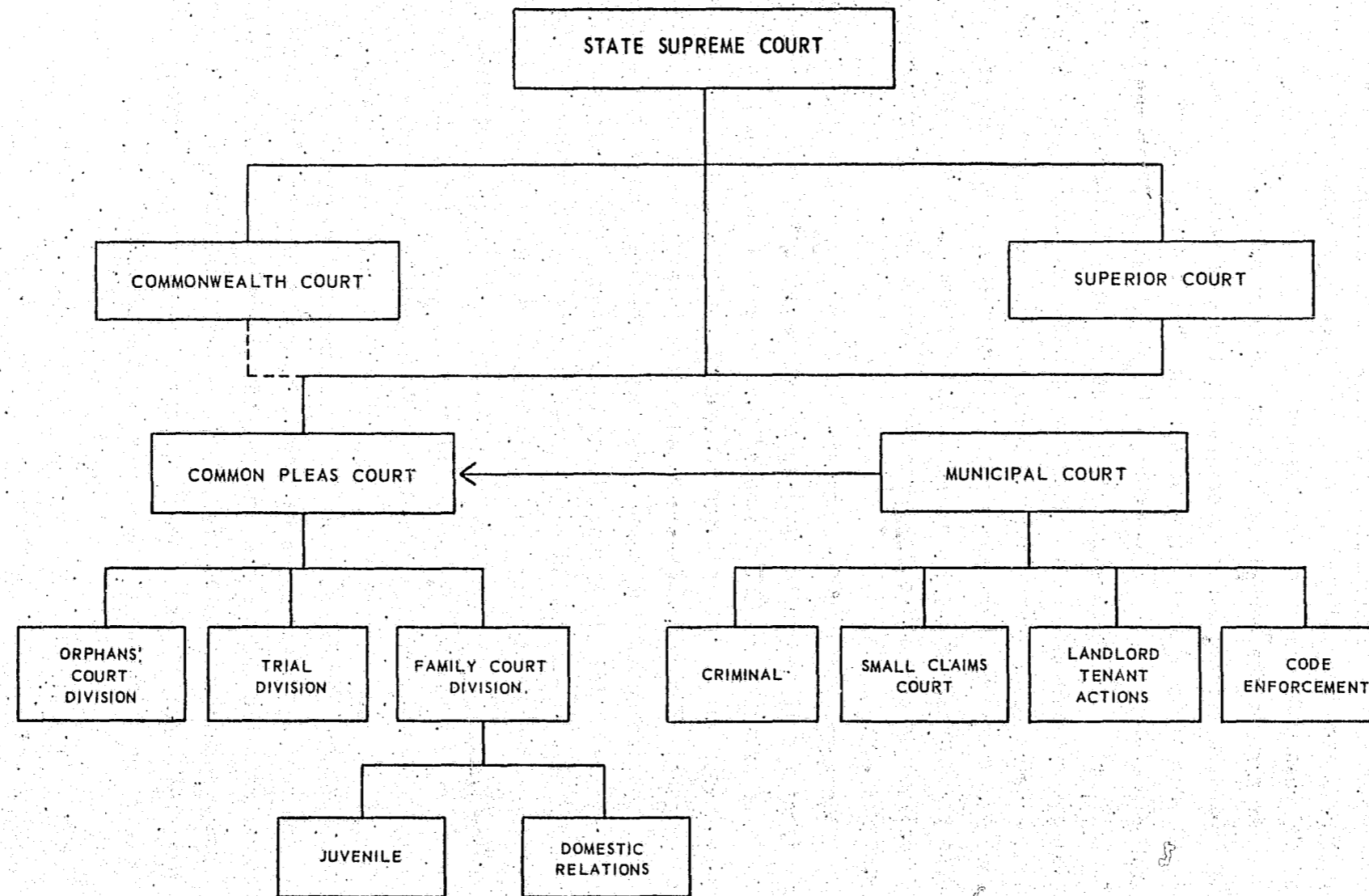Bill No. 195 has since been passed). The Pennsylvania State Supreme Court

decided in 1976 in <u>Commonwealth of Pennsylvania v. Riggins</u> that reasons
must be stated for judicial sentences so that defendants will be informed
of the reason for the sentence imposed.

As part of the work being done at the Criminal Justice Research Center
in Albany, New York, David Orrock has completed a paper on "Legal Issues
in the Use of Sentencing Guidelines." In this paper, Mr. Orrick cites two
common ways that sentencing practices have been attacked in the United
States: (1) through an abuse of discretion, and (2) through not using judi-
cial discretion when it is granted by statute. Of these two arguments, the
latter seems to be most significant for sentencing guidelines. Case law has
reviewed instances where appellants claimed that a judge had not used judicial
discretion in assigning a sentence. The rationale for reversals was that
guidelines decisions are too mechanical, thereby reducing or eliminating judi-
cial discretion.

Since sentencing guidelines are still in the testing stage in Philadelphia,
it is difficult to predict what legal challenges might arise. However, judges
who were asked to comment indicated that potential legal challenges would
depend upon the extent to which sentencing guidelines might restrict judicial
discretion. The public defender and judges interviewed agreed that as long
as sentencing guidelines remain advisory in nature, there should be no legal
difficulties. This is especially true in light of the recent Pennsylvania
State Supreme Court ruling that judges must set forth in writing the reason
for their sentencing decision. This procedure should eliminate charges that
sentencing decisions have become mechanical. The public defender who was
interviewed supports the concept of sentencing guidelines, but is somewhat
skeptical of how much they would reduce sentencing disparity.

The Philadelphia courts have successfully moved toward full implementation
of sentencing guidelines primarily because of a judiciary committed to reduc-
ing sentencing disparity, a hardworking Judge's Advisory Committee dedicated
to implementing the process, and a research analyst with the necessary pro-
fessional skills to successfully implement the procedure. The assistance
of the Criminal Justice Research Center in Albany has also been a valuable
resource contributing to the success of the program.

PENNSYLVANIA STATE JUDICIAL SYSTEM

PHILADELPHIA COUNTY

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                    ┌─────────────────────┐
                    │ STATE SUPREME COURT │
                    └─────────────────────┘
                               │
          ┌────────────────────┼────────────────────┐
          │                    │                     │
┌──────────────────┐                         ┌────────────────┐
│ COMMONWEALTH COURT│                         │ SUPERIOR COURT │
└──────────────────┘                         └────────────────┘
          │
┌──────────────────┐                      ┌─────────────────┐
│ COMMON PLEAS COURT│ ◄──────────────────│ MUNICIPAL COURT │
└──────────────────┘                      └─────────────────┘
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| ORPHANS' COURT DIVISION | TRIAL DIVISION | FAMILY COURT DIVISION | CRIMINAL | SMALL CLAIMS COURT | LANDLORD TENANT ACTIONS | CODE ENFORCEMENT |

| JUVENILE | DOMESTIC RELATIONS |

Sentencing Guidelines -- Seriousness

Class	Seriousness Code
Murder	8
Felony 1, Against Person	7
Felony 1, Not Against Person	6
Felony 2, Against Person	5
Felony 2, Not Against Person	4
Felony 3 (all)	3
Misdemeanor, Against Person	2
Misdemeanor, Not Against Person	1

SENTENCING INFORMATION SHEET
MODEL TESTING

All Felonies

DEFENDANT'S NAME _____

CASE NUMBER _____

OFFENSE(S) CONVICTED _____

_____

OFFENSE SCORE

A.   **Seriousness Ranking**

- 3   Felony III
- 4   Felony II Not Against a Person
- 5   Felony II Against a Person
- 6   Felony I Not Against a Person   +
- 7   Felony I Against a Person
- 8   Murder

B.   **Victim Injury**

- 0   No Injury to Victim
- 1   Injury to Victim
- 2   Death   +

C.   **Weapon Usage**

- 0   No Weapon Used
- 1   Weapon Used   +

D.   **Victim Classification**

- 0   Large Store, Organization, Institution   +
- 1   Private Citizen

TO OBTAIN OFFENSE SCORE, <u>ADD</u> A,B, AND C. =
AND D WHERE APPLICABLE.

OFFENDER SCORE

A.   **Prior Adult Incarcerations**

- 0   None
- 1   One
- 2   Two
- 3   Three or more   +

B.   **Relationship to Criminal Justice System at the Time of Arrest**

- 0   None or Pending Cases
- 1   Court or Criminal Justice Supervision   +

C.   **Prior Adult Convictions**

- 0   None
- 1   One
- 2   Two
- 3   Three or more   +

D.   **Prior Felony Against a Person Convictions**

- 0   None
- 1   One or more   +

E.   **Employment History**

- 0   Not employed
- 1   Employed one year or less –
- 2   Employed over one year

TO OBTAIN THE OFFENDER SCORE, <u>ADD</u>
A,B,C,D AND <u>SUBTRACT</u> E.   =

SENTENCING INFORMATION SHEET
Model Testing

(Second Page)

Defendant's Name _____
Case Number _____
Court Room Number _____
Judge _____

To find the correct sentencing grid check the appropriate offense category:

☐ Felony I and Murder -------- Refer to Grid A

☐ Felony II -------------------- Refer to Grid B

☐ Felony III ------------------- Refer to Grid C

☐ Misdemeanor ------------------ Refer to Grid D

To find the guideline sentence using the proper sentencing grid, locate the cell on the grid where the Offense Score and the Offender Score intersect:

Guideline Sentence:

☐ IN

☐ OUT

Actual Sentence:

☐ IN (list term) _____

☐ OUT

If the actual sentence differs from the guideline sentence please list reasons:

SENTENCING INFORMATION SHEET
MODEL TESTING

All Misdemeanors

DEFENDANT'S NAME _____
CASE NUMBER _____
OFFENSE(S) CONVICTED _____

OFFENSE SCORE

A. Seriousness Ranking

1 Misdemeanor Not Against a Person
2 Misdemeanor Against a Person

+ ☐

B. Victim Injury

0 No Injury to Victim
1 Injury to Victim
2 Death

+ ☐

C. Weapon Usage

0 No Weapon Used
1 Weapon Used

+ ☐

TO OBTAIN OFFENSE SCORE, ADD A,B,AND C. = ☐

OFFENDER SCORE

A. Prior Adult Incarcerations

0 None
1 One or more

+ ☐

B. Relationship to Criminal Justice System at the Time of Arrest

0 None or Pending Cases
1 Court or Criminal Justice Supervision

+ ☐

C. Prior Adult Convictions

0 None
1 One
2 Two
3 Three or more

+ ☐

D. Prior Felony Against a Person Convictions

0 None
1 One or more

+ ☐

E. Employment History

0 Not employed
1 Employed one year or less
2 Employed over one year

☐

TO OBTAIN THE OFFENDER SCORE, ADD A,B,C,D AND SUBTRACT E. = ☐

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APPENDIX D
(Page 1)

SENTENCING INFORMATION SHEET
Model Testing

(Second Page)

Defendant's Name _____

Case Number _____

Court Room Number _____

Judge _____

To find the correct sentencing grid check the appropriate offense category:

☐ Felony I and Murder -------- Refer to Grid A

☐ Felony II ------------------- Refer to Grid B

☐ Felony III ------------------ Refer to Grid C

☐ Misdemeanor ----------------- Refer to Grid D

To find the guideline sentence using the proper sentencing grid, locate the cell on the grid where the Offense Score and the Offender Score intersect:

Guideline Sentence:	Actual Sentence:
☐ IN	☐ IN (list term) _____
☐ OUT	☐ OUT

If the actual sentence differs from the guideline sentence please list reasons:

TELEPHONE INTERVIEW SUMMARY

AGENCY: Washington State Board of   TYPE OF INSTRUMENT: Base Expectancy
           Prison Terms and Paroles

LOCATION: Olympia, Washington   CONTACT: Edwin Petersen
                                     Administrative Assistant
DECISION POINT: Sentencing and   Parole Decisions Project
               Parole Release   (206) 753-6797

The Washington State Board of Prison Terms and Paroles is developing and
planning to implement a base expectancy type classification instrument to be
used in decisions concerning the reduction of prison terms for inmates con-
fined to state institutions. The instrument consists of a list of variables
which are scored 0 or 1 (see Appendix A) and then summed to produce an overall
score which is designed to reflect the probability of successful, marginal,
or unsuccessful parole performance. The device will be used to classify both
felony and misdemeanor cases.

The Board previously used a different base expectancy instrument as one
factor in the fixing of minimum terms of confinement, but use of this instru-
ment was discontinued shortly after the start of the Parole Decisions Project
due to lack of confidence in the device. A first task undertaken by the Project
was reanalysis of this instrument. Project staff concluded that it should be
abandoned because: (1) the data used to construct the instrument were unreliable;
and, (2) the characteristics of the current inmate population were substantially
different from those of the sample used to construct the tool. The Project
therefore created a new data base consisting of over 400 prediction candidates
taken from a sample of 2,800 subjects released between July 1972 and June 1975.
Using this information, the current instrument was created after a lengthy
process of development and analysis. This instrument has not as yet been fully
implemented or evaluated.

Using information from the offender's official case file, the Board's
Case Analyst will fill out the instrument according to written instructions,
and then record the overall score and the client's offense group (based on the
release sample; see Appendix B). Based on constraints defined by the Board,
each offender will then be eligible for a reduction in length of confinement
according to his or her risk score and offense group. In contrast to the pre-
vious instrument which was used to fix minimum terms, the present instrument

will be employed only to reduce terms.

As mentioned above, the instrument has not been evaluated or implemented
yet. As a result, information on validity and impact were not available at
time of publication. However, data on each screening (including the risk
score and the score for each variable) are a permanent part of the Board's
Management Information System, and the instrument will be evaluated as required.

ATTRIBUTES RELATED TO PAROLE PERFORMANCE

HOMICIDE/ASSAULT OFFENSES

IF: ADD

Released on Bail OR On Own Recognizance for This Offense........... 1

No Illegal Use of Opiates... 1

Commitment is Not a Probation Revocation.......................... 1

Sedatives Not Involved in Offense................................. 1

Twenty Years of Age or Older at First Adult Arrest................ 1

ATTRIBUTES RELATED TO PAROLE PERFORMANCE

ROBBERY OFFENSES

IF: ADD

Never Committed to a Juvenile Institution......................... 1

Not Under the Jurisdiction of the Criminal Justice System at Time
of Offense.. 1

Not Living Alone, AND Not Living With Parents and Siblings AND
Not Living With Siblings.. 1

Weapons Not Involved in Offense................................... 1

Opiates Not Involved in Offense................................... 1

ATTRIBUTES RELATED TO PAROLE PERFORMANCE

BURGLARY OFFENSES

IF: ADD

Never Committed to a Juvenile Institution......................... 1

Never Used an Alias... 1

Employed During the Two Years Prior to Admission.................. 1

Not Confined During the Two Years Prior to Admission.............. 1

No Illegal Use of Marijuana OR Hashish............................ 1

No History of Assaultive Behavior................................. 1

Living With Spouse, OR Spouse and Children, OR Parents and Siblings 1

Not On Escape Status.. 1

Victim Not Threatened with a Knife AND Victim Not Injured With a
Weapon.. 1

ATTRIBUTES RELATED TO PAROLE PERFORMANCE

THEFT OFFENSES

IF: ADD

Released on Bail OR Own Recognizance for This Offense.............. 1

Ten or More Years of Verified Education........................... 1

Not Confined During the Two Years Prior to Admission.............. 1

Married... 1

Commitment Offense is Not Forgery AND Not Non-Sufficient Funds,
AND Not Illegal Use or Forgery of Credit Cards.................... 1

Opiates Not Involved in Offense................................... 1

ATTRIBUTES RELATED TO PAROLE PERFORMANCE

AUTO THEFT OFFENSES

IF: ADD

Never Committed to a Juvenile Institution........................ 1

First Felony Conviction was Not For Forgery....................... 1

Released on Bail OR Own Recognizance for This Offense............. 1

Eleven or More Years of Verified Education....................... 1

Married OR Previously Married.................................... 1

Opiates Not Involved in Offense................................. 1

Twenty-one Years of Age or Older at First Prison Sentence.......... 1

ATTRIBUTES RELATED TO PAROLE PERFORMANCE

NARCOTICS/CONTROLLED SUBSTANCES OFFENSES

IF: ADD

Stably Employed During the Two Years Prior to Admission........... 1

No History of Assaultive Behavior................................ 1

Living With Spouse OR Spouse and Children....................... 1

Not Under Parole Supervision.................................... 1

Nineteen Years of Age or Older At First Adult Arrest.............. 1

ATTRIBUTES RELATED TO PAROLE PERFORMANCE

NON-ASSAULTIVE SEX OFFENSES

IF: ADD

No Illegal Use of Marijuana OR Hashish.......................... 1

Not Under Parole Supervision.................................... 1

ATTRIBUTES RELATED TO PAROLE PERFORMANCE

WOMEN - NON-PROPERTY OFFENSES

IF: ADD

Never Convicted of Felony Burglary.............................. 1

No Illegal Use of Hallucinogens................................. 1

No History of Assaultive Behavior............................... 1

Twenty-two Years of Age or Younger at Admission.................. 1

ATTRIBUTES RELATED TO PAROLE PERFORMANCE

WOMEN - PROPERTY OFFENSES

IF: ADD

Never Convicted of Felony Burglary.............................. 1

No Illegal Use of Hallucinogens................................. 1

No History of Assaultive Behavior............................... 1

Twenty-two years of Age or Younger at Admission................. 1

CONDITIONS FOR GROUP MEMBERSHIP

OFFENDER GROUP	SEX OF OFFENDER	TYPE OF COMMITMENT	MINIMUM TERM FELONY CLASS*	OFFENSE LEADING TO ADMISSION
1. Homicide/Assault	Male	Court Commitment	Murder Manslaughter Sexual Molestation Assault Felon in Possession of Firearm	Murder II Manslaughter I, II Rape I, II, & III Only Assault I, II Felon in Possession of Firearm
2. Robbery	Male	Court Commitment	Robbery	Robbery I, II
3. Burglary	Male	Court Commitment	Burglary	Burglary I, II
4. Theft	Male	Court Commitment	Theft Possession of Stolen Property Check/Credit Card Abuse	Theft I, II Possession of Stolen Property I, II Forgery, Uttering a Forged Instrument, Unlawful Issuance of Bank Checks, Credit Card Forgery
5. Auto Theft	Male	Court Commitment	Auto Theft	Auto Theft
6. Narcotics/Controlled Substances	Male	Court Commitment	Drugs	Sale of Controlled Substances for Profit; Sale of Heroin for Profit; Sale, Delivery or Possession of Drug With Intent to Sell
7. Non-Assaultive Sex	Male	Court Commitment	Sexual Molestation	All sex offenses excluding Rape I, II, & III
8. Women – Non-Property Offenses	Female	Court Commitment	Classes 1,2,6, and 7	All Offenses in the Classes.
9. Women – Property Offenses	Female	Court Commitment	Classes 3, 4, and 5	All Offenses in the Classes.
10. Parole Violator	Either	Parole violators revoked with no new commitment offense	All Classes	N/A

*Note: See Section 5.121, Appendix I for explanation of Minimum Term Felony Class. If an offender has been convicted for more than one offense at this admission, offender is classified according to the offense with the highest act severity time (see Section 5.121, Appendix I for explanation of highest act severity time).

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APPENDIX B

END