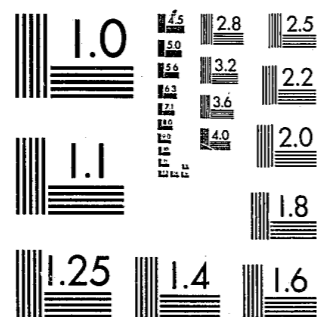


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# CORRECTIONAL OPTIONS

for the  
80's



DECEMBER 1980

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Department of  
Local Affairs

Division of  
Criminal Justice



Department of Local Affairs  
Colorado Division of Criminal Justice

Richard D. Lamm, Governor

December 31, 1980

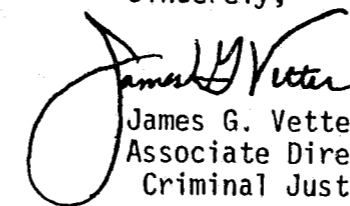
Dear Reader:

This study of correctional population projections and the resultant options represent four months of intensive effort by the staff of the Division of Criminal Justice. The study was requested by Dr. James Ricketts, Executive Director of the Department of Corrections, to provide an outside and objective review of the population issue and those other factors that influence correctional population. It is important to underscore that this effort could not have been completed without the support and cooperation of Dr. Ricketts and his staff, as well as criminal justice practitioners and many others interested in this important effort.

This report contains a broad array of information previously unavailable to key decision makers and those who are responsible for the development of public policy that impacts on correctional operations. It is our sincere hope that this material provides the basis for informed and objective decisions, as that was the underlying purpose that drove this effort.

Consequently, I urge you to give careful consideration to the contents of this report. Should you have any need for amplification or wish to raise questions or concerns about the content of this report, please call Ms. Patricia Malak, the project director, at 839-3331.

Sincerely,

  
James G. Vetter  
Associate Director for  
Criminal Justice Affairs

JGV:lk  
Enclosure

NCJRS

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## CORRECTIONAL OPTIONS FOR THE 80'S

Prepared by

THE COLORADO DIVISION OF CRIMINAL JUSTICE

Patricia Malak - Project Director

Mary Mande - Sentencing of the Felony Offender in Colorado

William Johnson - Inmate Population Projection

Herb Covey - Community Alternatives

Staff - Inmate Classification

Rex Ageton  
Laura Bork  
Deborah Brincivalli  
Robert Burke  
Lynda Dickson  
Lynnette Kerr  
Debra McKay  
Scott Menard  
Patricia Reed  
Mary Walker

December 31, 1980

## ACKNOWLEDGMENTS

Several individuals have made valuable contributions to this report. Without their help and advice, it is not likely this report could have been produced. Among those who helped, the following have our praise and gratitude.

### DEPARTMENT OF CORRECTIONS

Herman Abeyta	Ray Pitman
William Bokros	Dr. James G. Ricketts
Dr. Thomas G. Crago	Leo Schwartzberger
Lou Hesse	Larry Shuford
C. Scott Hromas	Gene Tollis
Robert Kula	Robert D. Trujillo
Carole Perko	

### COLORADO BUREAU OF INVESTIGATION

Gray Buckley  
John R. Enright  
Michael H. Olson

### JUDICIARY

The Honorable Donald P. Smith, Jr., Court of Appeals  
The Honorable Joseph N. Lilly, Chief Judge, 2nd Judicial District  
The Honorable J. Robert Miller, Chief Judge, 8th Judicial District  
The Honorable Gavin D. Litwiller, Chief Judge, 9th Judicial District  
The Honorable Whitford N. Myers, Chief Judge, 12th Judicial District  
The Honorable Dean Johnson, Chief Judge, 13th Judicial District  
The Honorable Jean J. Jacobucci, Chief Judge, 17th Judicial District  
The Honorable James J. Carter, Chief Judge, 21st Judicial District

and their respective court staffs

Gerald L. Allen, Director of Economic Research, University of Colorado  
Mary Ann Beck, Director for Technology Transfer Division, National Institute of Justice  
Dr. Alfred Blumstein, Urban Systems Institute, Carnegie-Mellon University  
Jacqueline Cohen, Urban Systems Institute, Carnegie-Mellon University  
Dr. Kathleen Cooper, Corporate Economist, United Bank of Colorado  
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Chris Neil, Senior Research Analyst, Public Service Company  
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One individual deserves special recognition for the tremendous personal sacrifices he so graciously made to our study. Rick Linehan of the Administration of Justice Computer Center spent many long hours of his own personal time in order to help us complete this study. To him we are most grateful.

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## INTRODUCTION

Nationally, the prison population has been increasing rapidly in recent years. In some states this has caused problems beyond the crisis level. Many state prison systems are under court order to correct overcrowding and unconstitutional inmate living conditions. Prison riots, such as those in New Mexico and Idaho, are likely to occur in other states unless these conditions can be improved.

In the spring of 1980, the Colorado Department of Corrections (DOC) projected a 222-bed shortage by the first quarter of 1981. It was further projected that this shortage would exceed 500 beds by 1984. A new maximum security and a new close security facility are currently under construction to replace the old maximum security facility. The move to the new facilities will result in a reduction of available bed space. However, the state is under court order to close the old maximum security facility because of the unconstitutional conditions.

The Division of Criminal Justice (DCJ) was requested by Governor Richard D. Lamm to conduct a study which will provide decisionmakers in the state with sufficient information to determine whether or not a new correctional facility is needed. If so, what size and type of facility must it be to house adequately and provide services for the projected population? If a new facility is not required, what are the alternatives to prison which might alleviate the present and future overcrowding conditions?

The prison population is affected by crime rates and the number of criminals in the population. Colorado is currently sixth in the nation in Part I crimes per 100,000 population. However, the prison population is affected to a much greater extent by the decisions, practices, and procedures adopted by the criminal justice system, particularly the judicial process. Colorado incarcerates approximately 15 percent of all convicted felons. The balance of Colorado's convicted offenders are placed in the community. In addition, Colorado recently enacted a presumptive sentencing law, HB 1589, which requires that the judge specify the length of sentence that an offender will serve. The effects of the law are just now being felt by the criminal justice system.

Once an offender is sentenced to DOC, a decision regarding the security level, program needs and facility placement appropriate for that offender is made. Collectively, these decisions influence the type of facilities that are needed to provide adequate security and programs for the inmates.

The Division of Criminal Justice has collected and analyzed data from district court files, DOC, and criminal history files at the Colorado Bureau of Investigation. This report provides estimates of the projected prison population and the factors which influence that population. This information is presented to assist policymakers in the state to decide

whether or not a new correctional facility is needed. The following issues are addressed:

1. What are the effects of the new sentencing law, HB 1589, on the prison population?
2. What are the long-range (three to ten years) projections for inmate populations?
3. Can community alternative programs be expanded to relieve the overcrowding situation?
4. Are there inmates currently sentenced to DOC who could appropriately be placed in less secure alternatives?

This report summarizes the findings of an extensive research effort. The executive summary presents the major findings of the study and policy considerations for the future of corrections in Colorado. A methods section briefly describes the research methods used in this study. Chapters I through IV present more detail on the results of the research. These chapters are organized to answer the four questions outlined above. A technical supplement which provides extensive detail on the research methods and analytical techniques is available on request.

## EXECUTIVE SUMMARY

This study describes and analyzes the Colorado correctional system from the perspective of a projected overcrowding problem in our prison system. This report may persuade us to build a new prison or to look for other options. It does not ask what the cause of the problem is; rather, it asks what condition we want to bring into being and what policy tools we wish to use that might, when applied, produce at reasonable cost the desired change in the present condition. The policy tools, over which the state has some control and which might be applied, include increasing the use of diversion placement, changing sentencing practices, building a new prison, reclassifying inmates, increasing the use of transitional placement, and doing nothing. The material in this study will provide descriptive information that can be used to help make these policy choices.

In no case will the findings of this study answer all the questions. In fact, the findings will often raise other questions which should be addressed in the future.

The major findings are as follows:

## SENTENCING FINDINGS

1. Fifteen percent of the offenders who are convicted by Colorado courts are sentenced to the Department of Corrections.
2. The impact of the presumptive sentencing bill (HB 1589) has been as some have predicted, i.e., corrections inmate population has not increased.
3. Commitment rates to DOC as a percentage of convictions have not increased.
4. The average length of sentence is 96 percent of the midpoint of the presumptive range. For example, if a sentence range is two to four years, the average sentence tends to be less than three years (the midpoint).
5. There has been no significant change in plea bargaining. Almost 85 percent of the cases in the system are disposed of by plea bargaining of some sort.
6. The average length of stay, when adjusted for jail credit combined with earned time and good time, has decreased. The projected average length of stay is 24 months, down from 28 months.
7. There have been no changes in the distribution of the seriousness of offenses pre and post HB 1589.



8. Characteristics of convicted offenders have not changed pre and post HB 1589.

### INMATE POPULATION PROJECTION FINDINGS

1. Adults in certain age groups are more likely to be incarcerated. The age mix of the population, commitment rates, and projected length of stay can be used to make long-term (three to ten years) prison population projections.
2. Commitment rates have decreased from 56.6 inmates per 100,000 population in 1975, to 42.6 inmates per 100,000 population in 1979.
3. Based on a general population projection model, and using high, medium and low commitment rates, the Division of Criminal Justice presents the following range of 1985 inmate population projections:

#### Shortage (-) or Surplus (+) of Beds by 1985\*

High Projection	- 846
Medium Projection	- 180
Low Projection	+ 403

The projection method takes into account current sentencing practices, energy development growth and current practices regarding community placement. Unless any of these factors change, the medium projections should be used for planning purposes.

\*For the entire period 1980-1990, the peak projected bed shortage will be 310 beds in 1981 in the medium projection.

4. The shortage of 180 beds in 1985 would occur primarily in medium security, based on the current classification system.

### COMMUNITY CORRECTIONS FINDINGS

1. In those counties with community corrections programs, the commitment rates to DOC are likely to show an immediate leveling off or decrease.
2. Community corrections programs are likely to receive clients with treatment or service needs (e.g., alcohol and drugs, educational and job skills training).

3. In those areas supporting community corrections programs, crime does not appear to increase as a result of the programs.
4. In general, those most likely to recidivate are those who:
  - had inflicted serious injury;
  - were unemployed at the time of arrest; and
  - had many prior incarcerations.

### INMATE CLASSIFICATION FINDINGS

1. The data indicate that the number of inmates classified as requiring maximum security has been reduced from 30 percent to 16 percent since May of 1978.
2. Over half (50.6 percent) of the current inmate population was convicted of violent offenses.
3. There has been a 7 percent increase (191 persons) in Class 5 felons from 1975 to 1980.
4. Class 5 felons spent an average of only 8.5 months in the system (with jail credit and good time deductions). Therefore, they have little time to participate in educational or meaningful job skills training programs. The current Class 5 population accounts for 270 total beds.
5. Approximately 1,570 (56.8 percent) of the total prison population were Class 4 and 5 felons. Approximately 1,000 (63.8 percent) of Class 4 and 5 felons had been convicted of nonviolent crimes. If nonviolent Class 4 and 5 felons recidivate, the crime is likely to be a nonviolent property crime.
6. Six percent (166) of the current population were either Class 4 or 5 felons convicted of nonviolent crimes, who were employed at the time of arrest. These people may be better served in a diversion program.
7. Prior to incarceration, 78 percent of offenders in prison were unemployed, which implies that community programs should have a strong emphasis on employment.



## OPTION COST FINDINGS

### 1. Prison

<u>New Facility Size</u>	<u>Medium Security Facility Construction Costs</u>	<u>Close Security Facility Construction Costs</u>
300 Inmate Population	\$20 Million	\$21 Million
400 Inmate Population	\$25 Million	\$26 Million
500 Inmate Population	\$31 Million	\$33 Million

Cost per inmate per year: \$10,782 (not including capital costs).

### 2. Community Corrections

Actual cost per client per year (includes rent): \$12,979

State reimbursement per client per year: 8,490

### 3. Probation

Cost per client per year: \$ 174

### 4. Parole

Cost per client per year: \$ 888

## POLICY CONSIDERATIONS

This report is intended to provide the foundation for objective decisions on future correctional policies. Alternatives to be presented were based on the data presented in the report. Each alternative or a combination of alternatives has the potential for relieving the overcrowding problem in our prison system. However, Colorado's decisionmakers must first decide which correctional policies to pursue. Once this decision is made, the selection of the appropriate alternative(s) will follow. The study results suggest that the following public policies are now being pursued by Colorado:

1. Sentencing of offenders is becoming more uniform (HB 1589).
2. Sentencing is based, at least partially, on rehabilitation theory (e.g., those in need of education or treatment often go to community corrections).
3. Deprivation of liberty is occurring in the most serious cases (e.g., 15 percent of those convicted go to prison).
4. The average length of sentence is decreasing (e.g., length of stay is down from 28 months to 24 months).

Comparison of these practices to the ones developed by James Q. Wilson, who has served on various presidential task forces and national advisory commissions and has authored several books on criminal justice, discloses some major differences.

This comparison does not suggest that Colorado should follow Wilson's preferences, rather it suggests that different public policies would lead to a different array of alternatives. Wilson's guidelines are as follows:

1. Determining guilt and sentence should be separate processes.
2. Sentencing should be placed under central management, with uniform standards enforced by a presiding officer.
3. Every conviction for a nontrivial offense should entail a penalty that involves a deprivation of liberty, even if brief.
4. Deprivation of liberty should include nights and/or weekends in prison for some, as well as complete incarceration for others.
5. Prospects for rehabilitation should not be allowed to govern length of sentence or whether there should be some deprivation of liberty.
6. Conviction for a subsequent offense should invariably result in an increased deprivation of liberty.<sup>1</sup>

There is a question about what Colorado's correctional policy should be. If Colorado policy, as stated, is acceptable to the people of Colorado, then the alternatives which follow should be selected for their ability to maintain the status quo. If, however, the current policy of Colorado is not acceptable or needs to be changed, then only those alternatives should be selected which will best reflect such a change in policy. For example, if one were to agree with Wilson's ideal of deprivation of freedom for any felony conviction, then building a new prison might best implement such a notion. If, however, one's purpose is to minimize the contact between hardened inmates and first time offenders, then implementation of that policy might require an increased utilization of community alternatives. In short, we must first decide on the policy direction and then select those alternatives which best implement that policy. This study provides alternatives for reducing prison overcrowding. If our purpose is merely to reduce overcrowding, then any alternative or combination of alternatives will suffice. It seems, however, that our objective must be more than just "reduce overcrowding." Since there are many ways of doing that, the questions to consider are what the public policies of Colorado should be and what alternatives best fit them.

## ALTERNATIVES

Various correctional alternatives which can be used to implement Colorado's correctional policy are presented in this section.

### CONSTRUCT NEW FACILITY

A new correctional facility will be needed unless current sentencing prac-

tices change, the use of community alternatives is increased, or the absolute or functional capacity of the Department of Corrections is increased.

Chapter II provides a prison population projection through 1990. Using the medium series projection, the Department of Corrections is estimated to have a 180-bed shortage by 1985 and a 266-bed shortage by 1990. It should be noted that the bed shortage is projected to exceed 180 beds in 1981 and 1982. However, a new facility could not be constructed prior to 1984 or 1985. Therefore, these immediate overcrowding conditions should not influence the decision to build or not to build a new correctional facility.

The prison population projections assume that current sentencing practices and length of sentence will continue, that is, that there will not be major changes to the presumptive sentencing law, HB 1589, or to the present trend in judicial sentencing decisions on incarceration and sentence length. The assumption is also made that community alternatives will continue to be used at the current level and inmate classification procedures will not substantially change.

The projections also assume a functional capacity that is 90 percent of absolute capacity. The Department of Corrections has found that a 90 percent functional capacity is most reasonable for proper management of the inmate population. A 90 percent functional capacity allows the Department of Corrections to manage the day to day fluctuations in population and to move inmates through various programs, facilities, and security levels.

The data in this study, based on the above assumptions, support the long-range need for the construction of a new correctional facility to house offenders of medium security classification. In struggling with population management considerations, however, the Department of Corrections has recommended that any new construction be designed to meet close/medium security requirements. This arrangement would allow DOC a broader range of placement options by security class, since it could adjust staffing patterns either up or down to meet classification requirements. In essence, it would provide a significant amount of flexibility in managing future correctional populations.

Cost comparisons of the estimated initial costs involved in the construction of new facilities were prepared by Lamar Kelsey Associates, Inc., Architects, of Colorado Springs. Costs were prepared for inmate populations of 300, 400 and 500 inmates for each of four security levels: minimum, medium, close and maximum security facilities. The programmed area requirements were projected by appropriate representatives of the Department of Corrections working with the consultants.

The following table shows the projected costs for a 300, 400 and 500 inmate facility by security class.

CONSTRUCTION COSTS BY SECURITY CLASSIFICATION			
Type of Facility	300 Inmate Population	400 Inmate Population	500 Inmate Population
Minimum Security	\$12,939,600	\$16,129,800	\$20,390,700
Medium Security	19,879,700	24,882,900	31,212,500
Close Security	21,323,000	26,610,800	33,300,100
Maximum Security	22,520,200	28,062,700	35,071,900

The estimated average annual operating costs per inmate are \$10,782. These costs include staff, facility maintenance, central support services, correctional industries and institutional parole. This figure does not include capital expenses, some federal grant funds and the revolving cash fund portion of the budget for correctional industries. Additional information on the construction and operating costs are provided in the technical supplement.

#### USE EXISTING FACILITIES

Existing facilities could be remodeled to help relieve the projected bed shortage. The old maximum security facility is scheduled to close after the move to the new facilities, but one or more of the cellhouses could be renovated and used to house inmates. Cellhouse Three currently meets federal standards in terms of cell size and, therefore, is probably the most appropriate for renovation. The Department of Corrections estimated that approximately \$240,000 would be needed for renovation and an additional \$545,000 per year would be necessary for staff and operating costs. Renovation of Cellhouse Three would increase the bed capacity by 88 beds.

#### REDUCE SENTENCE LENGTH

The length of each offender's sentence affects the prison population. Under HB 1589, the length of stay is approximately one-half of the sentence length, when adjusted for jail credit, good time and earned time. As discussed in Chapter I, the average sentence length for those sentenced under the new law is slightly less than midpoint of the sentencing range. The average length of stay is estimated to be approximately 24 months. If the average length of stay were reduced by one month (a two-month reduction in sentence length), the average daily population in the Department of Corrections would be decreased by approximately 250 by 1985. This alternative would have to be agreed to and implemented by the judiciary.

The Advisory Commission on Crime Classification and Sentencing was established to review the crime classification system, the implementation of

criminal sentencing statutes, and proposed changes to criminal sentencing legislation. The work of the Commission may result in changes to the sentencing legislation; however, the changes probably will not occur during the 1981 legislative session.

#### INCREASE USE OF COMMUNITY CORRECTIONS DIVERSION PROGRAMS

The results of the analysis presented in Chapter III, "Community Alternatives," indicate that offenders most likely to recidivate are those who have inflicted serious injury on the victim; were unemployed at the time of arrest, and had many prior Colorado incarcerations. Those offenders who are convicted of nonviolent crimes, have a good employment record and a limited criminal history, could be placed in the community with minimal risk to public safety. Although these offenders may recidivate, the crimes will tend to be nonviolent property crimes.

Chapter IV, "Inmate Classification," indicates that approximately 1,570 inmates (56.8 percent) were sentenced to the Department of Corrections for Class 4 and 5 felonies. Approximately 1,000 (63.8 percent) were convicted of nonviolent crimes. However, only 166 inmates (6 percent of the total population) were Class 4 or 5 felons who were convicted of nonviolent crimes and who were employed at the time of arrest. It appears that with proper screening and the increased availability of diversion programs, commitments of this type of offender to DOC could be decreased with minimal risk.

Since employment history appears to be a factor in the sentencing decision and in the likelihood of an offender recidivating, community programs should emphasize job training and employment services. These services could be provided by the community corrections programs or could be obtained from existing community programs at little or no cost to the offender or to the program. It may be more cost effective for community corrections programs to utilize existing community services while providing a structured living environment, rather than to attempt to provide all the offender services within the program. This approach may also help the offenders develop ties to the community which will aid the offenders after they leave the community corrections programs.

The decision to place more offenders in diversion programs must be made by the courts and the community, through the community corrections boards. Residential community corrections programs currently operate in nine counties. Many of these programs could be expanded or programs could be started in new areas of the state.

The average operating costs for residential community corrections programs are not readily available. Seven programs were contacted to develop estimated costs. The actual operating costs of the programs are estimated to be \$35.00 per day or \$13,000 per client per year. This figure suggests that diversion programs are more costly than incarceration. However, since most of the programs rent, rather than own their own facilities, the costs of community corrections and incarceration are not strictly comparable. The state reimbursement to the programs averages \$24.00 per day, or an

annual cost of \$8,800. The balance of the program costs are provided from client reimbursements, long term debt and reimbursement for federal clients. The Federal Bureau of Prisons reimburses at a rate which exceeds the state rate of reimbursement.

#### CONTRACT WITH FEDERAL BUREAU OF PRISONS

If a decision is made not to build a new correctional facility at this time, and the current facilities continue to operate at or near capacity, provisions should be made to accommodate temporary fluctuations in population. The projected prison population (see Chapter II) shows the average changes in population.

There will be minor fluctuations on a temporary basis. The Department of Corrections has observed that as unemployment increases, commitments to prison increase. The relationship between an offender's employment status and type of sentence has also been shown in this study. The Department of Corrections has built this variable into its short term projection model. Other factors, such as war, could affect the prison population on a temporary basis. The Department of Corrections projections should continue to be updated to predict the variation from the long term projection due to social and economic factors.

If the short term projection shows that the prison population will exceed functional capacity, and that community placements cannot be used to alleviate this temporary overcrowding situation, funds should be appropriated in the Department of Corrections budget to contract with the Federal Bureau of Prisons or other states to relieve the overcrowding situation.

The cost per inmate with the Federal Bureau of Prisons varies by type of security classification and facility of placement. The average cost per inmate is \$32 per day, or an annual cost of \$11,680 per inmate, plus transportation.

#### INCREASE USE OF PROBATION

Probation is currently the most extensively used and the least expensive form of offender supervision. Approximately 66 percent of the convicted offenders in Colorado are placed on supervised probation. This figure includes those who are given a jail sentence in combination with probation and those who are diverted to community corrections programs. Offenders who are given a deferred judgment or sentence are generally placed under the supervision of a probation officer for up to two years. If, during this period the conditions set by the court are not violated, the charges are dismissed.

During FY1979-80, probation supervised 32,377 active cases. The average estimated annual cost of probation services was \$174 per client.

The offenders who are sentenced to probation tend to be nonviolent, and have less serious educational, employment or alcohol treatment needs.

Colorado statutes limit the types of offenders eligible for probation as follows: "A person who has been convicted of an offense, other than a Class 1 felony or a Class 2 petty offense, is eligible to apply to the court for probation. A person who has been twice convicted of a felony in this state or another state prior to conviction on which his application is based shall not be eligible for probation" (C.R.S. 1973, Section 16-11-201).

Probation appears to be at least as effective and possibly more effective in reducing recidivism than community corrections programs or incarceration, but is much less expensive than these other correctional alternatives. When appropriate, probation and deferred judgments include provisions for restitution to the victim and for offender treatment needs such as alcohol, drug and mental health care. The use of these options could be increased for nonviolent offenders without significantly increasing the risk of violence in the community.

If more serious offenders are placed on probation, it may be appropriate to reduce the probation officers' caseload and increase the level of offender supervision and coordination of offender services within the community. This adjustment would have limited financial impact. For example, if the caseload were reduced by half, the cost for probation services would still be only \$348 per client per year. This alternative would have to be agreed to and implemented by the judiciary.

#### INCREASE USE OF TRANSITIONAL PROGRAMS

Transitional programs have not been addressed in this study. However, several states have addressed their prison overcrowding problems by increasing the use of transitional programs.

Transitional programs are used to reintegrate the offender back into the community. This is accomplished by assisting the offender in locating employment, by making housing arrangements and developing other community ties and by providing services such as mental health, alcohol or drug abuse treatment services. All or most inmates who have served a sentence which exceeds, for example, one year, could be placed in a transitional community corrections facility or a staging center. The short term risk to the community may be increased if this alternative were implemented. However, the offenders who would be placed in these programs would be released in 90 to 120 days in any case without the supervision and support services of the program. Therefore, the long term risk would not be increased.

#### MAKE NO CHANGES TO SYSTEM OR CAPACITY

The projected bed shortage assumes a functional capacity of 90 percent because that capacity provides the Department of Corrections with the maximum flexibility to move inmates between security classifications, facilities and programs. However, the facilities are currently being operated at a capacity in excess of 95 percent of absolute capacity. The projected 180 bed shortage for 1985 could be accommodated with the current facilities by operating at 96.8 percent of absolute capacity.

#### ACTIVITIES IDENTIFIED BY THIS STUDY REQUIRING FOLLOW-UP

The criminal justice system, like other social institutions, is constantly in a state of flux. Changes in policy, legislation and practices are a part of the evolutionary process. Therefore, while the data used for this report provide us with a "snapshot" of the existing situation, they give only a glimpse of the future. To ensure that state decisionmakers have enough lead time for action, it is vital that these data be routinely updated. We strongly recommend that some unit in state government be assigned this task.

The impact and effectiveness of a number of correctional programs such as diversion, probation, prison, parole and transitional programs have not been thoroughly examined. The questions of what works, in what ways, and for whom, go unanswered. This information has the potential to affect program placements, reduce public risk, reduce costs, and affect legislative funding decisions.

In addition, we recommend that the first research priority be given to an evaluation of the current classification system used by DOC.

Research reports on this and other criminal justice issues can be the basis for redefinition of our public policies on corrections and other criminal justice programs.

## METHODS OVERVIEW

The impetus for this study was the overcrowding problem reported by the Department of Corrections. In this connection, the research was designed to answer two general questions:

1. Is the existing Department of Corrections capacity adequate to meet immediate and long term (three to ten years) needs?
2. If not, how can these needs best be met?

To answer these questions, this study analyzes the effects of the new sentencing law, the use of community alternatives, the prison inmate classification system and develops a prison population projection model.

The data to answer these questions were collected from many sources, including the Colorado Bureau of Investigation, the Department of Corrections, the district courts, and other state and national criminal justice agencies and interested parties.

Since the nature of the data precludes true experimental control, we use statistical controls to measure the significance of relationships between variables. Thus, statements about statistical significance refer to the probability that the relationship observed in the sample would not have occurred by chance, as well as to the strength of the observed relationship. We have used several measures throughout the study to assess statistical significance, and a conclusion of the presence or absence of a statistically significant relationship between variables is usually based on two or more of these measures. For example, a chi-square test of significance may indicate a significant relationship at the .05 level (i.e. the relationship between the variables would have occurred by chance less than 5 times in 100). However, if the appropriate measures of association indicate that less than five percent of the variance between the variables is explained, then the relationship would not be considered statistically significant.

The methods used in each of these major components is outlined below. A comprehensive discussion of methods is beyond the scope of the present report, but will be available in the technical supplement.

## SENTENCING OF THE FELONY OFFENDER IN COLORADO

The sentencing study was designed to discover whether the predicted impact on corrections of the presumptive sentencing law had occurred. We needed to know if HB 1589 implementation had led to certain changes in the prosecution and sentencing of felony offenders which would lead to increased commitment rates and longer prison sentences. The data required to answer these questions were available only in district court files. These court



data, supplemented by a separate sample of community corrections inmates, were used in the analysis of community corrections.

District court case files are located by county in respective county courthouses. Because of such wide dispersion of the data, sampling all judicial districts in the state was impractical, so to complete the data collection within the time and cost limitations of the study, seven judicial districts were included to represent commercial and industrial, agricultural and energy-impacted areas. A systematic random sample was then selected from one county within each representative judicial district. Counties were selected on the basis of number of felony filings and availability of additional data (presentence reports). Districts and counties chosen were:

Judicial District	County
2	Denver
8	Larimer
9	Garfield
12	Rio Grande
13	Logan
17	Adams
21	Mesa

A systematic sample was selected from all criminal case filings which resulted in conviction in the counties listed above. Sample size was based on an estimate of the number of convictions in 1979 for each district. This sampling procedure resulted in the following number of cases from each district:

District	County	Pre HB 1589		Post HB 1589		Total	
		Number of Cases	%	Number of Cases	%	Number of Cases	%
2	Denver	190	50	288	56	478	54
8	Larimer	41	11	30	6	71	8
9	Garfield	19	5	37	7	56	6
12	Rio Grande	15	4	8	2	23	3
13	Logan	9	2	19	4	28	3
17	Adams	62	17	67	13	129	14
21	Mesa	43	11	63	12	106	12
		379	100	512	100	891	100

Design of the research instrument was based on information from past research and on meetings with judicial staff and Denver Anti-Crime Council researchers. Information needed for analysis of HB 1589 impact on sentencing of offenders determined selection of data elements. Data elements fell into three major categories: offender characteristics, offense characteristics and case disposition. Data were all collected from criminal

court records for 1979 and 1980. Copies of data collection instruments are included in the technical supplement.

Much of the data required were located in confidential files. Control measures used to insure that confidentiality was not violated included training data collectors and securing data collection instruments. Further, we removed, as soon as possible, the end of the coding form which contained all identifying information necessary for tracking.

Several steps were taken to reduce coding errors. Except for offense codes, data elements were precoded. In order to reduce coding disparity for offenses, given the complexity of offense codes, two individuals working together coded offenses for the entire sample. Forms were then audited twice for coding consistency by researchers familiar with the data. Precoding the data elements allowed keypunching directly from the instrument. This eliminated the need to transfer data to another form and further reduced probability of recording errors.

Computer analysis was done at the Colorado Bureau of Investigation using the Statistical Package for the Social Sciences. Statistical techniques used in analyzing the data include frequencies, bivariate and multivariate analysis (crosstabulation), breakdowns, analysis of variance and covariance (ANOVA and ANCOVA), and discriminant analysis. Details of the statistical findings will be available in the technical supplement to this report.

## INMATE POPULATION PROJECTION

This portion of the study was concerned principally with locating, adapting and employing the analytical and mathematical processes necessary to produce a credible inmate population projection. The methods used are summarized briefly here; full details will be found in the technical supplement.

The first stage of the study involved a review of the literature and correspondence with relevant national, state and private agencies. This activity yielded pertinent information on the state of the art in prison population forecasting. Based on this review, several projection methods were selected to be tested for feasibility and credibility. Eventually, one projection model was selected for adaptation, subject to the availability of necessary data.

Two principal sources of data were employed; the first was the Department of Corrections, whose files, published reports and computer data base provided the historical and current information on inmate admissions and populations. The second was the state court system, whose trial records supplemented the current corrections data and provided some insight into trend directions. The latter were derived primarily from the results of the sentencing study reported in Chapter I.

There was no independent data collection effort for this portion of the

study, since the overall study design provided for a single integrated data collection phase. Since most of the data were used to determine rates, ratios and the like, the mathematical and statistical techniques used were quite straightforward and limited, in general, to descriptive techniques.

## COMMUNITY ALTERNATIVES

Research on community alternatives focused on two questions:

1. Do diversion programs actually divert offenders from the criminal justice system?
2. What are the risks to the public of increasing the use of community placements? (Risk was defined as known recidivism for the purposes of this study.)

The analysis used data collected at the county and state levels as well as data on individuals. These data were:

1. Commitments by county, data on community corrections programs, and information on individuals sentenced to DOC from DOC and court files.
2. Arrest data from the Colorado Bureau of Investigation.
3. Population figures from the Division of Planning.

Data required for comparison of offenders included the offenders' social characteristics, needs, criminal history and their current offense characteristics.

The sampling techniques were essentially the same as those used for the sentencing section of this report with one exception. Because there are very few community corrections placements at any given time, they were oversampled to assure an adequate sample. The entire population of Denver community corrections diversions for the period FY1978 to the present was also included in the analysis.

Statistical tests and procedures used in analyzing these data included bivariate and multivariate analysis (crosstabulation), analysis of variance, measures of association, correlation, and discriminant analysis. These methods are discussed in greater detail in the technical supplement.

## INMATE CLASSIFICATION

An analysis of the classification of inmates was made in order to obtain a profile of their characteristics. Data from the DOC offender data base for a sample of randomly selected active inmates was compared with similar

data from the 1976 Corrections Master Plan.

The data included information about the inmate social characteristics, problem treatment needs, and criminal history. Diagnostic summaries which identify inmate needs and placement recommendations were also used in the analysis. Statistical techniques included crosstabulations of offender characteristics by classifications, measures of association, and correlation.



## CHAPTER I: SENTENCING OF THE FELONY OFFENDER IN COLORADO

## CHAPTER I : SENTENCING OF THE FELONY OFFENDER IN COLORADO

On July 1, 1979, a major change occurred in the sentencing of the felony offender in Colorado. Offenses committed on or after that date are covered by HB 1589, commonly referred to as the presumptive (or determinate) sentencing law. The law requires a "definite" sentence be imposed for offenders sentenced to the Department of Corrections. Offenses committed before July 1, 1979, are covered by the "indeterminate" sentencing law which allows the court to set a minimum and maximum sentence.

HB 1589 has now been in effect for over 16 months. Although the law was not expected to impact corrections adversely, commitment rates and the number of serious offenders committed increased in the first few months after implementation. As a result of these observed increases, it was hypothesized that changes in prosecuting and sentencing practices associated with HB 1589 would result in an increased commitment rate and a longer average time served.

It has been unknown whether the expected reactions to HB 1589 implementation have actually occurred. Although the Department of Corrections routinely analyzes commitment data and sentence lengths, no general research has been conducted on HB 1589 effects on prosecuting and sentencing practices.

Analysis of the law's effects required the most current information available on prosecuting and sentencing practices. Thus, data were collected from district court files for offenders sentenced prior to HB 1589 and those sentenced under the new law. Three central questions guided the research:

1. Are offenders and offenses any different pre and post HB 1589?
2. Are offenders sentenced under HB 1589 more likely to be incarcerated?
3. Has the average length of sentence increased as a result of HB 1589?

In this chapter, findings which attempt to answer these questions are presented. Dispositional outcomes and the factors affecting these outcomes are analyzed and compared for offenders sentenced under the old sentencing law and under HB 1589. Also, to identify possible trends in prosecuting and sentencing practices, findings are compared where appropriate to 1976 baseline data. Before proceeding with a discussion of the findings, however, some introductory materials are provided which describe the judicial process, enactment of HB 1589, the creation of the Advisory Commission on Crime Classification and Sentencing, and changes enacted in HB 1589.

## DESCRIPTION OF JUDICIAL FUNCTION

The sentencing of convicted felons is the final stage of a complex judicial process which begins when the suspect appears before the court for advisement on rights and charges (see Figure I-1 on next page). When sentencing occurs, the offender has completed a series of legal actions beginning with an arrest.

Once placed under arrest, the defendant must be brought before a judge without unnecessary delay.<sup>1</sup> This first appearance before the court serves as the accused's first advisement and requires that the judge set bail (except in the case of a Class 1 felony), and inform the defendant of his rights and the charges against him. Thereafter, the defendant may request a bond hearing for the purpose of presenting evidence indicating the propriety of a bond reduction or release on personal recognizance. On the basis of the defendant's request for a hearing, an investigation is conducted by an officer of the court to provide the judge with information relevant to the bail/bond decision.

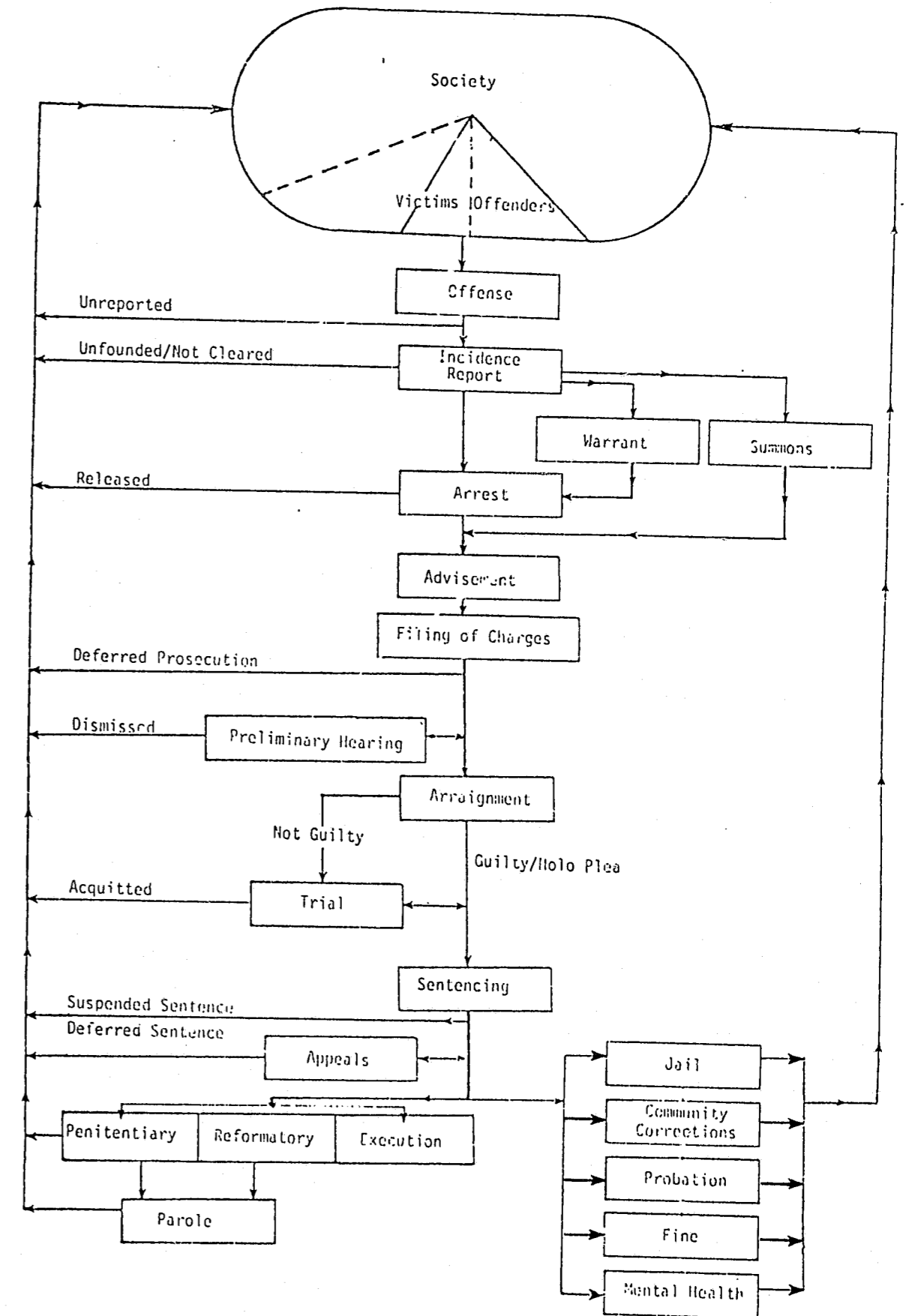
At any time after filing, the court has the right to defer prosecution with the consent of the district attorney and the defendant. In practice, however, this is generally initiated by the prosecutor. As a condition of the deferred prosecution, the defendant is placed under the supervision of a probation officer for a period of up to one year (C.R.S. 1973, 16-7-401). If during this period the conditions set by the court are not violated, the charges are dismissed.

After charges have been filed, a preliminary hearing is held to determine if there is probable cause to believe that the offense charged has been committed by the defendant. In the case of an indictment, the grand jury determines the existence of probable cause. If probable cause is established, the defendant is either bound over to district court and scheduled for arraignment or is simply scheduled for arraignment. If probable cause is not established, the defendant is released.

At the time of arraignment, the defendant must make a plea to the charges. The plea possibilities are guilty, not guilty, not guilty by reason of insanity, and nolo contendere, which has the same effect as a guilty plea but the defendant is neither admitting nor denying the charges. When a guilty or nolo contendere plea is accepted by the court, a sentencing date is set.

When a defendant pleads not guilty by reason of insanity, the court orders the defendant to undergo a sanity examination. Upon receiving the report of this examination, the court either sets a sanity trial or a trial of the charges, depending on the results of the examination. If at the sanity trial the defendant is found to be not guilty by reason of insanity, the

FIGURE I-1  
COLORADO CRIMINAL JUSTICE FELONY OFFENDER FLOW



court will commit the defendant to the custody of the Department of Institutions until eligible for release (C.R.S. 1973,16-8-105).

There is considerable leeway for negotiations between the district attorney and the defendant about the charges that can be pled to or the sentence recommendations that can be made upon conviction. The judge may not take part in these negotiations, but when an agreement is reached, the judge will state whether or not a charge reduction or a specified sentence is acceptable to the court (C.R.S. 1973, 16-7-302).

If a trial is required, the judge or jury must determine the defendant's guilt beyond a reasonable doubt. If this cannot be done, the defendant is acquitted. If the defendant is found guilty, a sentencing date is set.

The court, within statutory limits, has sole discretion in sentencing a convicted defendant. A sentence is a pronouncement by the court of the penalty imposed upon an offender. Sentences can be completely or partially suspended or can be deferred. Sentences can consist of one or more of the following possibilities: supervised or unsupervised probation, fine, jail, community corrections, mental health programs, institutionalization or execution.

In the case of a deferred judgment and sentence the court has the power (with the written consent of the defendant, his attorney of record and the district attorney) to continue the case for up to two years. The court, as a condition of sentencing, will generally place the defendant under the supervision of the probation department. Any violation of a condition of a deferred judgment or sentence may be grounds for revocation. The defendant may then be sentenced under the original conviction. In addition, each person convicted has the right to make an application for a post-conviction review. The court can reduce a sentence within 120 days of imposition (Rule 35).

## HB 1589 AND THE ADVISORY COMMISSION ON CRIME CLASSIFICATION AND SENTENCING

The companion topics of equity in criminal sentencing and crime classification have consumed much legislative and administrative energy in Colorado over the past two decades. A comprehensive history of sentencing legislation is beyond the scope of this report; however, a brief review of events beginning with the introduction of HB 1589 (1977) through the creation of the Advisory Commission on Crime Classification and Sentencing is presented on the following page.

In the 1977 legislative session, HB 1589 was introduced to accomplish two major purposes:

1. to substitute a single fixed "presumptive" incarceration sentence for felony classes two through five in place of the incarceration ranges then in effect; and
2. to classify a number of felonies which were then unclassified in the statutes.

This bill was passed by the General Assembly on June 3, 1977. However, HB 1001 was enacted during a special session of the legislature to delay the effective date of HB 1589 until April 1, 1979.

On February 9, 1979 a sentencing conference was convened by Governor Lamm, the General Assembly leaders and the Chief Justice. Represented among the conferees were the three branches of state government, state and local law enforcement officials, prosecution and defense agencies, the private bar and other interested private organizations. The participants were able to produce a compromise regarding incarceration sentence lengths, good and earned time provisions, parole functions, retroactivity and sentence review. This compromise was written into HB 1589 (1979), which was enacted by the General Assembly and signed by the Governor on March 29, 1979. The act took effect on July 1, 1979, to apply to offenses committed on and after that date.

The old sentencing law authorized a minimum and maximum sentence. These indeterminate sentences could be as short as one day or as long as 50 years. HB 1589 specifies for five felony classes a range within which a definite sentence must fall unless aggravating or mitigating circumstances are involved. The following table shows the penalties for each felony class under the indeterminate and the presumptive sentencing laws.

Class	Minimum Sentence	Maximum Sentence	Presumptive Range
1	Life	Death	Life imprisonment or death
2	10 years	50 years	8-12 years (+1 year parole)
3	5 years	40 years	4-8 years "
4	1 day	10 years or \$30,000 fine or both	2-4 years "
5	1 day	5 years or \$15,000 fine or both	1-2 years "

HB 1589 does not mandate incarceration. Other sentencing alternatives can be used at the court's discretion. If the court imposes a prison sentence, however, the length of sentence must fall within the presumptive range specified for the felony class of conviction. Exceptions are

allowed in cases where mitigating or aggravating circumstances exist. If mitigating factors are present, the court may impose a sentence as low as one-half the minimum specified for the presumptive range. Where aggravating factors are involved, the maximum sentence may be doubled. Sentences outside the presumptive range are automatically reviewed by the court of appeals.

Under the new law, timeserved is connected to sentence length. Presentence confinement must be counted as time served. The law's good time and earned time provisions enable a prisoner to cut the sentence served by more than half. The prisoner is entitled to a good time deduction of 15 days a month from his sentence. Earned time vests semi-annually at 15 days each six months. Good time is administered by Corrections; earned time by the Parole Board.

On December 3, 1979, the Governor, the General Assembly leaders and the Chief Justice signed a "Joint Order Establishing the Advisory Commission on Crime Classification and Sentencing" to review the crime classification system. The Commission, consisting of twelve members, was charged with the following duties:

1. to review the crime classification system;
2. to review the implementation of criminal sentencing statutes; and
3. to review proposed changes to criminal sentencing legislation.

The Commission must make recommendations on each of the above topics for consideration by the appointing authorities.

The Advisory Commission is conducting a survey of criminal law experts for specific recommendations on felony reclassification and sentencing. All felonies are currently being reviewed by the Commission, and specific recommendations for legislation will be forthcoming for the 1981 legislative session. The Commission believes, however, that no changes in the sentencing law are currently appropriate, absent clear evidence that problems exist in the implementation of HB 1589.

## HB 1589 AND SENTENCING OF THE FELONY OFFENDER

While HB 1589 was not originally expected to impact the criminal justice system adversely, some changes observed soon after its implementation indicated that adverse effects might, nevertheless, be occurring. It was believed that the new law was impacting sentencing in the following ways:

1. The greater certainty of a specific sentence length provided by HB 1589 was expected to lead to an increase in plea bargaining.
2. Prosecutors, in anticipation of the expected increase in plea bargaining, were expected to file more serious charges as a strategy to secure more convictions and a more severe sentence upon conviction.

3. Judges were expected to increase the percentage of commitments to prison, increase the use of consecutive sentencing, and impose sentences at the high end of the presumptive range for the class of conviction.

These reactions, if they were occurring, would lead to a higher commitment rate to corrections, with sentences averaging more than 100 percent of the midpoint of the presumptive range. Thus, corrections would be doubly impacted by an increased prison population serving longer sentences.

Results of this study indicate that in the 16 months of HB 1589 implementation these projected reactions have failed to materialize. The results of the study are:

1. Commitment rates, as a percentage of convictions, have not increased.
2. Average length of sentence is less than 100 percent of the midpoint of the presumptive range.

Findings will be discussed in the following order:

1. Findings related to
  - A. Offenders
  - B. Offenses
  - C. Plea Bargaining
  - D. Dispositional Alternatives
2. Analysis of factors associated with the decision to incarcerate.
3. HB 1589 sentence lengths will be described and possible "time served" impacts considered.

## OFFENDER CHARACTERISTICS

In 1976 the "typical" Colorado offender was single, Anglo, male and about 25 years old.<sup>4</sup> The demographic characteristics of Colorado's convicted offender population are still about the same: 84 percent are male, 66 percent are Anglo, and the average age is 24.5 (median age is 23.8). There is one difference: the proportion of convicted female offenders seems to be decreasing. Sex distribution for pre HB 1589 offenders was 21 percent female; post HB 1589 females make up only 12 percent of the convicted offenders. This may be a short-term fluctuation rather than a real trend, however. As would be expected, the proportion of women incarcerated has also decreased significantly. Women constituted 11 percent<sup>5</sup> of those sentenced to prison, pre HB 1589, but only 3 percent of the post HB 1589 group.

The largest ethnic category of convicted offenders is Anglo (66 percent). Blacks comprise 16 percent and Hispanics 17 percent. Fewer than half the sentenced offenders have high school diplomas or GEDs, and about half are unemployed. Another large percentage have sporadic employment histories, but for purposes of this research, part-time or intermittent em-

ployment was counted as employed. Convicted offenders are most often unmarried; 53 percent have never married and another 20 percent are separated or divorced. These demographic characteristics of convicted offenders have not changed significantly during the time period covered in this study (see Table I -2 below).

TABLE I-2.  
DEMOGRAPHIC CHARACTERISTICS  
OF SENTENCED OFFENDERS: 1978-1980

	Pre HB1589		Post HB1589		Total	
	%	N	%	N	%	N
SEX						
Female	21	81	12	62	16	143
Male	79	301	88	450	84	751
RACE						
Anglo	65	219	67	316	66	535
Black	19	64	15	70	16	134
Hispanic	16	53	18	86	17	139
MARITAL STATUS						
Single	49	170	56	276	53	446
Married	30	104	24	115	26	219
Separated/Divorced	21	74	20	96	20	170
EDUCATION						
High School Diploma or GED	44	138	49	229	47	367
No High School Diploma or GED	46	175	51	236	53	411
EMPLOYMENT						
Employed	53	179	46	219	49	398
Unemployed	44	146	51	244	48	390
Students and Others	3	10	3	15	3	25

About half of all the sentenced offenders have been convicted of prior misdemeanors, 14 percent have prior parole or probation revocations and 27 percent have prior incarcerations (including jail sentences). There is no significant difference between the percentage of convicted offenders with prior felony convictions in 1976, 1979 and 1980. In 1976, 33 percent had prior felony convictions; in 1979, 34 percent; and in 1980, 29 percent.

TABLE I-3  
PERCENTAGE OF SENTENCED OFFENDERS  
WITH PRIOR CRIMINAL HISTORY

	Prior Misdemeanor Convictions		Prior Felony Convictions		Prior Revocations		Prior Incarcerations*	
	%	N	%	N	%	N	%	N
Pre HB 1589	49	166	34	116	15	51	29	97
Post HB 1589	49	225	29	136	13	61	27	125
Percent of total sample with priors	49	391	31	252	14	112	27	222

\* includes jail sentences.

Note: A person may have "priors" in more than one category, therefore, the "percent of total sample" figures will add to more than 100%.

CHARACTERISTICS OF OFFENSES

Type of Crime

In 1976, the majority of felony offenders were charged with crimes against property. Over 78 percent of the charges filed in that year were for burglary, larceny, theft and other nonviolent crimes. In 1979-80, of those convicted, 71 percent were originally charged with property crimes.

TABLE I-4  
PERCENT OF PERSONAL CRIMES PRE AND POST HB 1589

	Pre HB 1589		Post HB 1589		Total	
	%	N	%	N	%	N
Personal	27	86	31	138	29	224
Property	73	236	69	312	71	548

For all offenses which ended in convictions during the time period of this study, burglary was the original charge for 25 percent (212), and theft for 19 percent (159). As can be seen in the following table, burglary has increased 5 percent, but there is little change pre and post HB 1589 in the other crime categories. Serious victim injury occurred in 5 percent (43) of the cases.<sup>6</sup>

TABLE I-5  
MOST FREQUENT OFFENSE CHARGED AS A PERCENT OF FIRST OFFENSE CHARGED PRE AND POST HB 1589

	Burglary	Theft	Assault	Robbery	Fraud
Pre HB 1589	22	21	10	8	9
Post HB 1589	27	18	9	9	7

Table I-5 shows that burglary and theft continue to be the most common types of crime. Another way of describing crime is by felony class. More than half (55 percent) of sentenced offenders are originally charged with Class 4 felony crimes. Distribution of offenses charged by felony class is presented in Table I-6.

TABLE I-6  
PERCENT OF MOST SERIOUS OFFENSE CHARGED BY FELONY CLASS PRE AND POST HB 1589

Felony Class	Pre HB 1589		Post HB 1589		Total	
	%	N	%	N	%	N
1	2	6	1	5	1	11
2	2	6	2	12	2	18
3	19	69	23	116	22	185
4	57	207	54	269	55	476
5*	20	92	20	110	20	202

\*Includes "other" felonies or misdemeanors processed as felonies.

For many offenders, the offense charged is more serious than the offense at conviction since plea negotiations often result in a reduced charge. One of the expected reactions to HB 1589 was more serious charging by prosecutors which would produce a higher proportion of more serious felonies at conviction.

Data presented in the preceding table and in the table that follows indicate that distribution by felony class of offenses charged or offenses at conviction has not changed significantly with implementation of HB 1589.

TABLE I-7  
FELONY CLASS OF MOST SERIOUS OFFENSE AT CONVICTION PRE AND POST HB 1589

Felony Class	Pre HB 1589		Post HB 1589		Total	
	%	N	%	N	%	N
1	0	1	1	3*	0	4
2	1	4	1	6	1	10
3	10	36	11	55	11	91
4	49	172	49	240	49	412
5	21	75	20	96	20	171
Misdemeanor**	19	67	18	91	19	158

\*Not guilty by reason of insanity.

\*\*Includes drug and traffic convictions.

Number of Offenses

Most felony filings include more than one offense (type of crime) at filing. Over 53 percent of all cases had two or more offenses charged. Two charges were filed in 41 percent of the cases and three charges in 12 percent. Of the 396 (47 percent) of the cases with one offense filed, there may have been more than one count for that offense. The filing of multiple counts for multiple offenses has been one of the anticipated reactions to HB 1589, but the data do not support such results. There is no significant difference in number of offenses charged before and after HB 1589.

There is a slight relationship, however, between number of offenses charged and disposition. There were 43 offenders with four or more charges. Twenty-eight of these offenders (56 percent) were incarcerated in prison, jail or community corrections.

PLEA BARGAINING

The results of this research indicate no significant change in plea bargaining after HB 1589 became effective. Plea bargaining continues to be practiced routinely in felony case dispositions. In 1979-80, using a conservative measure of plea bargaining, 53 percent of the cases indicated plea bargaining had been involved in arriving at a disposition.

TABLE I-8  
PERCENT OF CONVICTIONS WITH A CHARGE DISMISSED OR REDUCED PRE AND POST HB 1589

	%	N
Pre HB 1589	50	165
Post HB 1589	55	289
Percent of Total	53	454



Plea bargaining can result in charge dismissal and charge reduction. When more than one offense is charged at filing, offenses are usually listed in order of their seriousness. The percent of charges dismissed by offense charged is shown below.

TABLE I-9  
PERCENT OF CHARGES DISMISSED FOR FIRST, SECOND,  
AND THIRD OFFENSE CHARGED: 1979-1980

	Dismissed	
	%	N
1st Offense	13	114
2nd Offense	52	185
3rd Offense	60	69

In 37 percent of the cases, offenders pled to a lesser felony or a misdemeanor. Percentage of charge reductions has not changed significantly since 1976, when 35 percent of those convicted had charges amended to a lesser felony or misdemeanor. Although the data do not show a statistically significant change, the 6 percent decrease in "Same Felony Class" convictions may indicate the beginning of a trend toward increased plea bargaining, or that plea bargaining strategies are changing.

TABLE I-10  
RELATIONSHIP OF CHARGE AT CONVICTION TO CHARGE  
AT FILING: PRE AND POST HB 1589

Class of Conviction compared to Class Charged	Pre HB 1589		Post HB 1589		Total	
	%	N	%	N	%	N
Same Felony Class	66	250	60	303	63	553
Lesser Felony	18	68	22	111	20	179
Misdemeanor	16	61	18	90	17	151
Total	100	379	100	504	100	883

Further analysis of offense at filing and offense at conviction shows that reducing seriousness of offense as a plea bargaining option most frequently occurred in felony class 3. Of 186 Class 3 charges at filing, 44 percent (82) resulted in Class 3 convictions, 32 percent (59) were reduced to Class 4 offenses at conviction and 21 percent (39) were pled down to Class 5 or misdemeanors. There is no significant change in this pattern associated with implementation of HB 1589 (see the following table). There is the suggestion, however, that more Class 3 charges are being reduced under HB 1589 sentencing.

TABLE I-11  
MOST SERIOUS OFFENSE CHARGED BY MOST SERIOUS OFFENSE AT CONVICTION

Pre HB 1589

Most Serious Offense Charged	Row Pct Col Pct	Most Serious Offense at Conviction						Row Total
		Felony 1	Felony 2	Felony 3	Felony 4	Felony 5	All Misdem	
Felony 1	N 17 100	1 33 50	2 0	0 0	2 33 1	1 17 1	0 0	6 2
Felony 2	N 0 0	0 33 50	2 0	2 33 5	1 17 1	0 0	1 17 1.5	6 2
Felony 3	N 0 0	0 0	0 0	34 50 94	23 34 13	4 6 5	7 10 10	68 19
Felony 4	N 0 0	0 0	0 0	0 0	146 72 85	25 12 33	30 15 45.5	201 57
Felony 5	N 0 0	0 0	0 0	0 0	0 0	45 79 60	12 21 18	57 16
Misdemeanor	N 0 0	0 0	0 0	0 0	0 0	0 0	16 100 24	16 4
Column Total	N Pct	1 0	4 1	36 10	172 49	75 21	66 19	354 100.0

Post HB 1589

Felony 1	N 60 100	3 20 17	1 0	1 20 2	0 0	0 0	0 0	5 1
Felony 2	N 0 0	0 33 67	4 0	4 36 7	2 18 1	0 0	2 18 2	12 2
Felony 3	N 0 0	0 1 17	1 0	48 42.5 87	36 32 15	16 14 17	12 11 13	113 23
Felony 4	N 0 0	0 0	0 0	2 1 4	200 76 83	26 10 27	35 13 38.5	263 54
Felony 5	N 0 0	0 0	0 0	0 0	2 2 1	54 59 56	34 37 37	90 18
Misdemeanor	N 0 0	0 0	0 0	0 0	0 0	0 0	8 100 9	8 2
Column Total	N Pct	3 1	6 1	55 11	240 49	96 20	91 18	491 100.0



Since a greater percentage (15 percent as compared to 6 percent) of post HB 1589 Class 3 charges were pled down to Class 5 offenses at conviction, it may be that prosecutors have charged more serious offenses in some cases. The data do not show, however, that offenders originally charged with Class 3 but convicted of Class 5 offenses are more severely sentenced than other Class 5 convictions with similar criminal histories.

The plea bargaining indicators used above undercount the frequency of this practice since most of the deferred sentences result from sentence negotiations. Deferred sentences require that the defendant plead guilty and agree to abide by terms stipulated in the sentencing agreement. The court continues the case for up to two years. If the defendant successfully fulfills the terms of the agreement, the case is dismissed at the end of the specified period with no record of conviction. Violation of any specified condition may be grounds for revocation and the deferred sentence may be terminated. The defendant may then be sentenced under the penalties available under the original conviction.

Deferred judgment and sentence is currently used in 44 percent of all felony convictions, an increase of 11 percent from 1976, when this alternative was used in 33 percent of the cases.

TABLE I-12

TYPE OF CONVICTION PRE AND POST HB 1589

Type	Pre HB 1589		Post HB 1589		Total	
	%	N	%	N	%	N
Deferred Judgment	44	168	44	221	44	389
Guilty or Nolo	53	201	53	272	53	473
Trial	3	10	2	11	3	21
Insanity	0	1	1	5	0	6
Total	100	380	100	509	100	889

To further identify the extent of plea bargaining, guilty pleas for deferred judgments, guilty pleas other than deferred judgment, and trial convictions were compared to changes in offense charged and offense at conviction. The data show that 312 of the 389 deferred judgments pled to the offense originally charged, or to an offense in the same felony class as offense charged. If these deferred judgments are added to the 454 cases which had charges dismissed or reduced, then plea bargaining occurs in about 85 percent of the case dispositions.

DISPOSITIONAL ALTERNATIVES

Through plea negotiations, guilty pleas without negotiation, or trial convictions, the judicial process culminates in a sentence placing the con-

victed offender in or out of prison. Table I-13 compares the use of the various types of dispositional alternatives between 1976 and 1979-80.

TABLE I-13

DISPOSITIONAL ALTERNATIVES

	1976	1979-80
Jail	14%	8%
Jail and Probation	N/A	5
Probation	53	48
Community Corrections	N/A	13
Other (Suspended Sentence, Unsupervised Deferred Judgment, etc.)	6	11
Prison/Reformatory	27	15
	100%	100%

In 1979-80, 15 percent of those convicted were given prison sentences, 8 percent received jail sentences, and another 5 percent were given jail and probation. Thus, 28 percent of those convicted in 1979-80 were incarcerated. This compares to 41 percent for 1976.<sup>7</sup> The decrease in commitment rate (as a percentage of convictions) results primarily from a lower percentage of jail sentences and greater use of community corrections. There is no significant change in placement in/out of prison as a result of HB 1589 as shown in Table I-14.<sup>8</sup>

TABLE I-14

SENTENCING DISPOSITIONS PRE AND POST HB 1589

	Pre HB 1589		Post HB 1589	
	%	N	%	N
Jail	8	28	7	37
Jail and Probation	4	13	5	27
Community Corrections	9	30	15	77
Probation	48	160	48	245
Suspended Sentence	3	11	2	7
Prison/Reformatory	15	50	16	81
Other	13	42	7	35
	100	334	100	509

### Jail

Jail sentences were given to 8 percent of those convicted. Charges were reduced to misdemeanor for 69 percent, and to a lesser felony for 6 percent of those sentenced to jail. Seriousness of charge at filing is related to jail sentences. Those originally charged with felony Classes 4 and 5 account for 95 percent of the jail sentences. Of those who received jail sentences, 61 percent were in jail at the time of sentencing.

### Jail and Probation

A jail and probation sentence usually indicates a work release program or some type of alcohol or drug treatment program. Of those convicted, 5 percent (40) received this type of sentence.

### Probation

The proportion of convicted offenders placed on probation has not changed since 1976, when about 53 percent (probation plus deferred sentences) of all convictions were placed on probation. In 1979-80, probation was also received by 53 percent (445) of all sentenced offenders. Of the 405 cases sentenced directly to probation, 260 (64 percent) were deferred sentences. For many of these, the major task for probation is monitoring restitution payments. HB 1589 requires offenders sentenced to probation to make restitution where appropriate. Deferred sentences are used overwhelmingly for first offenders who have not committed violent crimes: 87 percent of those receiving deferred judgments had no prior felony convictions; another 8 percent had one. Ninety-seven percent did not use a weapon in committing the offense, and 98 percent of those receiving deferred judgments were not charged with offenses in which serious victim injury occurred. Deferred sentences, as well as other sentences to probation, are also related to employment and prior criminal history. Sixty-four percent of those employed at presentence were placed on probation. Three percent (10) of offenders receiving deferred judgments were required to spend some time in jail. Thus, probation has some degree of responsibility for 53 percent (445) of convicted offenders.

### Community Corrections

Community corrections was the alternative selected for 12.7 percent (107) of the convicted offenders in 1979-80 (see Chapter III for an in-depth analysis).

### Other

A variety of other dispositions are available to the court: suspended sentences, deferred sentences unsupervised by probation, deferred prosecutions and fines. Only 2 percent (18) of the sentences were suspended. The other dispositions listed above account for another 9 percent (77) of the sentences. This category also includes four offenders who were found not guilty by reason of insanity.

### Prison/Reformatory

About 15 percent of the convicted offenders received prison sentences. Before HB 1589 was implemented, some criminal justice professionals expected the law to result in an increased commitment rate. The results of this research indicate no significant change in commitment rate: convictions under the old sentencing law resulted in 15 commitments per 100 convictions; convictions under the new law resulted in 16 commitments per 100 convictions.

### ANALYSIS OF FACTORS ASSOCIATED WITH DECISION TO INCARCERATE

To identify the variables most strongly involved in the decision to place the offender in the community or in prison, a discriminant analysis was performed. This type of analysis identifies those factors which most strongly differentiate between groups. Primary interest was in differentiating those who are sentenced to prison from those who are not. The following variables were considered in differentiating between the two groups:

Age	Number of Offenses
Ethnicity	Plea Bargaining
Education	Type of Conviction
Employment	Offender Status
Date of Offense	Deadly Weapon
Marital Status	Physical Injury
Prior Criminal History	Mental Health Needs
Felony Class of Offenses Charged	Alcohol Treatment Needs
Felony Class of Offenses at Conviction	Drug Treatment Needs
Type of Offense	Personal/Property Crime

The discriminant analysis identified five factors associated with the in/out decision.

Variable	Group	
	Community	Prison
Physical Injury	Minor or none	Serious
Offender Status	Bond	Jail
Plea Bargaining	Yes	No
Number of Prior Paroles	Low	High
Number of Prior Revocations	Low	High

Those offenders who committed violent crimes, who were recidivists (more than one prior parole and/or prior revocation), who were convicted of the offense charged, and who were in jail at sentencing were most likely to be sentenced to prison. These variables correctly predict 79 percent of the cases.<sup>9</sup>

## LENGTH OF SENTENCE

The scenario for HB 1589 impact on corrections also included an average sentence which would be greater than the midpoint of the presumptive ranges. The midpoints are as follows:

Felony Class	Presumptive Range	100 Percent of Midpoint (Yrs)
2	8 - 12	10
3	4 - 8	6
4	2 - 4	3
5	1 - 2	1.5

The prediction was based on the expectation that prosecutors would file more serious charges, resulting in a higher proportion of convictions for the higher felony classes, and that judges would impose sentences at the high end of the presumptive range. The data do not show that either of the predicted results have occurred. As discussed earlier, neither conviction rates nor distribution by felony class of charges at conviction have significantly changed with implementation of HB 1589, and analysis of sentence length indicates that average length of sentence is lower than the midpoint of the presumptive range. The average length of sentence for all HB 1589 sentences in this sample is 3.15 years. This averages out as 96 percent of the midpoint. HB 1589 average sentence lengths for each felony class are as follows:

Felony Class	Number Incarcerated	Average # Months Sentenced	Percent of Midrange
2	1	96	80
3	18	66	91
4	38	36	100
5	24	17	93
Total	81	38	96

Most variation in sentence length occurs within Class 3. The longer sentences (72-month sentences and one 192-month sentence) were for aggravated robbery. One offender was originally charged with attempted murder (Class 2) but convicted of aggravated robbery.

Within felony Class 4, burglaries and assaults received the longer sentences. Felony Class 5 sentences were the most consistent.

Another postulated result of HB 1589 is increased use of consecutive sentences. It was thought that prosecutors would file more charges in an attempt to convict and sentence for more than one charge in a given case.

This practice has not developed. As stated in a previous discussion, no increase in the number of charges filed has occurred. In addition, judges are seldom using consecutive sentences within cases. Only one of the post HB 1589 cases in our sample received a consecutive sentence and in this case the total length of the two consecutive sentences was equal to the maximum sentence for that presumptive range. Consecutive sentences are sometimes being used for offenders who have been convicted in more than one case, both within and between jurisdictions. However, the data collection instrument used in this research did not measure the actual number of consecutive sentences which resulted from convictions in multiple cases.

The findings on sentence length reported above have important implications which should be considered in corrections policy decisions. These findings are not unexpected; they are consistent (within one percentage point) with average sentence length reported by the Department of Corrections. The important implication lies in the connection between sentence length and time served. When average jail credits are added to good and earned time, average time served is likely to be greatly reduced. Currently, average time served is about 28 months. For HB 1589 sentences, this can be reduced to 18 months or less, assuming current sentencing practices continue. It should be kept in mind that HB 1589 does not change the life sentence for Class 1 convictions, or long-term sentences for habitual offenders and sex offenders. Also, those sentenced under the old sentencing law will remain a part of the prison population for some time. Therefore, it is not realistic to expect that the average time served for the entire prison population will drop to 18 months. It can be reasonably expected, however, that over time the vast majority of the prison population will eventually be serving time imposed under the new sentencing law.

## CONCLUSION

The sentencing study was designed to answer two important questions concerning possible impact of HB 1589 on corrections. Have commitment rates (as a percentage of convictions) increased? Has the average length of sentence imposed under HB 1589 increased? The results reported herein consistently indicate negative answers to both major questions. In summary, findings of this study are:

1. Offender characteristics have not changed except for a smaller percentage of women convicted and incarcerated.
2. There is no significant change in plea bargaining practices.
3. There is no significant change in seriousness of offenses filed, seriousness of offenses at conviction or number of offenses charged associated with implementation of HB 1589.
4. Although commitment rates have decreased substantially since 1976, there is no significant change in commitment rates (as a percentage of convictions) associated with implementation of HB 1589.

5. The average length of sentence is 96 percent of the midpoint of the presumptive range, which should result in a decrease in length of time served for HB 1589 sentences.

## FOOTNOTES

1. The limits of what constitutes unnecessary delay are delineated as follows: "Defendant is not entitled to dismissal because of failure to comply with rule requiring that accused be taken before county judge without necessary delay after arrest unless it appears that the defendant would be unfairly prejudiced or would be denied some basic rights at trial because of noncompliance." People vs. Weidemer, 180 Colo. 265, 504 P. 2d 667 (1972), p. 667)
2. A brief review of the sentencing reform movement, a summary of research findings on the consequences of determinate sentencing in California, and HB 1589 are included in Appendix A. For a comprehensive history of the development and enactment of HB 1589, see Report to the Colorado General Assembly: Recommendations for 1979 Committee on: Judiciary--Sentencing Legislation, Colorado Legislative Council, Research Publication Number 240, December, 1978. Copies are available upon request from the Division of Criminal Justice.
3. HB 1589 does not affect sentencing decisions for habitual offenders, sex offenders, or misdemeanants. Also, a life sentence is still mandated for those incarcerated for felony one offenses.
4. Baseline data for 1976 cited herein are taken from Prosecution and Sentencing of the Felony Offender, unpublished study by the Division of Criminal Justice, Department of Local Affairs, Denver, Colorado, 1979.
5. All percentages are rounded. Eta, a statistic which describes percent of variance explained, is reported where appropriate.
6. Since the sample frame for this study consisted of sentenced offenders, percent of charges filed by type is not strictly comparable to percent of original charges by type for those who are convicted. The present study does not include all those offenders originally charged who were not sentenced.
7. Although the proportion of dispositions to community corrections reported in this chapter was identified through a random sampling procedure, the sample selected for this study may be biased toward community corrections dispositions. Four judicial districts with community corrections programs were purposely included in order to allow analysis of these community programs.
8. The small difference in the distribution before and after implementation of HB 1589 reflected herein may be due to sampling error.

With placement as a dependent variable, Eta is .02422. An analysis of variance adds further support to the conclusion that placement has not been affected by HB 1589. Eta (a measure of variance explained) is .0005. The mean disposition before and after HB 1589 is as follows:

<u>Variable</u>	<u>Mean</u>	<u>Standard Deviation</u>
Pre HB 1589	4.3144 (Probation)	2.0766
Post HB 1589	4.3124 (Probation)	1.9719

A discriminant analysis adds further strength to the above results. HB 1589 entered as a placement variable was removed in the first step of the analysis.

9. The Division of Criminal Justice study of 1976 sentences also used discriminant analysis to classify offenders according to in/out placement. That analysis identified two functions, one associated with plea bargaining, the other with status at time of sentence. It was found that being in jail at the time of presentence was the best predictor of incarceration. Other analysis show that jail/bond status is strongly associated with unemployment, education, seriousness of offense and prior criminal history.

Standardized Canonical Discriminant Function coefficients resulting from the discriminant analysis performed in this study are:

<u>Variable</u>	<u>Function 1</u>
Number of Prior Revocations	-.59111
Plea Bargaining (Yes/No)	-.70116
Status at Sentencing (Jail/Bond)	.68090
Victim Injury (Serious/None or Not Serious)	-.72332
Number of Paroles	.82057

## CHAPTER II: INMATE POPULATION PROJECTION

## CHAPTER II: INMATE POPULATION PROJECTION

The Department of Corrections (DOC) is required by statute to accept all offenders sentenced to prison. The Department has very little control over the number and type of inmates who are sentenced. All DOC can do is attempt to anticipate the number of inmates who will be sentenced and make provisions for adequate facilities and programs. The need for a new facility must be recognized at least three to four years before it will be needed to allow sufficient time for planning and construction.

DOC currently uses a population projection model which provides accurate short-term projections for up to 18 months. However, this model cannot accurately project the prison population three to ten years in the future. A longer-term projection model is needed to provide decisionmakers with adequate time to react to shifts in the prison population.

As a first step toward satisfying this requirement, the Division of Criminal Justice (DCJ) staff has begun development of a medium to long-range (three to ten years) inmate population projection method. As this report is being written, the initial stages of that development have been completed, and preliminary results are presented in this chapter.

This portion of the study focused on the following questions:

1. How many persons would be admitted to DOC in the years 1980-1990 if there were no physical or budgetary constraints?
2. How would the size of the inmate population change in the years 1980-1990 if there were no physical or budgetary constraints?
3. What is the estimated security level mix of the projected population?

The way the first two questions are stated highlights an important aspect of the study. The projection method under development is a "demand" model, in that the projections are made without considering the number of inmate spaces currently available. This mode of operation was adopted as a planning device, to indicate in advance the potential DOC admissions and population for future years. When the potential population indicated exceeds anticipated capacity at any given time, that is a signal to state policymakers that they should begin action to correct the situation. It is hoped that these signals will be provided early enough to permit completion of the necessary planning/budgeting/execution cycle in time to avert or relieve overcrowding.

## RESULTS OF THE PROJECTION

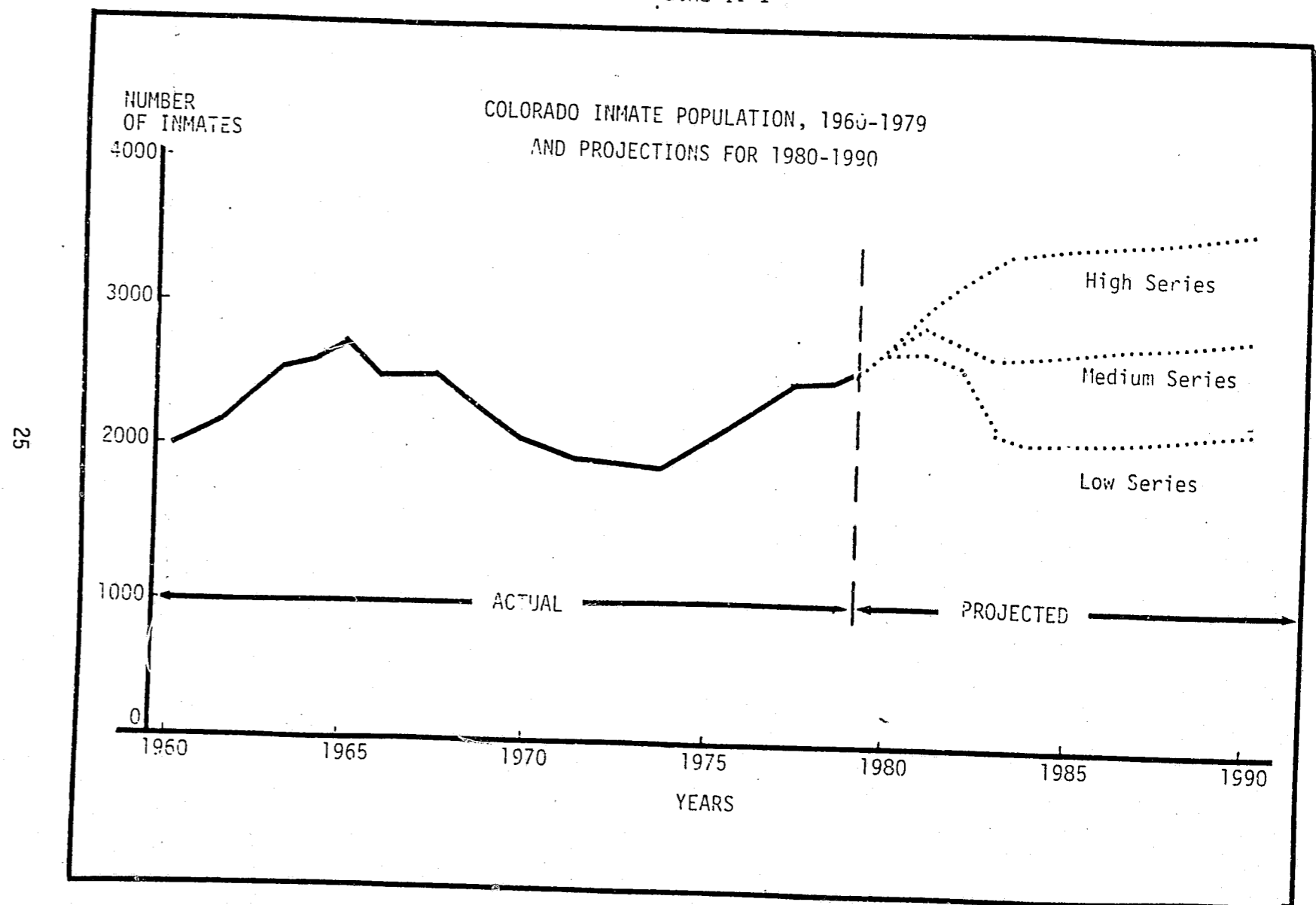
The projection method, to be described in general terms in the sections which follow and in full detail in the technical supplement, produced the inmate population figures for the years 1980-1990 which appear in Table II-1. High, medium and low series are provided to describe the range of possibilities which may occur, based on the various assumptions which were employed in the computations. However, the medium series seems more likely to occur than the high or low, and it is therefore recommended for planning purposes. The medium series is judged to be more likely because it is based on a combination of the most recent trends, as observed by DOC and as determined in the other portions of this study, particularly the continuity of sentencing patterns discussed in Chapter I.

Year	Projection Series		
	High	Medium	Low
1980	2,774	2,763	2,751
1981	3,080	2,906	2,738
1982	3,259	2,816	2,463
1983	3,397	2,714	2,243
1984	3,445	2,739	2,113
1985	3,488	2,764	2,130
1986	3,515	2,786	2,148
1987	3,530	2,801	2,161
1988	3,554	2,818	2,177
1989	3,581	2,840	2,196
1990	3,618	2,858	2,211

\*Quarterly data are available in the technical supplement.

These figures are presented graphically in Figure II-1 on the following page.

FIGURE II-1





The projected inmate populations shown in Table II-1 and in Figure II-1 are the result of the mathematical interaction of general population figures, inmate admission rates and inmate length of stay figures. In the early years of the projection period, some of these numbers are getting larger, some are getting smaller and others remain the same.

After 1983, rising population figures dominate the mathematics, and the result is seen as a moderate but steady rise in inmate population. Greater detail will be found in the procedures section which follows, and complete details are in the technical supplement.

In order to relate the population projections to DOC capacity, two views are necessary. The first compares the anticipated on-grounds population (92 percent of population) to the number of inmate spaces expected to be available. The available space in 1981 and later is that which remains after the new facilities are open and "Old Max" has been closed. The expected shortfall or surplus of inmate spaces in 1985 and 1990 is shown in Table II-2.

Projection Series	Year	Projected Population	On-Grounds Population*	Absolute Capacity	Functional Capacity**	Shortfall(-) or Surplus(+)
High	1985	3,488	3,209	2,626	2,363	-846
	1990	3,618	3,329	"	"	-966
Medium	1985	2,764	2,543	"	"	-180
	1990	2,858	2,629	"	"	-266
Low	1985	2,130	1,960	"	"	+403
	1990	2,211	2,034	"	"	+329

\*Computed at 92 percent of population in accordance with DOC practice.  
\*\*Functional capacity is computed at 90 percent of absolute in accordance with DOC practice.

The second view concerns the potential distribution of inmates by security classification. For this purpose, the actual distribution on a recent date was determined and that same distribution was assumed to remain valid in future years. The percentages used in this computation were:

Security Level	Percent of Population
Maximum	14
Close	29
Medium	18
Minimum	20
Community	11
Off Grounds	8
Total	100

The resulting distribution of persons in each of the three projections is shown in Table II-3 for the years 1985 and 1990.

Projection Series	Year	Maximum	Close	Medium	Minimum	Community	Off Grounds	Total
High	1985	488	1,012	628	698	384	278	3,488
	1990	507	1,049	651	724	398	289	3,618
Medium	1985	387	802	498	553	303	221	2,764
	1990	400	829	514	572	314	229	2,858
Low	1985	298	618	383	426	234	171	2,130
	1990	310	641	398	442	243	177	2,211

Table II-4 shows the projected bed difference by security classification for 1985. The facilities are shown based on the highest security level inmates the facility can house. However, all of the facilities except community facilities can be used to house inmates with various security class levels. For example, Fremont Correctional Facility primarily houses medium security inmates, although the facility is also used for close, minimum and community security inmates. It appears from the table that if a new facility is built, it should be a medium security facility. If a facility is not to be built, then 109 beds will be needed for community placement.

TABLE II-4

Security Classification*	Projected Population	Functional Capacity	Bed Difference
Maximum	387	New Max Cellhouse 5 Diagnostic } 448	+61
Close	802	New Close Fremont Buena Vista } 1247	+445**
Medium	498	CWCF	86
Minimum	553	ITC Delta Rifle Golden } 388	-165
Community	303	Bails Hall Ft. Logan Contract Services } 194	-109
	2543	2363	-180 shortage

\*Security classification of facilities was provided by Department of Corrections.

\*\*Close security facilities are used to house both close and medium security offenders.

The inmate population projections which are presented in tabular and graphic form above were produced through the use of the procedures, data and assumptions described in the sections which follow.

### PROJECTION STUDY PROCEDURES

This portion of the study began with a review of the literature and correspondence with relevant state, national and private agencies. The information gathered indicates that the projection methods currently in use can be classified into several general categories:

1. extrapolation models
2. simple and multiple linear regression models
3. input-output models
4. econometric models

5. Markov chain models

6. simulation models.

Arthur Young and Company consultants recently conducted a similar review in conjunction with a California corrections project, and they comment in their report:

...(T)here is no 'best' prison population projection methodology. Furthermore, there is little hard evidence on the predictive ability of any of the models currently used. In reality, availability of data and historical location - specific variables generally have determined which model is most practical to use in different states, in conformity with local technical and resource constraints.<sup>1</sup>

The review seeking a suitable method for Colorado was guided by the following primary selection criteria: reasonable reliability over the medium to long range (three to ten years), use of more than one independent variable (the more the better), availability of the necessary data, output of results at more frequent intervals than annually and, if possible, output of data on parole and probation populations.

Twenty states and other agencies responded to the DCJ request for information about their projection methods, providing examples of all of the categories identified previously. A summary of the results of that review is contained in the technical supplement available at the Division of Criminal Justice.

Based on the review of existing methods, the Division staff selected the demographically disaggregated model developed by Dr. Alfred Blumstein<sup>2</sup> as the desirable model toward which to work. The choice was based on the use in the model of a number of predictor variables, the use of fully disaggregated data to unmask trends, its ability to detect turning points and its face validity over the longer range.\* However, the initial search for the necessary data to implement that model revealed that the available data types were limited. In addition, while a fully articulated model of the criminal justice system is desirable eventually, the immediate requirement is to produce a prison inmate population projection. Consequently, it was decided to adopt an interim design of a population/event rate model which would initially yield only inmate population estimates, but which can be expanded to estimate other system activity as the necessary data become available.

When the first trials of the interim model were complete, a draft technical report was prepared explaining the methods and trial results. This report was submitted to a panel of practitioners in the economic and demographic forecasting fields for their review and critique. The "blue ribbon" panel met on October 30, 1980, for a full discussion of the methods and

\*Discussed at length in the technical supplement.

trial results. See Appendix C for a list of panel members.

In general, the members of the panel felt that the projection method was sound and reasonable; however, a number of recommendations were offered to refine and improve the methods and presentation. Those recommendations have been incorporated into the material presented in this report. (Minutes of the panel meeting are available at the Division of Criminal Justice.)

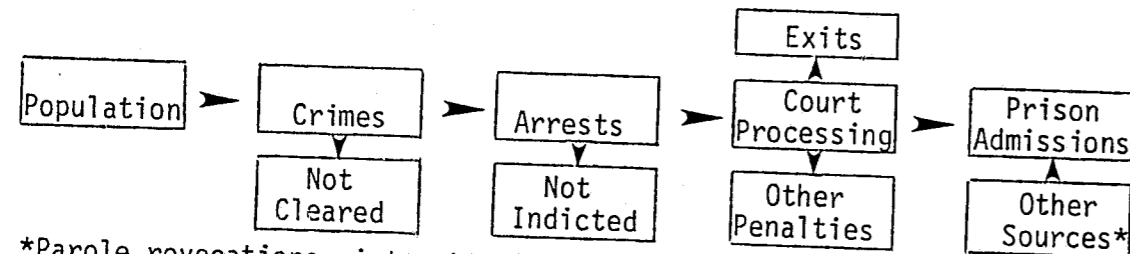
In addition to the panel review, the projection method was reviewed and critiqued by Dr. Alfred Blumstein, author of the projection model which the Division of Criminal Justice is seeking to adapt for Colorado. Dr. Blumstein found the method to be sound and reasonable, considering the limits imposed by the lack of data. His recommendations for improvement, particularly concerning the upper and lower bounds of the rates and length of stay estimates, have been incorporated into the model.

#### THE INTERIM PROJECTION MODEL

In general, the projection of a prison population can be viewed as the result of two processes:

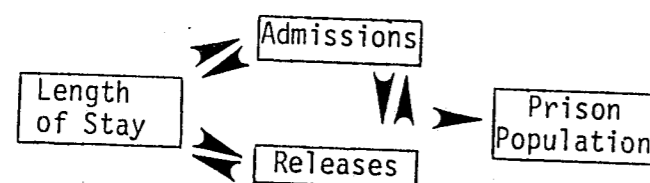
1. determining the flow of court commitments from the general population; and
2. generating the prison population from those committed to prison from the courts.<sup>3</sup>

The first process may be represented as follows:

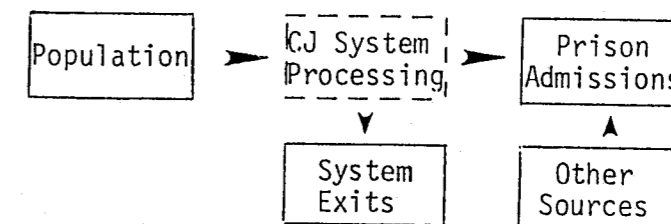


\*Parole revocations, interstate transfers, escape returns, etc.

The second process consists of the interaction of admissions, releases and length of stay:



The Blumstein model produces estimates of system activity at the following levels: arrests, indictments, convictions and sentences to prison. However, because disaggregated event rate information is not readily available for all of these events in Colorado, and because the immediate requirement can be satisfied with a lesser amount of output, it was decided to bypass the intermediate steps and proceed directly from population to prison admissions. (For longer range purposes, the intermediate steps will be added later as the necessary data become available.) Effectively, this decision reduces the intermediate steps to a "black box":



Similarly, generation of the prison population may also be simplified to some extent by using a heuristic method devised by Dr. T.G. Crago and C.S. Hromas, DOC research staff. As noted in the previous section, the "blue ribbon" panel and Dr. Blumstein have concurred that this limited model is acceptable until a more detailed version can be developed. Of particular importance in this respect are the assumptions and caveats stated in the following section. Interim projection methods are fully explained in the technical supplement.

#### ASSUMPTIONS AND CAVEATS

Before examining the preliminary results, it is necessary that the reader be aware of the assumptions which underlie the model's operation as well as several related caveats.

##### General Assumptions

1. As is true with most projection models, it is assumed that certain historical phenomena (e.g., trends in population growth and rates of admission to DOC) will continue or will change in explicitly stated ways.
2. It is assumed that no catastrophic social or economic disruptions (e.g., war, major depression) will occur during the projection period.
3. It is assumed that there will not be any additional major legislative changes in the state criminal code or criminal procedures (such as HB 1589) in the immediate future.
4. It is assumed that there will not be any additional major changes in judicial sentencing practices (e.g., statewide adoption of sentencing guidelines) in the immediate future.

Caveats

By way of caveats, the following should be noted:

1. The model does not project actual admissions or population; rather, it presents a limited range of possibilities based on a set of explicit assumptions about future events.
2. The population projections are "demand" populations which are not restrained by available DOC capacity.
3. At this stage of development, the model does not yet take into account trends in crime rates, arrest rates, indictment rates, etc.
4. The model is not structured to account for public sentiment, judicial or legislative attitudes, or criminal justice system compensatory behavior, except insofar as these phenomena are reflected in the various rates and projected rate changes.
5. The model does not contain explicit provisions to account for the generally anticipated population changes in the developing energy resource area in the western part of the state. However, the energy impact population projections prepared for that purpose by the Office of State Planning and Budgeting<sup>4</sup> differ by less than 0.1 percent (during the years 1980-1990) from the Division of Planning projections. Consequently, it was judged adequate for the immediate purposes to use the official Division of Planning figures.

HISTORICAL INFORMATION

To provide a context for the projections of DOC admissions and inmate population, historical data are presented on the following pages in Table II-5 and in Figure II-2.

TABLE II-5

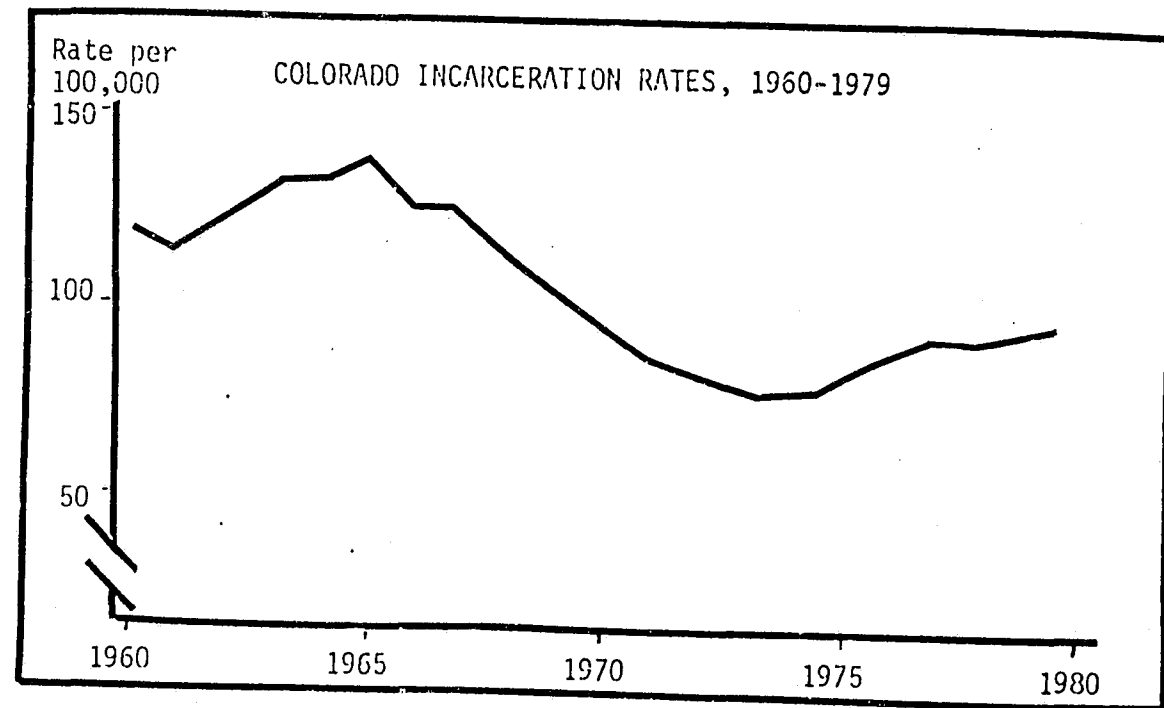
CORRECTIONS HISTORICAL DATA

Year	Colorado Population (In Thousands)	Corrections Admissions		Corrections Population	
		Number	Rate/100,000	Inmates	Rate/100,000
1960	1,752	802*	45.8	2,050	117.0
1961	1,840	841*	45.7	2,133	115.9
1962	1,900	868*	45.7	2,333	122.8
1963	1,940	868*	44.7	2,566	132.3
1964	1,970	846*	42.9	2,633	133.7
1965	1,990	767*	38.5	2,750	138.2
1966	2,010	676*	33.6	2,533	126.0
1967	2,050	712*	34.7	2,566	125.2
1968	2,120	**	**	2,419	114.1
1969	2,170	**	**	2,238	103.1
1970	2,210	874	39.5	2,109	95.4
1971	2,310	1,015	43.9	2,009	87.0
1972	2,390	1,100	46.0	1,975	82.6
1973	2,470	1,089	44.1	1,926	78.0
1974	2,508	1,187	47.3	1,995	79.5
1975	2,541	1,439	56.6	2,114	83.2
1976	2,576	1,311	50.9	2,260	87.7
1977	2,626	1,276	48.6	2,446	93.1
1978	2,677	1,248	46.6	2,480	92.6
1979	2,731	1,164	42.6	2,591	94.9

\* Fiscal years  
 \*\* Not Available at time of printing

Sources: Department of Corrections,  
 Department of Planning

FIGURE II-2.



PROJECTION OF ADMISSIONS

The first step in the overall process of projecting the inmate population was to project the annual total admissions for the years 1980-1990. In making this projection, the following data and specific assumptions were used:

1. General population: the medium series general population projections published by the Division of Planning, Department of Local Affairs, were the basis of the admissions projections (see Table II-6).

TABLE II-6

STATE POPULATION - MEDIUM SERIES  
(MALES IN SELECTED AGE GROUPS)  
(FIGURES IN THOUSANDS)

Year	18-19	20-24	25-29	30-34	35+
1980	54.7	138.1	139.3	127.8	512.0
1981	54.7	142.4	141.5	138.6	526.8
1982	53.8	145.0	143.8	144.7	545.7
1983	49.5	147.8	148.3	148.6	566.9
1984	48.8	148.0	152.5	150.6	593.6
1985	44.9	145.5	157.1	155.8	620.1
1986	44.5	141.1	161.0	157.8	647.7
1987	46.5	135.6	164.6	160.0	675.4
1988	49.9	130.3	166.4	165.0	702.1
1989	49.4	127.3	167.0	169.6	729.5
1990	47.3	126.6	165.1	175.0	755.6

Source: Colorado Division of Planning, expanded by Colorado Division of Criminal Justice

2. Admission rates by age groups: these rates were computed from intake data furnished by the Department of Corrections. (see Table II-7 on the following page).

TABLE II-7

CORRECTIONS ADMISSIONS RATES BY AGE, 1975-1979  
(RATES PER 100,000 IN THE GENERAL POPULATION)

Age Group	1975	1976	1977	1978	1979
18-19	493.04	477.76	380.15	337.57	289.05
20-24	424.90	387.22	367.18	283.05	330.88
25-29	244.13	236.39	185.38	187.04	195.30
30-34	154.72	132.82	135.22	129.09	138.25
35+	35.95	39.02	34.39	34.79	41.96

Source: Computed from DOC Intake Data

3. Admission rate trends: rate trends observed over the years 1975-1979 were extended for the projection period by using the most recent rate as the medium estimate. High and low estimates were then established based on the variability noted in the available historical data; specifically, the high and low estimates were set at one standard deviation above and below the medium estimate.

TABLE II-8

PROJECTED CORRECTIONS ADMISSION RATES BY AGE, 1980-1990  
(RATES PER 100,000 IN THE GENERAL POPULATION)

Age Group	High	Medium	Low
18-19	377.37	289.05	200.73
20-24	385.11	330.88	276.65
25-29	223.63	195.30	166.97
30-34	148.17	138.25	128.33
35+	45.17	41.96	38.75

Year-by-year application of the rates shown in Table II-8 to the corresponding age group totals shown in Table II-6 resulted in the projected annual high, medium and low admissions totals listed in Table II-9. These projections, coupled with historical data from 1970-1979, are illustrated in Figure II-3.

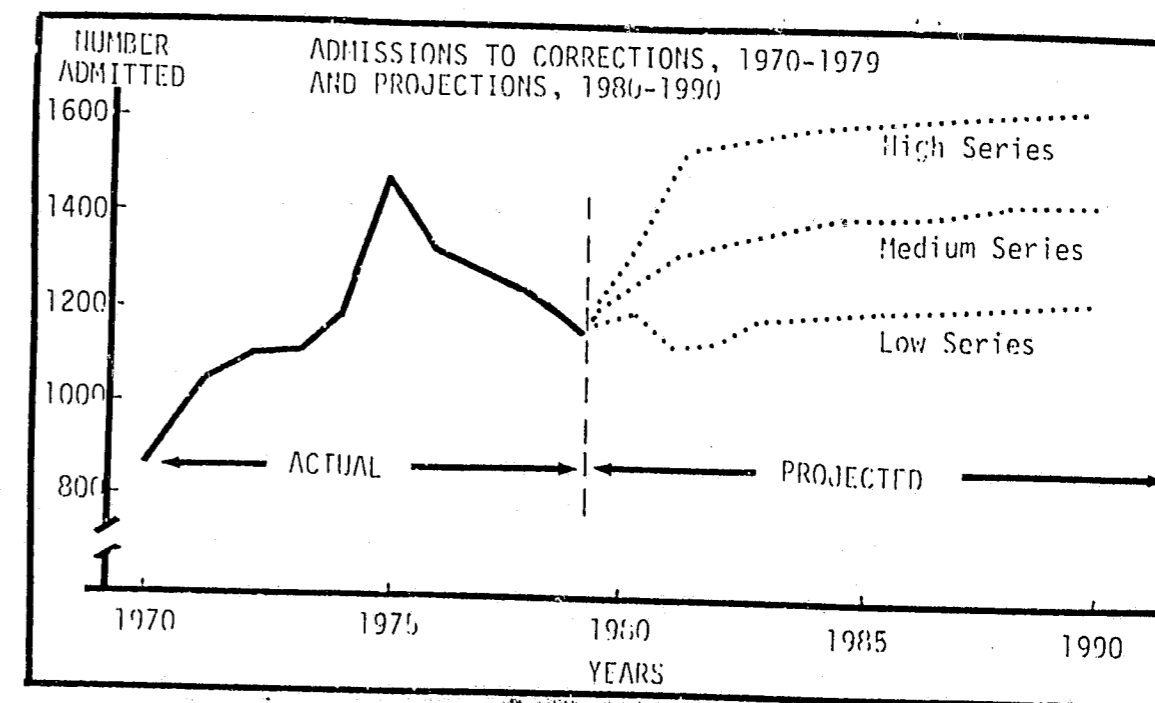
TABLE II-9

PROJECTED ANNUAL\* INMATE ADMISSIONS, 1980-1990

Year	Projection Series		
	High	Medium	Low
1980	1,469	1,277	1,088
1981	1,514	1,316	1,124
1982	1,543	1,343	1,148
1983	1,553	1,363	1,168
1984	1,586	1,383	1,187
1985	1,591	1,391	1,197
1986	1,597	1,399	1,204
1987	1,607	1,407	1,212
1988	1,623	1,421	1,224
1989	1,630	1,429	1,232
1990	1,635	1,436	1,240

\*Quarterly data are available in the technical report

FIGURE II-3



## PROJECTIONS OF INMATE POPULATION

Using the annual admission figures produced as described in the preceding section and the propagation matrix technique<sup>5</sup> (described in detail in the technical supplement), inmate population projections were generated for the years 1980-1990. In this process, certain data were used and specific assumptions made, as described below.

### QUARTERLY ADMISSIONS

The Department of Corrections research staff has observed<sup>5,6</sup> that there is a clear seasonal pattern to admissions during the period 1970-1979. That information is used in this projection to divide the annual admissions projection into quarterly projections. The pattern derived through historical data indicates that approximately 27 percent of the year's admissions occur in the first quarter of the calendar year, 26 percent in the second, 23 percent in the third, and 24 percent in the fourth quarter. It is assumed that this pattern will persist in the period 1980-1990.

### LENGTH OF STAY

Inmate population is the result of the interaction of admissions, releases and the duration of the average inmate's incarceration (length of stay). In the propagation matrix technique, releases and length of stay are subsumed into a single procedural step (described in detail in the technical supplement). The length of stay figures used in this projection are based in part on the historical length of stay data shown in Table II-10 below.

TABLE II-10

#### HISTORICAL LENGTH OF STAY DATA

Entry Year*	Average Length of Stay
1972	21.6 (Months)
1973	20.8 "
1974	19.4 "
1975	21.2 "
1976	22.9 "
1977	25.8 "
1978	27.4 " (2 Quarters)

\*Quarterly data are available in the technical supplement.

Source: Computed from DOC reports.

Additional length of stay information developed from court records (and reported in detail in Chapter I of this report) indicates that recent sentences imposed under the provisions of HB 1589 are averaging lower than the midpoint of the permissible time ranges of the various felony classes. Moreover, information furnished by DOC indicates that intake records also reveal that average sentences have been dropping steadily relative to the midpoint of the permissible ranges. Average sentences at intake have dropped from 103 percent of the midpoint in July-September 1979 to approximately 93 percent in July-September 1980.<sup>7</sup>

Under HB 1589, length of stay is largely determined by the sentence adjudged. Consequently, it can be inferred that the length of stay which recently admitted inmates will undergo has also become shorter by percentages similar to those stated above for the change in sentence length. Based on that premise, the most recently observed felony class distribution at intake (July 1979-June 1980) was combined with the sentencing findings discussed in Chapter I to yield the following estimate of length of stay for current admissions to DOC.

TABLE II-11

#### ESTIMATED LENGTH OF STAY COMPUTATIONS

Offender Type	Fraction of 1979-1980 Intake	Length of Stay (Months)	Fraction X Length
Felony I	0.013	240.0	3.120
Felony II	0.037	48.0*	1.776
Felony III	0.178	33.0*	5.874
Felony IV	0.475	18.0*	8.550
Felony V	0.268	8.5*	2.278
Habitual Criminal (Life)	0.002	240.0	.480
Habitual Criminal (Other)	0.009	142.2	1.280
Sex Offender	0.006	38.6	.232
Misdemeanor	0.012	8.8	.106
	1.000 (100%)		23.696
Adjustments:			
	Reparoles (110 @ 3 month stay)		.275
	Consecutive sentences (3.6% of intake)		.167
AVERAGE LENGTH OF STAY (MONTHS)			24.138

Source: DOC, except when marked (\*), which is derived from court records.



The projection uses a medium length of stay of 24 months commencing in mid 1981. This trend and figure were based on the following considerations:

1. The most recent computed average length of stay (among admissions in April-June 1978) was 28.0 months.
2. The estimated length of stay for new admissions (Table II-11) is approximately 24 months.
3. The midpoint between the recent observed low length of stay (19.4 months for 1974 admissions) and the recent observed high (28.0 months for 1978 admissions) is 23.7 months.

As was done earlier to select upper and lower bounds for the admission rates, a spread of one standard deviation ( $\pm 2.5$  months) was used to select the high and low length of stay estimates. Consequently, the upper and lower bounds of length of stay are 26.5 months and 21.5 months, respectively. Using those figures in the propagation matrix, the three population projections shown in Table II-1 and Figure II-1 were generated (the propagation matrix technique is explained in the technical supplement.)

## FOOTNOTES

1. Arthur Young and Co., A Report on Alternative Methods of Housing Convicted Felons, Volume II Technical Report. Sacramento, CA, 1980. p. 49.
2. Dr. Alfred Blumstein is a member of the faculty of Carnegie-Mellon University and Chairman of the Pennsylvania Commission on Crime and Delinquency.
3. Blumstein, A., Cohen, J., and Miller, H.D., "Demographically Disaggregated Projections of Prison Populations," Journal of Criminal Justice, Spring 1980. pp. 1-26.
4. Colorado Office of State Planning and Budgeting, Economic and Demographic Forecasts. (Draft staff paper for Governor's Blue Ribbon Panel, September 26, 1980). Denver, CO.
5. Crago, T.G., and Hromas, C.S., Inmate Population Projections, 1980-1985. Colorado Department of Corrections. Colorado Springs, CO.
6. Colorado Division of Correctional Services, Letter from Dr. T.G. Crago. Subject: Cyclic Nature of Commitments, dated March 30, 1976.
7. Verbal report by Dr. T.G. Crago, Colorado Department of Corrections, to the Colorado Advisory Commission on Crime Classification and Sentencing, November 1, 1980.

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### CHAPTER III: COMMUNITY ALTERNATIVES

### CHAPTER III: COMMUNITY ALTERNATIVES

The expanded use of community placement alternatives is often proposed as a method to alleviate prison overcrowding conditions. Community placement alternatives include probation, community corrections diversion programs, community corrections transitional programs and parole. The appropriation of additional funds for residential community corrections programs, both diversion and transitional, is often cited as the best option for reducing the prison population while insuring the maximum level of public safety.

Critics of community corrections programs claim that diversion programs are serving clients, who in the absence of such programs, would be placed on probation and not be sentenced to prison. Therefore, it is suggested that the prison population is not affected by these programs. Others have said that those sentenced to prison are too dangerous to be placed in the community.

This chapter will attempt to answer the following two questions:

1. Do community corrections programs affect the prison population?
2. What are the risks to the public of increasing the use of community placements?

The chapter defines community corrections and summarizes the findings of past research. To answer the question of whether or not diversion programs are really diverting offenders from prison, a comparison is made of commitments to the Department of Corrections (DOC) from counties with and without community corrections programs. An analysis is also made of offender characteristics of those placed on probation, those in community corrections programs, and those incarcerated.

The question of risk to the public will be addressed by comparing crime rates between counties with and without programs. Comparisons of recidivism rates between probation, diversion programs, incarceration, transitional programs and parole will be provided. The seriousness of the subsequent offense will also be analyzed as an indicator of the level of risk to the community.

## DEFINITION OF COMMUNITY CORRECTIONS

According to the National Advisory Commission on Criminal Justice Standards and Goals<sup>1</sup>, community corrections "...includes all correctional activities that take place in the community. The community base must be an alternative to confinement of an offender at any point in the correctional process." This includes probation, work release, study release, family visiting furloughs, and re-entry programs that occur subsequent to incarceration such as halfway houses and parole. Community corrections is defined somewhat differently in the Colorado Community Corrections Comprehensive Plan: "Community corrections includes all correctional activities that occur in the community rather than in a state correctional institution."<sup>2</sup> Specifically, county jails are included in this definition of community corrections, but are not included in the one used by the National Advisory Commission on Criminal Justice Standards and Goals.

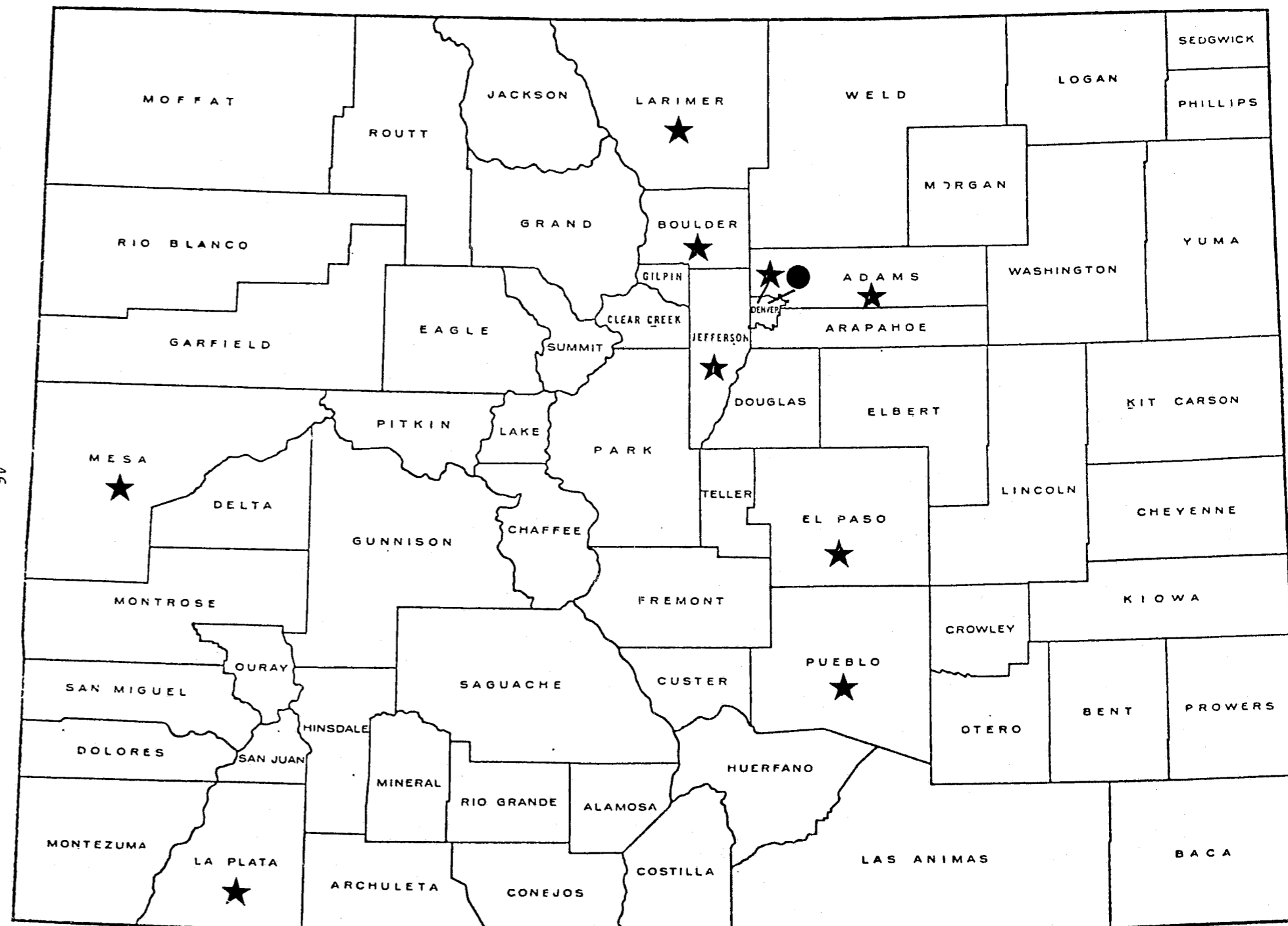
The Colorado Revised Statutes (CRS 1973 17-27-102), define community corrections as follows:

'Community correctional facility or program' means a community-based or community-oriented facility or program: which is operational either by a unit of local government, the department (of Corrections), a private nonprofit agency or organization, or any corporation, association, or labor organization; which may provide residential accommodations for offenders; and which provides programs and services to aid offenders in obtaining and holding regular employment, in enrolling in and maintaining academic courses, in participating in vocational training programs, in utilizing the resources of the community in meeting their personal and family needs and providing treatment, and in participating in whatever specialized programs exist within the community.

This chapter focuses on residential community corrections programs. Both diversion and transitional community corrections placements will be included in this study. Thus, the report will investigate the use of community corrections in place of and after incarceration. Pretrial release, deferred sentencing and other forms of judicial diversion will not be included in this study. For a history of community corrections in Colorado see Appendix D.

Currently, there are 16 residential community corrections facilities in the state. Two are controlled directly by the state and 14 are private contractors. In addition, DOC operates three honor camps and one Industrial Training Center (ITC staging center). The locations of all contracting and state facilities are represented on the following Map 1. The majority of community corrections programs are located in the "front range" region of the state. Seven programs are located in Denver, two in Jefferson County and one each in Larimer, Boulder, Adams, El Paso and Pueblo counties. Programs are also located in Mesa and La Plata counties.

MAP I : LOCATIONS OF COMMUNITY CORRECTIONS PROGRAMS IN COLORADO



★ Privately Controlled

● State Operated Community Corrections Programs

Table III-1 shows the total state appropriation for community corrections contracts and the corresponding Average Daily Attendance (ADA) estimates. The table reflects an overall increase of \$811,468, or 123 ADA (50 percent), for contractual community corrections from FY1979-80 to FY1980-81. Additional financial support for these programs is derived from federal placements, the offenders themselves and other sources. For example, most community corrections clients pay \$3.50 or \$6.00 per diem to aid in their support.

### CRITERIA FOR PLACING OFFENDERS IN COMMUNITY CORRECTIONS

Criteria or policy guidelines for placement of offenders in community corrections programs are derived from the Colorado statutes, the Department of Corrections' Policy Statement Offender Security Designations and Offender Facility Assignment Criteria, community corrections boards' criteria, and program guidelines. CRS 1973, 17-27-105 grants the sentencing judge the authority to sentence offenders to community corrections programs. The legislative intent is to limit community corrections sentences to offenders convicted of nonviolent felonies. Nonviolent misdemeanor offenders may only be sentenced to nonresidential programs. During the sentencing process, judges may receive or request input from the district attorney, public defender, community corrections staff, community corrections boards and/or probation as to the appropriateness of a community corrections placement.

Community corrections boards are authorized to establish criteria for screening community corrections placements. CRS 1973, 17-27-103 states:

The corrections board and the department or judicial district shall establish procedures for screening offenders who are to be placed in its community correctional facility or program. The corrections board has the authority to accept, reject, or reject after acceptance to placement of any offender in its community correctional facility or program pursuant to any contract or agreement with the department or a judicial district.

Community corrections boards may establish criteria for diversion and transitional placements or may rely on judicial or DOC recommendations. In some instances, community corrections boards act more as advisory boards than as review committees, relying heavily on the recommendations of community corrections staff or others in the criminal justice system.

The criteria used by each board vary to reflect the attitudes of the community. Some policies consider the offenders' ability to work full time, family ties, type of crime, and characteristics of current placements. Additional elaboration on the types of criteria for community placement is presented in Appendix E. Critics of community corrections believe that boards' reviews of potential placements sort out the most favorable and reject those of higher risk. In Colorado, the suggestion is often made that boards are taking only the "cream of the crop". Whether

TABLE III-1

COMPARISON OF ADA AND STATE APPROPRIATION FOR REIMBURSEMENT CONTRACTS TO COMMUNITY CORRECTIONS PROGRAMS FOR FY1979-80 & 80-81

	FY1979-80			FY1979-81			% Increase in ADA
	Daily Rate	Total Appropriation	ADA	Daily Rate***	Total Appropriation	ADA	
Residential Diversion	20.00	1,043,900*	143	22.48	1,195,083	145	
Non-Residential Diversion	7.50			7.50	335,800	92	
Sub-total Diversion		1,043,900	143		1,530,883	237	65%
Transitional	20.00	730,000	100	22.48	1,054,485	129	29%
TOTAL		1,773,900**	243		2,585,368**	366	50%

\*FY 79-80 Long Bill footnote on appropriation allowed the DOC to use the appropriation to reimburse for either Residential or Non-Residential placement, thus only a total ADA figure for FY 79-80 was used.

\*\*Figures do not include potential client reimbursement.

\*\*\*Daily reimbursement is still under negotiation for some programs.

Source: FY1980-81 Long Bill

this is or is not the case will be explored in this study.

The Department of Corrections has developed a written policy manual that outlines the criteria for community corrections transitional placements (Policy Statement - Offender Security Designations and Offender Assignment Criteria). Section VI-E specifies the community security criteria (see Appendix E). The Department of Corrections may override any of these criteria if it is determined to be in the best interests of the offender and/or society.

The courts sentence offenders to diversion programs as a condition of probation and must, therefore, conform to the criteria for granting probation (C.R.S. 1973, 16-11-203. Further legislative direction for placement is also presented in C.R.S. 1973, 16-11-204 which outlines the conditions for probation. If the offender is placed in a transitional program, he or she will be assigned a parole officer. A set of criteria for granting parole has not been developed; however, the parole board is currently developing a decision matrix to aid in making decisions.

### WHAT IS KNOWN ABOUT COMMUNITY CORRECTIONS

This section will summarize what is known about community corrections based on previous research.<sup>3</sup>

Community corrections residential programs provide valuable services to some offenders, but the needs of some offenders are not being met by these programs. Community corrections diversion programs reduce commitments to state institutions if "widening the net" does not occur. In other words, community corrections reduces commitments to prison when it is used for those who would normally be sent to prison rather than for those who would be released or placed on probation. The risk to society resulting from community corrections is small. Community corrections has no known negative impacts on communities in terms of crime rates or property values. Rates of recidivism for community corrections are similar to those for institutional corrections. Some research has found that residential community corrections (transitional placement) results in lower rates of rearrest, reconviction, and parole violation (combined) than simple release to parole. Finally, residential community corrections allows greater quantity and quality of supervision for offenders than probation or parole, yet, need cost no more than, and usually costs less than, institutional corrections.

Studies conducted in Colorado mirror those conducted in other states. Findings from Colorado studies, while reporting different rates of recidivism, generally conclude that community corrections placements have lower rates of recidivism than other offenders. Furthermore, community corrections diversion placements differ from those offenders sentenced to probation; thus, diversion is occurring in Colorado.

## DIVERSION PROGRAMS

### COUNTY LEVEL COMPARISONS

The question of whether or not community corrections programs affect the prison population will be addressed in two ways. First, the rates of commitment of sentenced offenders to DOC will be analyzed. Then the individual offender characteristics of the people in community corrections programs will be described and compared to those for people in prison and on probation.

If community corrections programs are diverting offenders from the prison system, the commitment rates should be decreasing.

Since the need for a new prison facility is currently being considered, are community corrections programs really impacting the statewide commitment rate to any great degree. Many factors can affect statewide commitment rates. Therefore, trends in commitment rates for counties before and after the establishment of residential community corrections programs are compared. A comparison is also made of commitment rates of counties with and counties without residential community corrections programs for the years 1970 to 1979.

Nine counties currently operate residential community corrections programs. Most counties (six) showed an immediate decline in commitment rates following the establishment of community corrections diversion programs. However, the rates in one of the counties increased and two other counties showed no clear trend. This suggests that diversion may be working in some, but not necessarily all counties.

Table III-2 shows the effects of diversion programs on commitment rates in each county.

Eight counties were selected for a more thorough analysis. The objective was to compare commitment rates of counties having community corrections programs with those of neighboring counties. The selected counties with community corrections are Denver, with its high population concentration; Adams, bordering on Denver and part of the metropolitan area; Larimer, a Front Range county separate from the Denver area; and Mesa, a Western Slope county facing energy development. These counties have also been selected for the individual level analysis of community corrections. The selected neighboring counties are Arapahoe, bordering Denver and Adams, and part of the metropolitan Denver area; Weld, bordering Larimer; Garfield, bordering Mesa and also affected by energy development; and Fremont, a southern Colorado county which borders Pueblo and which houses the major correctional facilities of DOC. Fremont County borders Pueblo County, which has a community corrections program, although Pueblo is not included in the analysis.

Figure III-1 shows the relationship between commitment rates and the introduction of community corrections programs for the four counties. For all but Larimer County, the commitment rates had been increasing for a one to two-year period prior to community corrections. In all four counties, the

TABLE III-2

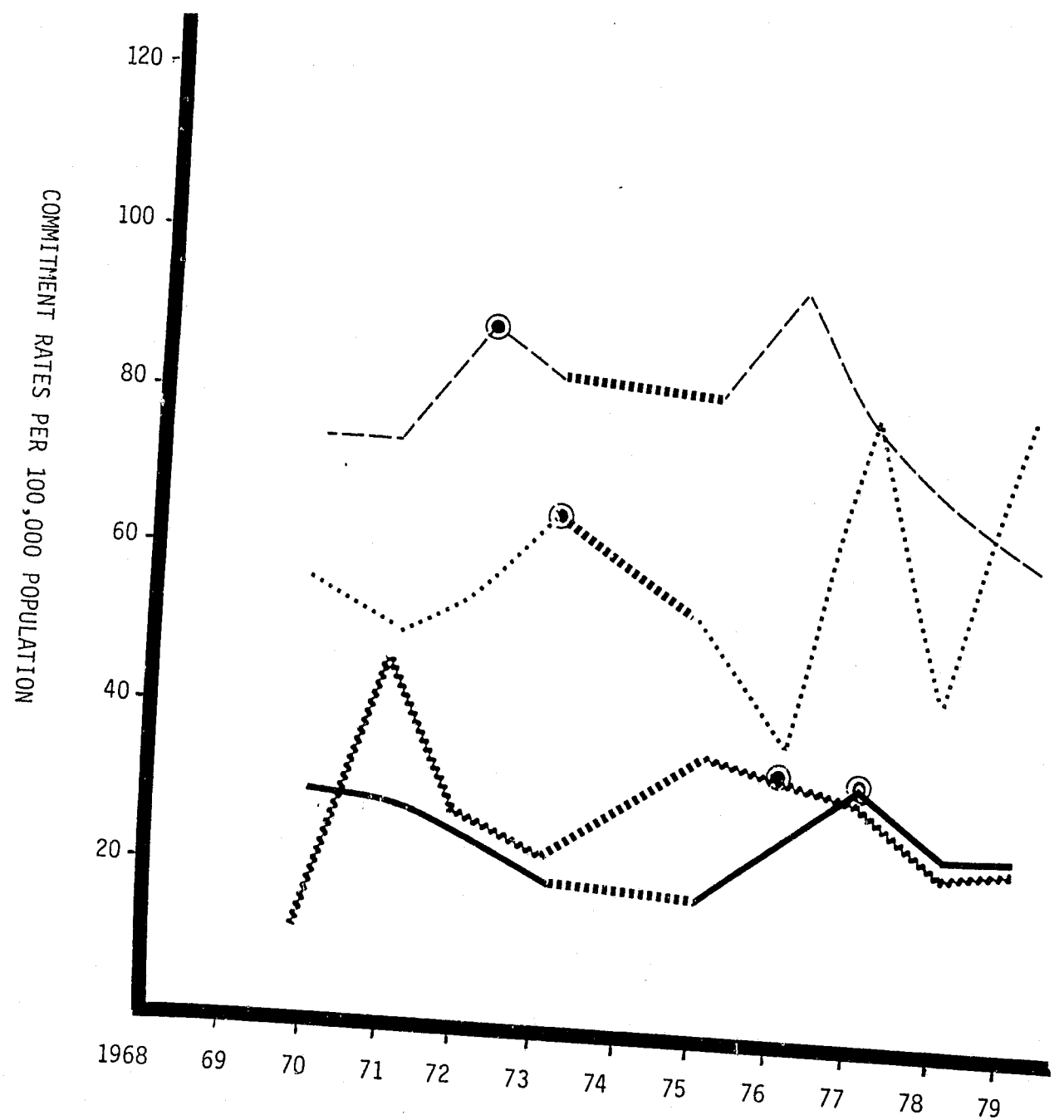
## EFFECT OF DIVERSION PROGRAMS ON COMMITMENT RATES

County	Commitment Rate/ 100,000 Population FY1978-79	Average Commitment Rate Two Years Prior to Start of Diversion Program	Effect of Diversion Program on Commitment Rates
Adams	23	23	Decreased
Boulder	23	25	Decreased first year, then returned to normal levels.
Denver	62	74	Rates have fluctuated. Decreased since 1976 when several new programs started.
El Paso	69	89	Decreased
Jefferson	32	34	Leveled Off
La Plata	54	62	Decreased
Larimer	23	29	Decreased
Mesa	80	52	Decreased immediately after introduction of program. Have since fluctuated with a general upward trend.
Pueblo	49	34	Increased immediately after introduction of program. Has decreased since then.

Source: Commitment rates were obtained from the Department of Corrections.



Figure III-1  
 TRENDS IN COMMITMENT RATES  
 FOR SELECTED COUNTIES WITH COMMUNITY CORRECTIONS\*



\*Based on DOC commitment rate figures

- ..... Missing Data
- Adams
- Denver
- ~~~~~ Larimer
- ..... Mesa
- Year in which community corrections goes into operation

commitment rate declined after the introduction of community corrections, and continue to decline for two or three years. Commitment rates are lower in 1979 than they were when community corrections began for all but Mesa County which may be affected by Western Slope energy development.

Figure III-2 shows the commitment rates for counties neighboring counties with community corrections programs. The trend lines demonstrate a clear upward trend in the rate of commitment, although the rates vary from year to year. These counties show remarkable uniformity in their general upward trend in commitment rates, the similarity of peak years, and the decrease in commitment rates from 1978 to 1979.

#### INDIVIDUAL LEVEL ANALYSIS OF DIVERSION

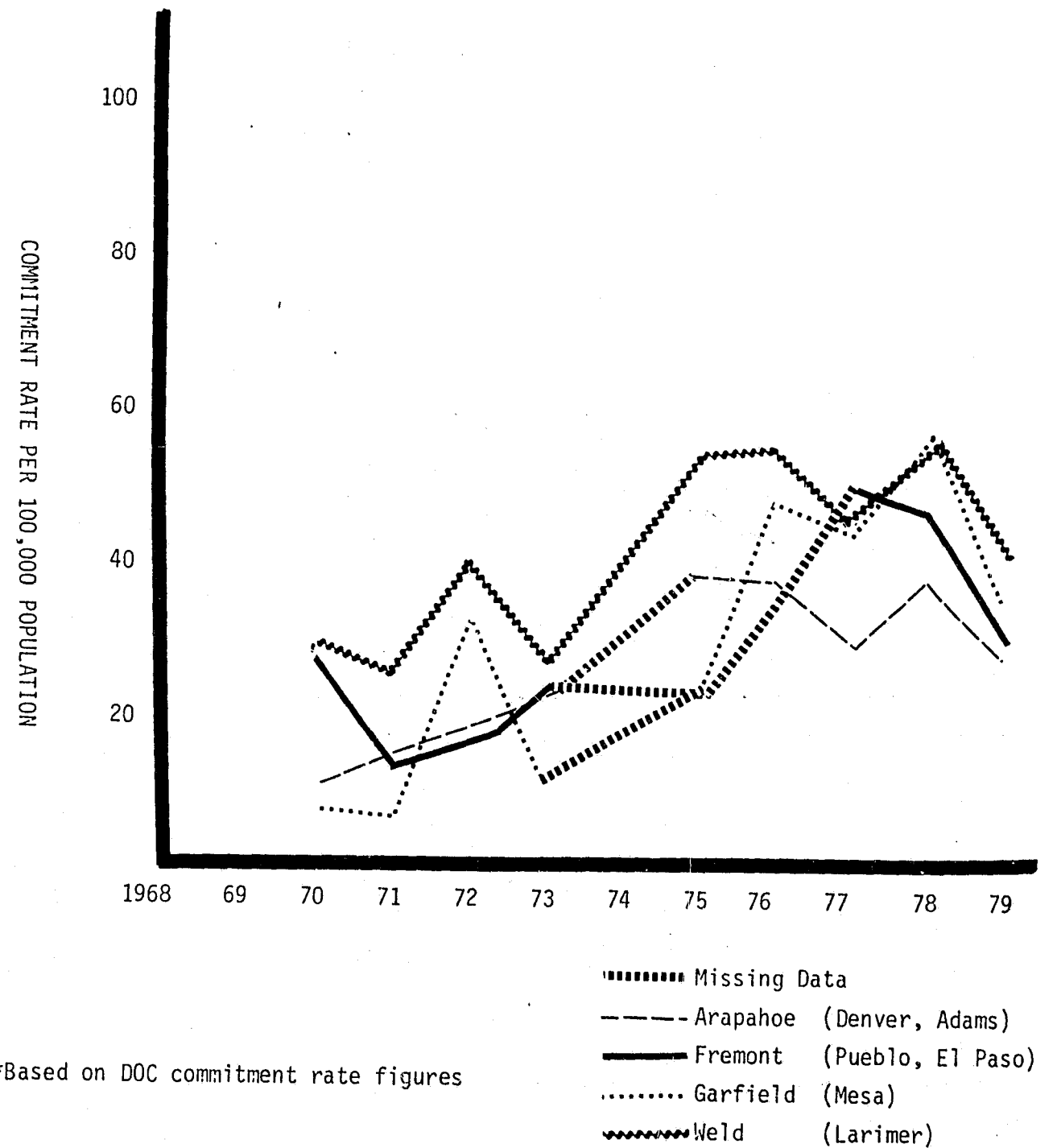
Whether or not community corrections diversion programs are diverting offenders from prison and are serving the intended population can be further explored by analyzing the characteristics of offenders in the programs. If diversion programs are truly diverting offenders from prisons, the offenders in the programs should more closely resemble those in the prison system than those on probation. If, as is sometimes claimed, the diversion programs are merely an alternative to probation, the clients in the diversion programs should be very similar to the probation population.

We would expect the prison population to contain more serious offenders because of certain statutory limitations and public safety considerations. For example, C.R.S. 1973, 16-11-309, provides for mandatory minimum sentences for violent crimes. Therefore, offenders accused or convicted of violent crimes as defined in this statute are excluded from participation in community corrections programs.

Data on the social and criminal characteristics of convicted offenders were collected from a sample of district court files.<sup>4</sup> The following counties were included in this sample: Adams, Denver, Garfield, Larimer, Logan, Mesa and Rio Grande. The data were then analyzed to determine the type of program to which the offender was sentenced. Those offenders who were sentenced to jail, or jail and probation, received a suspended sentence, or received other sentences, such as fines, were excluded from the sample. Community corrections programs were oversampled for this portion of the study to provide a reasonable sample size. A total of 738 cases are analyzed in the following section.

The comparison of offenders in the diversion programs will include social characteristics, assessed needs, criminal history, and the frequency and seriousness of the current offenses.

Figure III-2  
TRENDS IN COMMITMENT RATES  
FOR SELECTED COUNTIES NEIGHBORING  
COMMUNITY CORRECTIONS COUNTIES\*



OFFENDER SOCIAL CHARACTERISTICS

Two social characteristics, sex and ethnicity, were selected for this study. The offenders' sex was the first comparison made. As seen in Table III-3, men are more likely to receive sentences to prison or community corrections than women, as indicated by the higher ratio of men to women in prison and community corrections than on probation. Women are more likely to receive sentences to probation.

TABLE III-3  
OFFENDER SEX BY SENTENCE TYPE

Sex	Prison		Community Corrections		Probation	
	%	N	%	N	%	N
Female	8	10	9	15	22	91
Male	92	121	91	159	78	326
Total	100	131	100	174	100	417

N = 722

The ethnicity of the offender has been proposed historically as a factor in sentencing outcomes. The three categories of ethnicity that were used were Anglo, Black and Hispanic. There was no statistically significant relationship between offender ethnicity and sentence type. Blacks are slightly more likely than the other groups to be sentenced to prison and community corrections and least likely to be placed on probation. Hispanics are evenly distributed between the three programs. Anglos comprise a larger proportion of the probation population than of community corrections or prison population. Blacks comprise a larger proportion of the prison population than of the probation population.

TABLE III-4  
OFFENDER ETHNICITY BY SENTENCE TYPE

Ethnicity	Prison		Community Corrections		Probation	
	%	N	%	N	%	N
Anglo	60	79	64	105	72	280
Black	23	30	20	33	13	51
Hispanic	17	22	16	27	15	57
Total	100	131	100	165	100	388

N = 684

OFFENDER NEEDS AND SENTENCE TO PROGRAMS

Historically, community corrections programs have been viewed as offering rehabilitation services to offenders not generally available to those sentenced to prison or probation. Services offered by community corrections programs often include educational rehabilitation, drug and alcohol abuse programs, occupational training and other offender needs services. In addition, community corrections is thought to be a means of maintaining the offender's ties to the community. Therefore, offender's needs would be expected to have a bearing on placement into prison, community corrections or probation.

Five variables were selected to analyze offender needs; education, employment, mental health, alcohol treatment and drug treatment. Information regarding these variables was obtained from the presentence reports.

Education

Educational attainment was measured by whether the offender had a high school diploma or GED. As shown in Table III-5, 67 percent of the offenders sentenced to community corrections lacked a high school education, compared to 56 percent of those sentenced to prison and 47 percent of those sentenced to probation. Additional analysis of the offender's last grade of school completed showed a similar pattern.

TABLE III-5  
GED OR HIGH SCHOOL DIPLOMA BY SENTENCE TYPE

High School Education	Prison		Community Corrections		Probation	
	%	N	%	N	%	N
No	56	74	67	109	47	177
Yes	44	57	33	54	53	198
Total	100	131	100	163	100	375

N = 669

Employment

A key variable in understanding sentencing has been employment status. As shown in Table III-6, those offenders who are employed at the time of the presentence report are more likely to receive a less restrictive program assignment. Of the offenders placed in community corrections programs, approximately 65 percent were unemployed at the time of the presentence report compared to 37 percent of those sentenced to probation and 80 percent of those sentenced to prison.

TABLE III-6

## EMPLOYMENT STATUS AT TIME OF PRESENTENCE

Employment Status	Prison		Community Corrections		Probation	
	%	N	%	N	%	N
Employed	20	25	35	58	63	236
Unemployed	80	101	65	106	37	140
Total	100	126	100	164	100	376

N = 666

Mental Health Needs

Mental health was not found to have a relationship to program assignment. The results suggest that the presence or absence of mental health needs is not a factor in assigning offenders to programs. As can be seen in Table III-7, the proportion of offenders with mental health needs in each program is similar.

TABLE III-7

## MENTAL HEALTH NEEDS BY SENTENCE TYPE

Mental Health Needs	Prison		Community Corrections		Probation	
	%	N	%	N	%	N
No	78	93	80	123	81	255
Yes	22	26	20	30	19	61
Total	100	119	100	153	100	316

N = 588

Alcohol Treatment Needs

Table III-8 reveals that when alcohol problem needs are present, the likelihood of the offender receiving a sentence to community corrections increases. The proportion of offenders with alcohol treatment needs placed in community corrections programs is significantly higher than for those on probation, but only slightly higher than for those in prison.

TABLE III-8

## OFFENDER ALCOHOL TREATMENT NEEDS BY SENTENCE TYPE

Alcohol Treatment Needs	Prison		Community Corrections		Probation	
	%	N	%	N	%	N
No	65	85	61	97	80	294
Yes	35	46	39	63	20	74
Total	100	131	100	160	100	368

N = 659

Drug Treatment Needs

As shown in Table III-9, offenders with drug treatment needs are likely to be sentenced to prison, rather than to probation or community corrections. This may be explained partially by the fact that while low education, unemployment, mental health problems and alcoholism are not illegal, possession and use of "dangerous" drugs are.

TABLE III-9

## OFFENDER DRUG TREATMENT NEEDS BY SENTENCE TYPE

Drug Treatment Needs	Prison		Community Corrections		Probation	
	%	N	%	N	%	N
No	69	90	86	138	90	327
Yes	31	41	14	23	10	38
Total	100	131	100	161	100	365

N = 657

In summary, mental health needs appear to be unrelated to placement. Drug treatment needs and unemployment are most characteristic of those sentenced to prison and least characteristic of those placed on probation. Alcohol treatment needs are most characteristic of those in community corrections and prison, rather than those on probation. Finally, educational needs are most characteristic of those in community corrections and least characteristic of those on probation. Overall, probation receives relatively fewer of those with treatment or training needs.

## OFFENDER CRIMINAL HISTORY

The offender's criminal history has a bearing on sentencing to prison, community corrections or probation. Offenders with more serious and extensive criminal backgrounds receive more restrictive sentences. Table III-10 shows the percent of offenders sentenced to prison, community corrections and probation in relation to their prior criminal history.

TABLE III-10  
CRIMINAL HISTORY CHARACTERISTICS OF OFFENDERS  
AND WHERE THEY ARE SENTENCED

Criminal History Variables	Prison		Community Corrections		Probation		Total	
	%	N	%	N	%	N	%	N
Prior Misdemeanors	66	89	59	96	40	153	49	338
Prior Felonies	60	86	39	64	19	72	32	222
Prior Incarcerations	55	77	31	51	14	53	26	181
Prior Colorado Incarcerations	44	64	23	40	13	52	21	156
Prior Paroles	27	40	14	25	5	22	12	87
Prior Revocations	33	46	13	21	5	18	12	85
Prior Escapes	12	18	4	7	1	2	4	27

The criminal history variables consistently are associated and correlated with the type of program to which offenders are sentenced. Those committed to DOC generally have more prior felonies, escapes, paroles, and incarcerations. Those sentenced to probation are at the other end of the continuum, with relatively minor criminal histories. The percent of diversion clients with prior criminal histories falls approximately halfway between prison and probation. These results suggest that diversion programs are serving offenders who may not require incarceration but, nevertheless, may not necessarily be fit for probation.

## CHARACTERISTICS OF THE OFFENSE

To understand whether diversion is actually diverting, it is necessary to investigate some of the characteristics of the crime for which the offender was convicted. We would expect the characteristics of the offense to be of importance in the decision to commit, divert or assign to probation. The question is whether those sentenced to prison, community corrections and probation are significantly different groups.

To explore these relationships, seven variables related to the seriousness of the crime were selected for study.

### Number of Offenses

The first variable was the number of offenses for which the offender was charged. Offenders were classified as having one, two, three and four or more offenses. The number of offenses does not refer to prior convictions but to the current offense(s). Those offenders who are sentenced to prison have been convicted of more offenses than those sentenced to probation or community corrections.

TABLE III-11  
NUMBER OF OFFENSES BY SENTENCE TYPE

Number of Offenses	Prison		Community Corrections		Probation	
	%	N	%	N	%	N
One	39	51	57	97	64	265
Two	28	37	24	42	24	101
Three	20	26	13	22	9	36
Four or More	13	17	6	10	3	13
Total	100	131	100	171	100	415
N = 717						

### Deadly Weapon

The use of a deadly weapon is thought by some to be a major consideration in sentencing offenders to programs. As shown in the following table, using a deadly weapon increases the likelihood that offenders will be sentenced to prison. A larger proportion of those sentenced to prison used a deadly weapon in the commission of the crime than those sentenced to community corrections or probation.

**CONTINUED**

**1 OF 2**

TABLE III-12

USE OF DEADLY WEAPON BY SENTENCE TYPE

Deadly Weapon	Prison		Community Corrections		Probation	
	%	N	%	N	%	N
Not Used	83	109	96	158	95	387
Used	17	22	4	7	5	19
Total	100	131	100	165	100	406

N = 702

Physical Injury to Victim

The extent of physical injury resulting from the offense or offenses committed by the offender is the third variable analyzed. The three categories of the degree of injury were no harm, minor harm and serious harm. The results suggest that as the level of physical injury increases, the likelihood of being sent to prison increases. Only a small proportion of those offenders sentenced to community corrections and probation inflicted serious harm on the victim.

TABLE III-13

PHYSICAL INJURY TO VICTIM BY SENTENCE TYPE

Physical Injury	Prison		Community Corrections		Probation	
	%	N	%	N	%	N
No Harm	78	102	89	147	89	360
Minor Harm	11	14	7	12	7	27
Serious Harm	11	14	4	6	4	16
Total	100	130	100	165	100	403

N = 698

Type of Crime

The type of crime was compared to program placement. Table III-14 shows that 59 percent of the offenders sentenced to prison committed a violent crime. This compares to 29 percent of those in community corrections and 28 percent of those on probation.

TABLE III-14

TYPE OF CRIME BY SENTENCE TYPE

Type of Crime	Prison		Community Corrections		Probation	
	%	N	%	N	%	N
Violent	59	62	29	30	28	93
Nonviolent	41	44	71	75	72	238
Total	100	106	100	105	100	331

N = 542

Felony Class of Offense

The class of felony of the first offense charged was compared with program placement. As would be expected, a larger proportion of those sentenced to prison had committed Class 1, 2 and 3 felonies than those sentenced to community programs. Community corrections, by statute, should not be and is not receiving any Class 1 felons. The results of this comparison are presented in the following table.

TABLE III-15

FELONY CLASS AT TIME OF FILING

Felony Class	Prison		Community Corrections		Probation	
	%	#	%	N	%	N
1	4	5			1	3
2	3	4	1	1	1	4
3	40	52	23	41	15	62
4	38	50	54	94	58	242
5	10	13	16	28	15	63
Misdemeanor	5	7	6	10	10	43
Total	100	131	100	174	100	417

N = 722



Felony Class at Conviction

Class of felony at conviction is often different from the class of offense charged. For example, offenders might plead down to a lesser felony or a misdemeanor. The relationship with program placement is basically the same as it was for felony class at filing.

TABLE III-16.

CLASS OF FELONY AT CONVICTION

Felony Class	Prison		Community Corrections		Probation	
	%	N	%	N	%	N
1	1	1			1	2
2	2	2			1	1
3	27	33	17	25	7	26
4	47	58	49	73	54	198
5	17	21	24	37	17	62
Misdemeanor	6	7	10	15	22	80
Total	100	122	100	150	100	369

N = 641

Offender Status

The seventh variable was the offender's status at sentencing (either bond or jail). The results are presented in Table III-17. A significant relationship was found between being on bond and program placement. Not making bond appears to increase one's chances of receiving a sentence to prison. Those offenders sent to prison are likely to have been in jail at the time of sentencing, whereas those offenders sent to probation or community corrections are likely to have been free on bond. For example, 27 percent of the offenders in prison were on bond at the time of sentencing compared to 61 percent of those in community corrections and 87 percent of those on probation.

TABLE III-17

OFFENDER STATUS AT TIME OF SENTENCING BY PROGRAM TYPE

Offender Status	Prison		Community Corrections		Probation	
	%	N	%	N	%	N
Bond	27	35	61	97	87	330
Jail	73	96	39	62	13	49
Total	100	131	100	159	100	379

N = 669

In order to determine which of the previous individual variables best characterize offenders sentenced to probation, community corrections and prison, a discriminant analysis was performed.

Four variables emerge as being important in this analysis. Those who lack a high school diploma or graduate equivalency degree (GED), and/or those diagnosed as having alcohol problems are most likely to be placed in community corrections. Those who have inflicted serious physical injury and/or those who are unemployed at the time of the presentence report are more likely to be incarcerated. Community corrections receives those offenders who have not committed serious physical injury, possibly because of the statutory mandate noted earlier. Probation is most likely to receive those who have a high school diploma, are employed, and have no alcohol treatment needs.

All other things being equal, the following profiles emerge for the three programs:

1. Imprisonment - unemployed offenders who have inflicted serious physical injury.
2. Community corrections - nonviolent offenders who have serious educational or alcohol treatment needs.
3. Probation - employed, educated offenders with no serious alcohol problems.

We must emphasize that these are group characteristics, and may not be applicable to specific individuals or to offenders in all community corrections programs.

The discriminant analysis results were used to predict program placement. The predicted placement for each offender (based on possession of GED or diploma, alcohol treatment needs, whether serious injury was inflicted, and employment) was compared to the offender's actual placement. The prediction coincided with the actual placement for 51 percent of the of-

fenders, including 55 percent of the actual probationers and 60 percent of those incarcerated. For community corrections, only 36 percent of the predictors coincided. More importantly, for those that did not coincide, twice as many were predicted to go to prison (42 percent) as to probation (22 percent).

A study done for the Department of Corrections by Winterfield (1979), based on offenders in the City and County of Denver, used a larger set of variables to predict placement into probation, community corrections or prison. Of 13 community corrections offenders incorrectly classified, ten were classified into probation and three into the Department of Corrections. Had community corrections not been an available option, Winterfield's results suggest that 51 percent would have been placed on probation and 49 percent would have been sent to the Department of Corrections. This is consistent with our observation that community corrections may be a distinct third option for offender placement. These results suggest:

1. Community corrections clients more closely resemble imprisoned offenders than probationers, implying that diversion from the Department of Corrections is taking place.
2. Community corrections programs are likely to receive clients with treatment and service needs. Therefore, community corrections is being used not only for diversion, but also as a distinct, separate third option for offenders with certain kinds of needs or problems.

### RECIDIVISM AND COMMUNITY ALTERNATIVE PROGRAMS IN COLORADO

The use of community corrections has been suggested as a viable way of reducing the pressures of overcrowding in Colorado's correctional facilities. However, this may not be politically acceptable if the risks to the public are too great. This option cannot be considered until more is known about the risk of placing additional offenders in community corrections programs. Does placing more offenders in community programs substantially increase the amount of risk, in the form of new crime? The question is an important one that will be addressed in this section.

There is very little agreement on what constitutes risk. For the purposes of this study, rearrest data is used to represent risk. Arrest data has several limitations. It does not account for unreported crimes and reported crimes committed by the offender for which an arrest is not made. In addition, the past record of an offender may result in the offender being arrested for crimes he did not commit. However, rearrest data is the best indicator of risk to the community available at this time. Based on victimization studies, rearrest probably underestimates the actual level of recidivism.

### COUNTY LEVEL DATA

As part of this analysis, crime rates and trends were compared for counties before and after the establishment of community corrections. Crime in general was indicated by rates of crime known to the police, property crime by auto theft and violent crime by homicide. The latter two rates are the most accurately reported by police agencies. The findings indicate that community corrections programs tend to be located in areas with large populations and high crime rates, but that the programs themselves have little or no impact on those rates.<sup>5</sup> This finding is consistent with other findings on community corrections.

### RATES OF RECIDIVISM

It is important to look at the amount of crime as well as the type of crime that can be expected if additional people are put into the community.

Table III-18 shows the rate of recidivism for those sentenced to probation, community corrections diversion programs and prisons. Of the 381 offenders for which information was available, 33.1 percent recidivated after they had been sentenced. Twenty-one percent of those sentenced to probation recidivated, compared to 36 percent of those sentenced to community corrections programs and 62 percent for those sentenced to prison.

The rates of recidivism were determined by matching the offender with criminal history records, to determine whether an offender committed any crimes after sentencing to programs. This procedure is limited by the number of successful matches. Since the criminal history records are incomplete, the rates of recidivism may be underestimated.

TABLE III-18  
RECIDIVISM BY TYPE OF SENTENCE

Program Type	Nonrecidivists		Recidivists		Total	
	%	N	%	N	%	N
Probation	79	161	21	42	100	203
Community Corrections Diversion	64	65	36	36	100	101
Prison	38	29	62	48	100	77
						N = 381

TABLE III-19  
 RECIDIVISM BY TYPE OF CRIME

Crime of First Recidivism	Felony Class of Offense at Conviction													
	Class 1		Class 2		Class 3		Class 4		Class 5		Misdemeanor		Totals	
	%	N	%	N	%	N	%	N	%	N	%	N	%	N
<b>VIOLENT</b>														
Homicide	100	2	67	2			2	1			9	1	5	6
Kidnapping			33	1									1	1
Sexual Assault					12	5	2	1					5	6
Robbery					44	19	6	3					18	22
Assault					2	1	6	3	14	2			5	6
<b>Total Violent</b>	<b>100</b>	<b>2</b>	<b>100</b>	<b>3</b>	<b>58</b>	<b>25</b>	<b>16</b>	<b>8</b>	<b>14</b>	<b>2</b>	<b>9</b>	<b>1</b>	<b>34</b>	<b>41</b>
<b>NON-VIOLENT</b>														
Burglary					28	12	31	16	7	1	9	1	24	30
Larceny					5	2	23	12	14	2			13	16
Stolen Vehicle							10	5	7	1			5	6
Forgery							4	2	14	2			3	4
Fraud							8	4					3	4
Stolen Property							2	1					1	1
Damage Property											9	1	1	1
Dangerous Drugs					7	3	4	2	14	2	64	7	11	14
Obstructing the Law					2	1	2	1			9	1	2	3
Traffic									30	4			3	4
<b>Total Non-violent</b>					<b>42</b>	<b>18</b>	<b>84</b>	<b>43</b>	<b>85</b>	<b>12</b>	<b>91</b>	<b>10</b>	<b>66</b>	<b>83</b>
<b>TOTAL</b>	<b>100</b>	<b>2</b>	<b>100</b>	<b>2</b>	<b>100</b>	<b>43</b>	<b>100</b>	<b>51</b>	<b>100</b>	<b>14</b>	<b>100</b>	<b>11</b>	<b>100</b>	<b>124</b>

N=124

TYPE OF OFFENSES

Table III-19 presents the types of crime committed by offenders sentenced to probation, community corrections and prison. The table also indicates the felony class for which the offender was originally sentenced. The most common type of crime committed by recidivists was burglary (24 percent), followed by robbery with 18 percent. Thirty-four percent of the crimes of recidivism were violent compared with 66 percent nonviolent.

The proportion of offenders who recidivated with a violent crime is higher for those who had been sentenced for a higher class felony. One hundred percent of those convicted of Class 1 and 2 felonies who recidivated committed a violent crime, as compared to 58 percent for Class 3, 16 percent for Class 4 and 14 percent for Class 5.

OFFENDER CHARACTERISTICS

In addition to the analysis on recidivism rates and types of offenses, comparisons were made between offender characteristics and recidivism to determine which offenders are the greatest risk to the community.

Alcohol Treatment Needs

Offender alcohol and drug treatment needs were the first two comparisons made with recidivism. As Table III-20 reveals, the offender's needs for alcohol treatment are not related to whether recidivism occurs. For example, 35 percent of offenders without treatment needs recidivated, compared with 37 percent of those with such needs.

Offender Alcohol Treatment Needs	Nonrecidivists		Recidivists		Total	
	%	N	%	N	%	N
No Treatment Needs	65	211	35	113	100	324
Has Treatment Needs	63	83	37	48	100	131
						N = 455

Drug Treatment Needs

Table III-21 presents the data on offender drug treatment needs. For offenders without treatment needs, 33 percent recidivated, compared with 51 percent of offenders with treatment needs.

Offender Drug Treatment Needs	Nonrecidivists		Recidivists		Total	
	%	N	%	N	%	N
No Treatment Needs	67	259	33	127	100	386
Has Treatment Needs	49	34	51	35	100	69
N = 455						

Mental Health Treatment Needs

Table III-22 presents the data on offenders' mental health treatment needs. Thirty-three percent of the offenders without treatment needs recidivated compared with 41 percent of offenders with treatment needs. The results suggest that offenders in need of mental health treatment tend to recidivate at a higher rate.

Offender Mental Health Treatment Needs	Nonrecidivists		Recidivists		Total	
	%	N	%	N	%	N
No Treatment Needs	67	217	33	107	100	324
Has Treatment Needs	59	50	41	35	100	85
N = 409						

Employment Status at Time of Arrest

Table III-23 presents the data on the offenders' employment status at the time of arrest. Offenders who were employed at the time of arrest recidivated at a 27 percent rate, compared with a 43 percent rate for unemployed offenders.

Employment Status	Nonrecidivists		Recidivists		Total	
	%	N	%	N	%	N
Employed	73	148	27	56	100	204
Unemployed	57	139	43	105	100	244
N = 448						

Prior Felony Convictions

In addition to offenders' treatment needs, comparisons were made on two indicators of the offenders' criminal history and recidivism. Table III-24 shows the relationship of prior felony convictions to recidivism. The offenders with more extensive records of prior felony convictions are more likely to recidivate than offenders with fewer felony convictions. For example, only 30 percent of the offenders with no prior felonies recidivated, compared to 58 percent of the offenders with four or more.

TABLE III-24

PRIOR FELONY CONVICTIONS

Prior Felony Convictions	Nonrecidivists		Recidivists		Total	
	%	N	%	N	%	N
None	70	205	30	86	100	291
One	60	52	40	35	100	87
Two	54	27	46	23	100	50
Three	53	10	47	9	100	19
Four or More	42	10	58	14	100	24
N = 471						

Prior Colorado Incarcerations

Table III-25 shows the relationship of the number of prior Colorado incarcerations to recidivism. Like prior felony convictions, the data suggest that offenders with more extensive criminal backgrounds, as represented by the number of incarcerations, are more likely to recidivate. For example, 65 percent of those with four or more prior incarcerations recidivated, compared with 36 percent of those with only one prior incarceration.

TABLE III-25

PRIOR NUMBER OF COLORADO INCARCERATIONS

Prior Colorado Incarcerations	Nonrecidivists		Recidivists		Total	
	%	N	%	N	%	N
One	64	46	36	26	100	72
Two	60	18	40	12	100	30
Three	59	10	41	7	100	17
Four	35	6	65	11	100	17
N = 136						

Felony Class of Offense

Five variables that characterized the crime for which the offender was convicted prior to the first arrest for recidivism were selected to determine if they were related to recidivism. The first comparison was the felony class of the offense and recidivism. Table III-26 presents the results of this comparison. According to the table, Class 5 felons are the group least likely to recidivate, followed by Class 4 felons. There are so few Class 1 and 2 felons that making comparisons including them is difficult.

TABLE III-26

FELONY CLASS OF FIRST OFFENSE

Felony Class	Nonrecidivist		Recidivists		Total	
	%	N	%	N	%	N
1			100	3	100	3
2	60	3	40	2	100	5
3	59	69	41	48	100	117
4	68	164	32	76	100	240
5	70	63	30	27	100	90
Misdemeanor	59	24	41	17	100	41
N = 496						

Number of Offenses

Offenders who were convicted of several crimes are more likely to recidivate. (See Table III-27.) For example, 30 percent of offenders with one offense recidivated, compared to 48 percent of the offenders with four or more offenses.

TABLE III-27

THE NUMBER OF OFFENSES FOR WHICH  
THE OFFENDER WAS SENTENCED

Number of Offenses	Nonrecidivists		Recidivists		Total	
	%	N	%	N	%	N
None	100	3			100	3
One	70	194	30	85	100	279
Two	59	76	41	54	100	130
Three	63	36	37	21	100	57
Four or More	52	15	48	14	100	29

N = 498

Violence

A comparison was made between offenders who were convicted of a violent or nonviolent crime and recidivism. Table III-28 presents the results. The table shows that violent offenders are slightly more likely than nonviolent offenders to recidivate. This difference, however, is not very large (6 percent).

TABLE III-28

## VIOLENT AND NONVIOLENT OFFENDERS

Type of Crime	Nonrecidivists		Recidivists		Total	
	%	N	%	N	%	N
Violent	61	77	39	50	100	127
Nonviolent	67	247	33	124	100	371

N = 498

Physical Injury

Whether the offender inflicted physical injury to the victim appears to be a better predictor of recidivism than whether or not the offense was a violent crime. Table III-29 reveals that 54 percent of the offenders inflicting harm recidivated, compared with 34 percent who had not.

TABLE III-29

## PHYSICAL INJURY

Harm	Nonrecidivists		Recidivists		Total	
	%	N	%	N	%	N
No Serious Harm	66	299	34	156	100	455
Serious Harm	46	11	54	13	100	24

N = 479

Use of a Deadly Weapon

The final comparison was between the use of a deadly weapon and recidivism. Table III-30 shows the results of this comparison. The table shows that 35 percent of the offenders who had not used a deadly weapon recidivated, compared to 42 percent of those who had.

TABLE III-30

## DEADLY WEAPON USED

Deadly Weapon	Nonrecidivists		Recidivists		Total	
	%	N	%	N	%	N
Not Used	65	292	35	155	100	447
Used	58	21	42	15	100	36

N = 483

## OFFENDERS MOST LIKELY TO RECIDIVATE

An analysis of variance and covariance was performed in order to compare the effects of program placement and individual characteristics on recidivism as identified by discriminant analysis. For general recidivism, those who were most likely to recidivate were those who:

1. had inflicted serious injury;
2. were unemployed at the time of arrest; and/or
3. had many prior Colorado incarcerations.

The individual characteristic that best describes general recidivists is having inflicted serious injury.

When both individual characteristics and program placement are considered, program placement has a greater effect on general recidivism than any one of the individual characteristics. Those sentenced to prison, despite the fact that they are presumably incapacitated for some time, have the highest rate of recidivism.

For violent recidivists, as with general recidivists, the effect of program placement is more important than any one of the individual characteristics.

In addition, those who had been convicted of a higher class felony are more likely to recidivate with a violent crime than those convicted of a less serious felony. If the use of community alternatives is increased, the variables discussed previously should be used to screen offenders for placement. However, these variables can not predict all of the recidivism. Increasing the number of offenders in the community will increase the potential risk, but the amount of violence or crimes against persons can be minimized using these variables in the decision-making process.

## CONCLUSION

If the use of community alternatives is increased, it is unlikely that rates of crime or rearrest will increase. The variables discussed above do not explain all of the recidivism, but they do indicate that both program placement and individual characteristics are important. They particularly support the use of diversion and probation for nonviolent offenders. Increasing the number of offenders in the community will increase the potential risk, but the amount of violence or crimes against persons can be minimized using these variables in the decisionmaking process.

## FOOTNOTES

1. National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C.: U.S. Government Printing Office, 1973) p. 222.
2. Division of Criminal Justice, Comprehensive Community Corrections Plan, 1978, p. III-11 to III-14.
3. (See complete list of references on following page.)
4. It should be noted that fifty-four percent of the cases were drawn from Denver, which has a reputation for "progressive or liberal" attitudes toward the use of community corrections. This may seem excessive or biasing of the results. However, one half of the community corrections programs in Colorado are in Denver. In addition, at the county level, the pattern experienced by Denver is similar to that experienced by other counties (e.g., Larimer and Adams).
5. Venezia, P.S. and Steggerda, R.O., Residential Corrections: An Alternative to Incarceration (Washington, D.C.: National Council on Crime and Delinquency, 1973); and Carlson, E.W. et al., Halfway Houses: National Evaluation Program, Phase I, Summary Report (Washington, D.C.: U.S. Government Printing Office, 1977).



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#### CHAPTER IV: INMATE CLASSIFICATION

#### CHAPTER IV: INMATE CLASSIFICATION

Many states in addition to Colorado are attempting to address a prison overcrowding problem. One alternative used is to restructure the inmate classification system. This system is used to meet inmate program needs and maximize management flexibility.

Inmate classification is defined by the American Correctional Association as,

...the process by which a correctional system determines differential care and handling of offenders and assigns them according to their needs and the availability of resources. It is a multidimensional process, which goes beyond the management of offenders for the convenience of the agency and involves the determination of security ratings or custody status, education, training, work requirements and the individual resocialization needs.<sup>1</sup>

A general philosophy has emerged from a literature review of the efforts of other states to develop new classification systems. Incarceration should be used only as a last resort, for as short a period as possible, and only for offenders who present a demonstrable risk to public safety or who are convicted of a crime for which society demands punishment through imprisonment.

No inmate should receive more surveillance or assistance than required or be kept in a more secure status than potential risk requires. In addition, correctional systems should provide a means and a consistent rationale for moving inmates, when warranted, through reduced or increased security levels and custody assignments.

The trend throughout the country appears to be to simplify and reduce subjectivity in classification systems. Usually, this is accomplished by reducing the amount of narration and basing the classification decision more on empirical offender data. This results in more uniform decisions and a significant reduction in the time required to conduct classifications. For example, Florida claims that a classification decision can be made in as little as ten minutes with their new system.

The needs of an inmate population, as determined through classification, can affect the relative resources needed by a correctional system to manage that population. Thus, current and projected patterns of inmate population characteristics, as determined by classification, are an important factor in determining future physical and program resources needed by the system.

An attempt will be made in this chapter to answer the following two questions:

1. Are there currently inmates in the prison population who could be appropriately placed in community programs, thereby relieving the overcrowding problem?
2. Are there changes in the classification and placement process which could be made that would contribute to a reduction in the prison population without substantially increasing risk to the community?

An attempt will be made to address these two questions by 1) describing the classification system data on the current population; 2) comparing initial recommendations for security classification and facility placement to initial placements in the population; 3) comparing inmate characteristics at intake for FY1975-76 and FY1979-80; and 4) analyzing data on the current population.

### COLORADO'S CURRENT INMATE CLASSIFICATION SYSTEM

All persons sentenced to prison are initially placed in the Reception and Diagnostic Center located at the Canon Correctional Facility. The Center has a capacity for 118 inmates. Men are housed in the facility and women are brought there on a daily basis for diagnosis and initial classification. The diagnostic process is designed to last about nine days and includes psychological, vocational, intelligence testing and screening for drug and alcohol abuse problems. At the conclusion of this process, inmates are assigned a security classification and transferred to one of the correctional facilities. Periodic reviews of each inmate's security classification and current facility placement are conducted as the basis for moving inmates as space becomes available in programs.

The Department of Corrections implemented the current diagnostic and classification system in 1978. The Department contracts with Herbert Eber and Psychological Resources, Inc., of Atlanta, Georgia, to develop a computerized classification program (Psychodiagnostic and Risk Assessment System) and an information storage and retrieval system (VISOR).

All inmates are administered an initial battery of tests which includes the Sixteen Personality Factor Test, Motivational Analysis Test, Clinical Analysis Questionnaire, Culture Fair Intelligence Test, and a Vocational Interest Measure Test. In addition to the psychodiagnostic battery, the Diagnostic Center also administers the Short Occupation Knowledge Test which measures an inmate's claimed proficiency in 12 different fields. Another series of tests, the Substance Involvement Inventory, is administered to evaluate the degree of claimed substance involvement. Results indicate whether or not the inmate has a problem with alcohol or drugs. The reports also include predictive indices for suicide, assault, escape, victim and psychotic behavior proneness.

The automated system scores the tests and prints a series of integrated narrative interpretations in the form of a special user report. These special reports are distributed to medical, mental health, vocational rehabilitation, correctional industries and case management staff, as well as to the inmate. Areas which can be addressed by the reports include: vocational competence, vocational interests, special assets and liabilities, motivational patterns, barriers (if any) to vocational functioning, counseling needs, critical problem areas, substance involvement problems, medical/psychiatric factors, favorable and unfavorable program participation patterns, and remedial educational needs. Each special report is designated to include only those areas pertinent to the particular user's needs. The results of these tests are used to recommend facility placement and security designations within correctional facilities.

Initial placement is currently made under the authority of the head of the Diagnostic Center. Operationally, when inmates are ready for movement out of the Center, the recommended facilities are called and asked about bedspace availability. If bedspace is available an inmate is sent to the facility. When bedspace is not available, a temporary placement is made, either at the Center or some other facility, usually Old Max. The inmate is then transferred to the recommended facility when space becomes available. Subsequent facility placements are controlled by the Central Office and "...require authorization by the Executive Director prior to transfer" (DOC Regulation 202-1, Sect.9a[4]). Once an inmate is assigned to a facility, a classification officer or committee decides on an appropriate security classification and the physical placement of the inmate within the facility. While the security classification suggested by the Diagnostic Center staff may be considered, it is not binding to the classification officer/committee. Periodic reviews of facility and security placement are provided for by departmental regulation.

Decisions on security classification and facility placement take into account (1) program needs of the inmate, (2) risks associated with placement, and (3) availability of DOC resources. Given current resources, decisions on inmate needs and risk must be made in the context of resource availability. Table IV-1 describes the departmental criteria used for placement in each facility.

Several problems with the inmate classification system used by the Department of Corrections are cited in the Ramos et al. vs. Colorado case. These include the validity of the system, restrictions imposed on facility placement by departmental criteria and staff shortages, qualifications and training.<sup>2</sup>

This report will not address the quality of the classification system. However, several other states have adopted the same system. Georgia has used the system several years longer than Colorado. As noted earlier, many states have recently developed simplified systems which allow classification decisions to be made in a short period of time. It is recommended that an evaluation of the inmate classification system be conducted in the future. Although the types of tests given inmates, and staffing of the Diagnostic Center cannot be evaluated in this study, the following sections will review some of the results of the process.

TABLE IV-1  
 CRITERIA FOR PLACEMENT OF INMATES IN FACILITIES BASED ON  
 TYPE OF CRIME, AGE AND SEX, AND LENGTH OF TIME TO PAROLE

Assignment Criteria	Facility					
	CCF	FCF	BVCF	CAMP	COMMUNITY	CWCF
Length of Time To Parole	More than 4 1/2 years	4 1/2 years or less	4 1/2 years or less	20 months or less	Five months or less (20 months as permanent party held if all other criteria are met)	
Escape	Conviction or Administrative Conviction Last 18 months					
Type Offender	Habitual, violent	non-violent	non-violent	If violent, 6 months in more restrictive facilities un- less waived/ no life sentences or sex offend- ers	No life senten- ces or sex offenders	
Medical Needs	Physician required on site			On site access to physician not required	Infirmery not required on site	
Age	21 or over		28 years old and under			
Security Status				Minimum	Community	
Detainers/ Pending	Violent			No violent or felony	No felony	
Other						Must remain until eligible for community facility

## CLASSIFICATION AND PLACEMENT

A comparison was made between the Reception and Diagnostic Center's recommendation for initial placement by facility and the actual placement. Table IV-2 presents this comparison for all admissions from July 1, 1979 to June 30, 1980.

During this period, for the 1,227 admissions for which data were available, the diagnostic unit recommended that 107 persons be placed in the Canon Correctional Facility. All 107 of these people were placed in that facility.

The row percents in the table show that of the 332 inmates recommended by the diagnostic unit for placement in Fremont, only 29.8 percent were placed in that facility. Ninety-one percent of those recommended for placement in Buena Vista, 100 percent for CWC, and 8 percent for Delta were initially placed in the recommended facility.

The column percents shown in parentheses are the proportion of inmates placed in the Canon City facility (Old Max) compared to the recommended placement. For example, 27 percent of the inmates in Canon Correctional Facility were recommended for placement in that facility. Fifty eight percent of the persons placed in Canon were initially recommended for placement in Fremont, and a total of 72 percent of the admissions for FY1979-80 initially placed in Old Max were recommended for placement in another less secure facility.

As previously discussed, many of the differences between recommended placement and initial placement may be explained by the lack of adequate bed space in the appropriate facility. In addition, decisions on inmate placement must include consideration of the program, medical and mental health needs of inmates and where these needs can best be met. Security problems associated with the inmate and the need to provide protective custody for certain inmates may also influence placement.

Since initial placement, as shown in Table IV-2, reflects a backlog of inmates on temporary placement waiting for available space in the preferred facility of placement, an analysis of facility of placement 90 days following intake at the Diagnostic Center may more accurately reflect facility of placement 90 days following diagnostic intake was not available for the FY1979-80 cohort represented in Table IV-2, so the analysis was conducted on a sample of 295 active inmates as of August, 1980, taken from Diagnostic Center files. While the diagnostic sample of 295 active inmates includes some cases which do not fall in the FY1979-80 cohort, we are assuming little or no difference in the backlog problems between samples.

Table IV-3 shows that at three months (90 days) after intake at the Diagnostic Center, for the sample of 295 intake cases, 55 percent of cases at Max were diagnosed as needing placement there, compared to 27.1 percent

for the FY1979-80 cohort. Similarly, the placement at Fremont is 47.1 percent as compared to 29.8 percent. It appears that many of the backlog problems are cleared up shortly after initial placement and a higher proportion of persons in more secure facilities were initially diagnosed as needing placement there. The reader should be cautioned that the use of a 90 day period permits some movement which does not necessarily reflect backlog problems. This trend can be seen in the placement of persons diagnosed as needing placement in Buena Vista. Within the 90-day period, 17.9 percent have been moved out of Buena Vista, either to a camp or some other less secure facility.

The figures presented in the tables represent a facility at first placement. The diagnostic unit also makes a recommendation as to security classification. Data were not available to compare the recommended security level with the actual security classification at first placement.

As mentioned earlier, the diagnostic unit was established in 1978. The mix of the inmate population with respect to security classification has changed from 1978, with a larger percentage of the inmates placed in less secure classification levels. Table IV-4 shows that on May 18, 1978, 30 percent of the inmates in the correctional facilities were classified as maximum security. The percent of the population classified as maximum security has decreased continuously to a figure of 16 percent on May 23, 1980. These figures are from a sample of intake population, not total resident population. The proportion of inmates classified as close security has increased, as has that of minimum security inmates. The proportion of medium security and community inmates has remained relatively unchanged.

It appears from the data presented that the Department of Corrections is moving toward a less restrictive classification system. In addition, the Department of Corrections implemented several changes in the classification system on November 1, 1980. These new criteria will limit the maximum security level inmates to those who have an active death penalty sentence, or have demonstrated a violent or disruptive pattern. Close security classification will include those inmates who demonstrate a high potential for violence. Medium and minimum classification are less restrictive.

These changes reflect the anticipated move to the New Max and New Close facilities in 1981. Opening of these facilities will alter the available alternatives and should improve the flexibility of the department to classify inmates.

TABLE IV-2

FACILITY OF FIRST PLACEMENT AS A PERCENTAGE OF DIAGNOSTIC PLACEMENT RECOMMENDATIONS

Diagnostic Recommendation	FACILITY OF FIRST PLACEMENT						TOTALS							
	Canon Correctional Facility		Fremont Correctional Facility		Buena Vista Correctional Facility		Colorado Womens Correctional Facility		Delta Correctional Facility		Other		Cases	
	%	N	%	N	%	N	%	N	%	N	%	N	%	N
Canon Correctional Facility	100	107											100%	107
	(27.1)												(8.7)	
Fremont Correctional Facility	69.6	231	29.8	99	.3	1					0.3	1	100%	332
	(58.5)		(100)		(.1)						(6.7)		(27.2)	
Buena Vista Correctional Facility	8.9	40			91.1	407							100%	447
	(10.1)				(75.8)								(36.4)	
Colorado Womens Correctional Facility							100	170					100%	170
							(100)						(13.9)	
Delta Correctional Facility	9.4	15			81.1	129			8.2	13	1.3	2	100%	159
	(3.8)				(24.1)				(100)		(15.4)		(12.9)	
Other	16.7	2									83.3	10	100%	12
	(0.5)										(77.9)		(.9)	
Total	100%	395	100%	99	100%	537	100%	170	100%	13	100%	13	100%	1227

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TABLE IV-3

FACILITY OF PLACEMENT AT 90 DAYS AS A PERCENTAGE  
OF DIAGNOSTIC PLACEMENT RECOMMENDATIONS

Diagnostic Recommendation	FACILITY OF FIRST PLACEMENT						TOTALS							
	Canon Correctional Facility		Fremont Correctional Facility		Buena Vista Correctional Facility		Colorado Womens Correctional Facility		Delta Correctional Facility		Other		Cases	
	%	N	%	N	%	N	%	N	%	N	%	N	%	N
Canon Correctional Facility	81.5 (55.0)	22	14.8 (11.4)	4					3.7 (6.7)	1			100% (12.1)	27
Fremont Correctional Facility	21.6 (27.5)	11	47.1 (68.7)	24					7.8 (26.6)		23.5 (50.0)	12	100% (22.9)	51
Buena Vista Correctional Facility	1.6 (2.5)	1	1.6 (2.8)	1	78.9 (84.2)	48			9.8 (40.0)	6	8.1 (20.9)	5	100% (27.4)	61
Colorado Womens Correctional Facility	5.1 (7.5)	3					88.1 (100)	52			6.8 (16.6)	4	100% (26.4)	59
Delta Correctional Facility	20.0 (5.0)	2	20.0 (5.7)	2	30.0 (5.3)	3			30.0 (20.0)	3			100% (4.5)	10
Other	6.7 (2.5)	1	26.6 (11.4)	4	40.0 (10.5)	6			6.7 (6.7)	1	20.0 (12.5)	3	100% (6.7)	15
Total	100%	40	100%	35	100%	57	100%	52	100%	15	100%	24	100%	223*

\*Within the 90 day period, 70 persons of 293 included in this analysis moved either onto Parole, or were directly released from DOC.



TABLE IV-4

## SECURITY CLASSIFICATION SUMMARY 1979-1980

	Maximum	Close	Medium	Minimum A	Minimum B	Total Classified
	%	%	%	%	%	N
5/18/78	30	22	24	12	12	2,234
6/16/78	32	22	22	12	12	2,401
7/13/78	32	22	22	12	12	2,349
2/16/78	29	23	19	16	13	2,494
3/16/78	29	22	20	15	14	2,494
6/8/79	26	22	20	18	14	2,406
7/6/79	27	21	21	18	13	2,413
8/17/79	25	23	21	19	12	2,445
9/21/79	23	24	22	20	11	2,445
10/19/79	18	29	22	20	11	2,483
11/16/79	17	30	22	19	12	2,569
12/13/79	17	31	20	20	12	2,569
1/11/80	17	31	20	20	12	2,556
5/23/80	16	32	19	20	13	2,652

## INMATE CHARACTERISTICS AT INTAKE

### FY1975-76 AND FY1979-80

If a portion of the prison population is being overclassified a change in the system would allow more inmates to be housed in less secure facilities or in community placement alternatives. This shift could reduce the prison overcrowding problem.

There are some offenders who must be incarcerated to protect the public. No method has yet been devised to accurately determine which offenders are a threat to society. Therefore, a policy decision must be made regarding the types of people who should be incarcerated versus those who should be placed in the community. A profile of the inmate population must be analyzed to determine if a shift in policy is appropriate. Do all of the people currently sentenced to DOC need to be incarcerated?

This section will provide a comparison of inmates committed in FY1975-76 with a sample of those committed in FY1979-80 to determine if the inmate population has changed over time. The comparison will be made on four characteristics: ethnicity, education, felony class of offense at conviction and type of offense for which the offender was sentenced.

The characteristics of the offenders committed in FY1979-80 are very similar to those committed in FY1975-76 as shown in the tables which follow.

#### ETHNICITY

The ethnic distribution of offenders shown in Table IV-5 indicates a slight increase in the proportion of Anglo offenders and a slight decrease in the proportion of Black and Hispanic offenders over the past four years.

TABLE IV-5				
ETHNICITY OF OFFENDERS				
	FY1975/1976		FY1979/1980	
	N	%	N	%
Anglo	734	53.0	101	56.2
Black	264	19.1	32	17.8
Hispanic	377	27.2	44	24.3
Other	10	.7	3	1.7
	<u>1385</u>	<u>100.0</u>	<u>180</u>	<u>100.0</u>

## EDUCATION

Offenders committed in FY1979-80 are slightly better educated than those committed in FY1975-76 (Table IV-6). The proportion of offenders with less than a high school education has decreased from 74 percent to 69 percent.

TABLE IV-6		
EDUCATION LEVEL OF OFFENDERS		
	FY1975/1976	FY1979/1980
Less than high school	74%	69%
High school	19	21
High school +	7	10
	<u>100%</u>	<u>100%</u>

#### FELONY CLASS

Table IV-7 compares the felony class of offenders between FY1975-76 and FY1979-80. Felony classes 1, 2 and 3 are virtually unchanged. The figures for FY1975-76 show drug offenses as a separate category. In FY1979-80, these cases are incorporated primarily into the Class 4 and 5 categories, which explains part of the increase in these two categories.

TABLE IV-7		
FELONY CLASS OF OFFENSE AT CONVICTION		
Felony Class	FY1975/1976	FY1979/1980
1	1%	.7%
2	3	3.5
3	16	15.4
4	47	49.3
5	18	24.9
Misdemeanor	6	6.2
Narcotic	9	N/A
	<u>100.0%</u>	<u>100.0%</u>

TYPE OF OFFENSE

The proportion of offenders committed for violent crimes has increased approximately 4 percent from FY1975-76 to FY1979-80, as shown in Table IV-8. The proportion of narcotic offenses has decreased from 9 percent to 5 percent. Burglary and larceny have not changed significantly.

TABLE IV-8  
TYPE OF OFFENSE AT CONVICTION

Type of Offense	FY1975/1976		FY1979/1980	
	N	%	N	%
<u>Violent</u>				
Murder and Homicide	46	3	7	5
Sexual Assault	44	3	8	5
Assault	161	10	17	12
Robbery	<u>263</u>	<u>16</u>	<u>22</u>	<u>14</u>
Total Violent	514	32	54	36
<u>Non-Violent</u>				
Burglary	405	25	40	27
Larceny	231	14	21	14
Forgery	84	5	N/A	N/A
Narcotic	144	9	8	5
Other	<u>232</u>	<u>15</u>	<u>26</u>	<u>18</u>
Total Non-Violent	1096	68	95	64
Total Offenses	1610	100	149	100

PROFILE OF CURRENT POPULATION

In the previous section, a comparison was made between intake cohorts 1975-76 and 1979-80. Intake cohorts are not, however, synonymous with active prison population, which is likely to have a much higher proportion of serious offenders serving long-term sentences. Thus the active prison population is composed of an existing population continually modified by admissions and dismissals.

This section describes the active prison population, as of August 1980, on the dimensions of social characteristics, criminal history and current offense. Data on these variables are described and presented in the following tables. The sample size of active offenders for this analysis is 195 inmates selected systematically from all active inmates.

ETHNICITY

Minority offenders constitute almost half of the active prison population; 17 percent are Black and 27.2 percent are Hispanic. Distribution by ethnicity is as follows.

TABLE IV-9  
OFFENDER ETHNICITY

Ethnicity	N	%
Anglo	107	54.9
Black	33	16.9
Hispanic	53	27.2
Other	2	1.0

EDUCATION

Most incarcerated offenders have not completed high school; only 38 percent have a high school diploma or GED.

TABLE IV-10  
OFFENDER EDUCATION

High School/GED	N	%
Yes	68	38
No	111	62

MARITAL STATUS

Only about 33 percent of the offenders are married. Distribution of active offender population on this variable is as follows.

TABLE IV-11  
OFFENDER MARITAL STATUS

Marital Status	N	%
Single	86	44.3
Married/Common law	66	34.0
Separated/Divorce	39	20.1
Widowed	3	1.6

AGE

Table IV-12 shows the age distribution of the active prison population. About 60 percent of the offenders are under 30 and only about 5 percent are over age 45.

TABLE IV-12  
OFFENDER AGE GROUPS

Age	N	%
15-19	1	.6
20-24	56	35.2
25-29	38	23.9
30-34	29	18.2
35-39	17	10.7
40-44	10	6.3
45-49	4	2.5
50-54	2	1.3
55-59	2	1.3

PRIOR PRISON INCARCERATION

One indicator of prior criminal activity is the total number of mittimuses (commitments to prison) recorded in the offender's criminal history file. This measure of criminal history is conservative, however, because the total number of mittimuses indicates only convictions for which the offender was incarcerated. Prior felony or misdemeanor convictions which did not result in incarceration are not counted. Thus, many offenders presently

incarcerated for the first time may have prior felony or misdemeanor convictions not counted by total number of mittimuses. Almost 60 percent of the active population are first time prisoners in the Colorado system. The complete distribution is as follows:

TABLE IV-13  
TOTAL NUMBER OF MITTIMUSES PER OFFENDER

Total Number of Mittimuses	N	%
1	83	57.1
2	34	23.5
3	22	15.1
4 or more	6	4.3

As shown in Table IV-14, the number of mittimuses by felony class of crime indicates that felony Class 5 offenders are more likely to have criminal histories (as indicated by number of mittimuses). Of those offenders sentenced for a Class 5 felony, 53.1 percent had more than one mittimus. The second largest group of prior criminal history offenders is in felony Class 3: 46.8 percent have more than one mittimus.

CURRENT OFFENSE

Seriousness of offense is measured by type and felony class of crime. The most serious crimes involve violence against persons. Over half of the active population is incarcerated for such crimes. Table IV-14 shows the distribution of violent versus non-violent crimes by the felony class of the offense for which the inmate was convicted.

Looking only at felony class, almost half of the prison population has been committed for felony Class 4 offenses. Class 3 is the next largest felony class, represented with 25 percent. Thus, 71.5 percent of the active population was convicted of Class 3 or 4 offenses. These data are summarized in Table IV-15.

Table IV-16 shows the distribution of felony class by facility. The row percent shows that 99 percent of the Class 1 felons are placed in either Canon or Fremont Correctional facilities. Those in Classes 3, 4 and 5 are fairly evenly distributed among the facilities. The column percents show the distribution of felony class within each facility.

TABLE IV-14

FELONY OF MITTIMUSES BY FELONY  
CLASS OF OFFENSE FOR ACTIVE PRISON POPULATION

Number of Mittimuses	FELONY CLASS										Row Total			
	Class 1		Class 2		Class 3		Class 4		Class 5		Misdemeanor		%	N
	%	N	%	N	%	N	%	N	%	N	%	N	%	N
1 - Row % Column %	10 89	8	10 67	8	23 53	19	48 58	40	8 47	7	1 19	1	57	83
2 - Row % Column %			9 25	3	21 19	7	56 28	19	11 27	4	3 20	1	24	34
3 - Row % Column %	4 11	1	4 8	1	32 19	7	32 10	7	14 20	3	14 59	3	15	22
4 - Row % Column %							100	1					1	1
5 - Row % Column %					32 3	1	35 2	1	33 7	1			2	3
6 - Row % Column %					100 5	2							1	2
Column Total	6	9	8	12	25	36	47	68	10	15	4	5	146	

TABLE IV-15  
 TYPE OF CRIME BY FELONY CLASS  
 OF CRIME FOR ACTIVE PRISON POPULATION

Type of Crime	Felony Class										Row Total		
	1		2		3		4		5			Misdemeanor	
	%	N	%	N	%	N	%	N	%	N	%	N	
Violent*		9		11		22		28		2		2	74
Row %	12.2		14.9		29.7		37.8		2.7		2.7		50.6
Column %	100.0		91.6		59.4		41.1		13.3		40.0		
Nonviolent		0		1		15		40		13		3	72
Row %			1.4		20.8		55.6		18.0		4.2		49.4
Column %			8.4		40.6		58.9		86.7		60.0		
Column Total		9		12		37		68		15		5	146
	6.2		8.3		25.0		46.5		10.3		3.6		

\*Includes murder, homicide, sexual assault, robbery, kidnapping and assault.

TABLE IV-16

OFFENSE FELONY CLASS BY FACILITY  
FOR ACTIVE PRISON POPULATION

Felony Class	Canon Correctional		Fremont Correctional		Colorado Womens		Buena Vista		Honor Camps		Row Total	
	%	N	%	N	%	N	%	N	%	N	%	N
Class 1 - Row % Column %	44 9	4	55 13	5	1 1	0					6 9	
Class 2 - Row % Column %	57 15	7	33 10	4	2 4	0	8 2	1			8 12	
Class 3 - Row % Column %	38 30	14	33 32	12	2 12	1	24 20	9	3 8	1	25 37	
Class 4 - Row % Column %	22 33	15	19 34	13	6 78	4	40 60	27	13 75	9	46 68	
Class 5 - Row % Column %	33 11	5	20 8	3	1 1	0	40 13	6	6 8	1	10 15	
Misd. - Row %	19	1	19	1			39	2	19	1	4	5
Column Total	31	46	26	38	4	5	31	45	8	12		146



In summary, the active prison population can be profiled as follows:

- 55 percent Anglo, 17 percent Black, 27 percent Hispanic.
- 14 percent completed high school, about 24 percent have GEDs.
- 66 percent are unmarried.
- about 27 years old.
- 57 percent are first time prisoners, 24 percent are second time prisoners, and 19 percent are third or more.
- prisoners serving sentences for felony Class 5 and felony Class 3 crimes are more likely to have criminal histories.
- 51 percent were convicted of crimes against persons.
- 56.8 percent were convicted of felony Class 4 or 5 offenses.

#### CONCLUSION

The results of the analysis of recidivism presented in Chapter III indicate that those most likely to recidivate are those who had inflicted serious injury, were unemployed at the time of arrest and had many prior Colorado incarcerations. Therefore, offenders who were convicted of nonviolent crimes, have a good employment record or are employable and who do not have an extensive criminal history record could be placed in the community with minimal risk to public safety. In addition, if those convicted of nonviolent offenses do recidivate, it is likely to be with a nonviolent property crime.

Table IV-15 shows that 56.8 percent of the prison population (approximately 1,570 inmates) were sentenced for Class 4 and 5 felonies. Of these, 63.8 percent (approximately 1,000 inmates) were convicted of nonviolent offenses. However, the analysis of the current population showed that only 6 percent of the total population (approximately 166 inmates) were Class 4 or 5 felons who were convicted of nonviolent crimes and who were employed at the time of arrest. This analysis indicates that this is a pool of offenders who could be screened by the judiciary for placement in the community, thereby reducing the prison population.

## FOOTNOTES

1. The American Correctional Association (1978) Handbook on Correctional Classification: Classification Systems 6:84
2. Ramos et. al. v. Lamm et. al., 485 Federal Supplement 122.

## APPENDICES

APPENDIX A

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APPENDIX A  
THE DETERMINATE SENTENCING REFORM MOVEMENT

Prior to 1970, indeterminate sentencing was generally considered to be the most effective and humane approach to the problems of sentencing offenders. Since that time, the climate of opinion has radically changed. This change was largely influenced by the increased numbers of middle class persons entering prisons in the late sixties who began questioning the rehabilitative ability of the prisons generally, and indeterminate sentencing in particular.

The news media and popular works such as Jessica Mitford's Kind and Unusual Punishment (1973) took up the attack, and these works, combined with the increasing number of scientific studies which documented the existence of the unwarranted sentencing disparity and the inability of the prisons to rehabilitate prisoners successfully, led a number of states to re-examine their sentencing structure.

While proponents of indeterminate sentencing had always realized that indeterminacy was linked to disparity, the cost of unfettered determinacy was assumed to be offset by the belief that the dangerous offenders could be identified, that social rehabilitation of offenders was possible, that judges and parole boards made the best attempt to determine correct sentences, and that simple procedural reforms (such as sentencing councils) could eliminate the side effects of disparity and accountability. Growing recognition of flaws in the rehabilitative ideal combined with the widespread criticism of unfairness, led to the lessening acceptability of indeterminacy.

In its place came a variety of determinate sentencing concepts, including flat sentencing, presumptive sentencing and sentencing guidelines.

In terms of flat sentencing, most legislatures have balked at the idea of creating absolutely rigid penalties for specific convictions. Maine came closest with its new statute allowing a judge to fix a "one time" prison sentence. However, discretionary release (though labeled resentencing) is possible after one year in prison, and this law in no way controls disparity in meting out prison sentences or in the length of prison terms.

Emphasis in other states' sentencing reforms has been upon either presumptive sentencing or sentencing guidelines. Both methods rest on the idea that to reduce disparity there should be a sentencing norm which is presumed to be the "correct" sentence for a particular criminal offense. Further, both have been associated with such procedural reforms as sentencing hearings, the giving of reasons for sentencing decisions which are "outside" the presumption, and appellate review of sentences. The major difference between the two stems from the nature of their development. Presumptive sentences are essentially arbitrary, decided upon by the group which has been given the authority to develop the presumptions. In all presumptive sentencing schemes put into legislation, a small number of presumptions have been established to cover all possible sentencing contingencies.

Guideline sentencing differs in that guidelines are based upon scientific analysis of existing sentencing patterns of all judges in a jurisdiction. This analysis is used to project "average" sentences of the judges for a variety of offense and offender fact combinations. These combinations are then displayed on decisionmaking grids. The effect of sentencing guidelines was to establish an effective way to structure sentencing decisions i.e., to partially control and improve them on the basis of relevant information.

#### RESEARCH ON SENTENCING IMPACT

The California Legislature, in conjunction with the Citizens' Advisory Committee on Alternatives, hired Arthur D. Little, Inc., in 1979 to prepare a study comparing California's experience under indeterminate and determinate sentencing laws, and to assess the feasibility of adapting the current law to a sentencing commission-guideline approach.

The study was completed and submitted to the legislature in May of this year. Where available, ten-year data were used, covering the years 1969 through 1979. The California determinate sentencing law became effective July 1, 1979.

Specific findings relate to the implementation of determinate sentencing.

1. The role of the judiciary has been expanded. Courts now determine sentence lengths rather than parole, and the courts have not lost all authority to utilize probation or other sentence alternatives. The judiciary feels, however, that due to some mandatory sentence legislation, some discretion has been lost and they have been forced to make sentencing decisions deemed inappropriate to the case.
2. Prosecutors have developed more clear-cut policies regarding charging and prosecutorial strategies.
3. Prosecutors have greater influence on the sentencing decision based upon the charges filed. Overcharging is not seen as a problem due to system checks of speedy trial requirements and the fact that more serious offenses require lengthier trials.
4. Defense attorneys have a better perspective on individual cases and can better advise clients.
5. There is greater interaction between the prosecution and defense because alternatives negotiated are more readily tagged as acceptable or not acceptable for both sides.
6. The early stages of the criminal process have become more critical due to prosecutorial emphasis of the preliminary hearing phase. As a

result, plea bargaining occurs much earlier than it did under the indeterminate sentencing law.

7. Determinate sentencing has created an environment more conducive to plea bargaining, which in effect is now sentence bargaining.
8. Determinate sentencing appears to have increased the number of original guilty pleas.
9. Local corrections may be financially impacted due to the fact that under the determinate law, an accused is credited for presentence confinement. Because trial delays normally work to the benefit of the defense, the dual incentive for the defense may raise costs of local corrections.
10. The increased reliance on presentence information has required that the investigative reports be made more thoroughly, and thus they are more time-consuming to prepare.
11. Although the presentence investigator's information is now more critical, he exercises less power over the sentencing decision due, most specifically, to legislation making probation a matter that cannot be considered for certain offenses.
12. Probation departments' roles and procedures still vary significantly from county to county, indicating a possible need for uniform probation legislation. Results indicate, however, that there is a decline in the granting of probation and jail/probation.
13. Although the prison population has increased since 1977, that fact alone cannot be attributed to the determinate sentencing law. The prison population in California ranged from a high in 1970 of 25,000 to a low in 1977 of nearly 18,000. According to computations made, the 1978 population figure of 19,000 approximates the projected number of commitments had the indeterminate sentencing law continued in effect.
14. A greater number of prison sentences are being given than before, but they are short-term, property offense commitments, and can be attributed to the determinate sentencing law. These offenders were probably candidates for probation under the old law; however, notwithstanding the role of determinate sentencing law in these commitments, a perceived "law and order" attitude can also be credited with the increase in property crime commitments.
15. Use of rehabilitation programs continues under determinate sentencing, and because participation no longer affects eligibility for parole, the assumption is that those using the programs are interested in rehabilitation. Rehabilitation staffs, however, view their role as having less legitimacy because of the change in philosophy from rehabilitation to punishment.

16. Offense rates are growing less rapidly, although the notion of deterrence cannot be attributed directly to determinate sentencing.
17. Early parole, under the indeterminate sentence law, provided prison managers with the flexibility to manage the size of prison populations. Under the determinate law, this management "option" has been voided.
18. Paroling agencies have lost considerable influence as they no longer determine sentence lengths, and parole lengths have been reduced by legislation.

APPENDIX B

APPENDIX B

HOUSE BILL 1589

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CRIMINAL PROCEEDINGS

Ch. 157

CHAPTER 157

CRIMINAL PROCEEDINGS

CRIMINAL JUSTICE — IMPOSITION AND ADMINISTRATION

HOUSE BILL NO. 1589 BY REPRESENTATIVES Gorsuch, Burford, Callahan, Chavez, Davoren, DeLippio, DeSut, Dodge, Edmonds, Erickson, Fizzard, Gustafson, Hamlin, Hastings, Hilsmeier, Johnson, Kopel, Larson, Lillpop, Massari, McCroskey, McDermery, Showalter, Speltis, Strable, and Theos; also SENATORS Anderson, Woodard, Harding, Meiklejohn, and Stewart

AN ACT

CONCERNING CRIMINAL JUSTICE, AND RELATING TO THE IMPOSITION AND ADMINISTRATION THEREOF.

*Be it enacted by the General Assembly of the State of Colorado:*

Section 1. 16-11-101 (1) (h), Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is amended to read:

16-11-101. Alternatives in sentencing. (1) (h) The defendant may be sentenced to the Colorado state reformatory pursuant to sections 16-11-301 and 16-11-302 PART 3 OF THIS ARTICLE.

Section 2. 16-11-204.5 (1), Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is amended to read:

16-11-204.5. Restitution as a condition of probation. (1) As a condition of every sentence to probation, the court shall provide that the defendant make restitution to the victim of his conduct for the actual damages which were sustained. Such restitution shall be ordered by the court only as a condition of probation. The amount of such restitution shall be based on the actual, pecuniary damages sustained by the victim, the ability of the defendant to pay, and the defendant's obligations to support his dependents and to meet other family obligations; except that the making of restitution may be waived totally if the court finds that such restitution will work an undue hardship on the defendant or his family. The court shall fix the manner and time of performance.

Section 3. 16-11-302, Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is amended to read:

16-11-302. Duration of sentences. UNLESS OTHERWISE PROVIDED BY LAW AND except as otherwise provided in the "Colorado Children's Code", title 19, C.R.S. 1973, courts sentencing any person to the Colorado

*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act*

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CRIMINAL PROCEEDINGS

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state reformatory or state penitentiary FOR THE COMMISSION OF A FELONY shall fix a definite term as provided by section 18-1-105, C.R.S. 1973. The persons so sentenced shall be imprisoned and discharged as provided by other applicable statutes. No person sentenced to the Colorado state reformatory or state penitentiary shall be subjected to imprisonment for a term exceeding the term provided by the statute fixing the length of the sentence for the crime of which he was convicted and for which he was sentenced. No person committed to the Colorado state reformatory as a delinquent child shall be imprisoned for a term exceeding two years.

Section 4. Part 3 of article 11 of title 16, Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

16-11-302.5. Duration of sentences to reformatory. Courts sentencing any person to the Colorado state reformatory for the commission of a misdemeanor shall not fix a minimum term but may fix a maximum term less than the maximum provided by law for the offense. The persons so sentenced shall be imprisoned, released under parole, and discharged as provided by other applicable statutes. No person sentenced to the Colorado state reformatory shall be subjected to imprisonment for a term exceeding the maximum term provided by the statute fixing the maximum length of the sentence for the crime of which he was convicted and for which he was sentenced. A person sentenced to a term of imprisonment at the Colorado state reformatory shall be entitled to the same time credits as if he were sentenced to a term of imprisonment at the state penitentiary. No person committed to the Colorado state reformatory as a delinquent child shall be imprisoned for a term exceeding two years.

Section 5. 16-11-303, Colorado Revised Statutes 1973, 1978 Repl. Vol., is RECREATED AND REENACTED, WITH AMENDMENTS, to read:

16-11-303. Definite sentence to reformatory not void. If, through oversight or otherwise, any person is sentenced or committed to imprisonment in the Colorado state reformatory for the commission of a misdemeanor for a definite period of time, the sentence or commitment shall not for that reason be void, but the person so sentenced or committed shall be subject to the liabilities and entitled to the benefits which are applicable to those persons who are properly sentenced to the Colorado state reformatory.

Section 6. 16-11-304, Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is amended to read:

16-11-304. Determinate sentence of imprisonment imposed by court. When a person has been convicted of a felony and a sentence of imprisonment imposed, the court imposing the sentence shall fix a definite term of imprisonment, which shall be not longer than the term fixed pursuant to TERMS AUTHORIZED IN section 18-1-105, C.R.S. 1973.

Section 7. 16-11-306, Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

16-11-306. Credit for presentence confinement. A person who is confined prior to the imposition of sentence is entitled to credit against the term of



his sentence for the entire period of such confinement. At the time of sentencing, the court shall make a finding of the amount of presentence confinement to which the offender is entitled and shall include such finding in the mittimus. Such period of confinement shall be deducted from the sentence by the department of corrections.

Section 8. 16-11-307 (1)(b), Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended to read:

**16-11-307. Credit for confinement.** (1) (b) A defendant whose sentence is stayed pending appeal after July 1, 1972, but who is confined pending disposition of the appeal, is entitled to credit against the maximum and minimum terms TERM of his sentence for that part THE ENTIRE PERIOD of such confinement, which does not exceed sixty days; and this is so even though the defendant could have elected to commence serving his sentence before disposition of his appeal.

Section 9. 16-11-309 (1), Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is amended to read:

**16-11-309. Mandatory sentences for violent crimes.** (1) Any person convicted of a crime of violence shall be sentenced to the AT LEAST THE MINIMUM term of incarceration IN THE PRESUMPTIVE RANGE provided for such offense in section 18-1-105 (6) 18-1-105 (1) (a), C.R.S. 1973, without suspension; except that, within ninety days after he has been placed in the custody of the department of corrections, the department shall transmit to the sentencing court a report on the evaluation and diagnosis of the violent offender, and the court, in a case which it considers to be exceptional and to involve unusual and extenuating circumstances, may thereupon modify the sentence, effective not earlier than one hundred twenty days after his placement in the custody of the department. Such modification may include probation if the person is otherwise eligible therefor. Whenever a court finds that modification of a sentence is justified, the judge shall notify the state court administrator of his decision and shall advise said administrator of the unusual and extenuating circumstances that justified such modification. The state court administrator shall maintain a record, which shall be open to the public, summarizing all modifications of sentences and the grounds therefor for each judge of each district court in the state.

Section 10. 16-11-310, Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

**16-11-310. Release from incarceration.** Except as provided in section 7 of article IV of the state constitution relating to the power of the governor to grant reprieves and pardons, an incarcerated person shall be unconditionally released and discharged upon the expiration of his sentence, less the deductions authorized in article 22.5 of title 17, C.R.S. 1973.

Section 11. 17-2-201 (3), Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**17-2-201. State board of parole.** (3) (f) To review applications for earned time made pursuant to article 22.5 of this title and to grant, consistent with the provisions of said article, a deduction from the sentence imposed.

Section 12. 17-2-201 (5) (a), Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended to read:

**17-2-201. State board of parole.** (5) (a) AS TO ANY PERSON SENTENCED FOR CONVICTION OF A FELONY COMMITTED PRIOR TO JULY 1, 1979, OR OF A MISDEMEANOR; AS TO ANY PERSON SENTENCED FOR CONVICTION OF A SEX OFFENSE, AS DEFINED IN SECTION 16-13-202 (5), C.R.S. 1973, OR A CLASS 1 FELONY; AND AS TO ANY PERSON SENTENCED AS A HABITUAL CRIMINAL PURSUANT TO SECTION 16-13-101, C.R.S. 1973, the board has the sole power to grant or refuse to grant parole and to fix the condition thereof and has full discretion to set the duration of the term of parole granted, but in no event shall the term of parole exceed the maximum sentence imposed upon the inmate by the court OR FIVE YEARS, WHICHEVER IS LESS.

Section 13. Part 2 of article 2 of title 17, Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

**17-2-213. Application of part.** Effective July 1, 1979, the provisions of this part 2 relating to the power of the state board of parole to grant parole and to establish the duration of the term of parole shall apply only to persons sentenced for conviction of a felony committed prior to July 1, 1979, persons sentenced for conviction of a misdemeanor, persons sentenced for conviction of a sex offense, as defined in section 16-13-202 (5), C.R.S. 1973, or a class 1 felony, and persons sentenced as habitual criminals pursuant to section 16-13-101, C.R.S. 1973. Parole for persons sentenced for conviction of a class 2, class 3, class 4, or class 5 felony committed on or after July 1, 1979, shall be as provided in section 18-1-105, C.R.S. 1973, and article 22.5 of this title.

Section 14. Title 17, Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended BY THE ADDITION OF A NEW ARTICLE to read:

#### ARTICLE 22.5

##### Good Time - Earned Time - Parole

**17-22.5-101. Good time.** Each person sentenced for a crime committed on or after July 1, 1979, whose conduct indicates that he has substantially observed all of the rules and regulations of the institution or facility in which he has been confined and has faithfully performed the duties assigned to him shall be entitled to a good time deduction of fifteen days a month from his sentence. The good time authorized by this section shall vest quarterly and may not be withdrawn once it has vested. No more than forty-five days of good time may be withheld by the department in any one quarter. No person subject to the good time credits of article 20 of this title shall be eligible for any good time deduction authorized by this article.

**17-22.5-102. Earned time.** (1) In addition to the good time authorized in section 17-22.5-101, earned time, not to exceed fifteen days for every six months of incarceration, may be deducted from the inmate's sentence upon a demonstration to the state board of parole by the inmate that he has made substantial and consistent progress in each of the following categories:

(a) Work and training, including attendance, promptness, performance, cooperation, care of materials, and safety;

(b) Group living, including housekeeping, personal hygiene, cooperation, and social adjustment;

(c) Participation in counseling sessions and involvement in self-help groups;

(d) Progress toward the goals and programs established by the Colorado diagnostic program.

(2) Pursuant to article 4 of title 24, C.R.S. 1973, the state board of parole, in cooperation with the department, shall develop objective standards for measuring substantial and consistent progress in the categories listed in subsection (1) of this section. Such standards shall be applied in all evaluations of inmates for the earned time authorized in this section.

(3) The state board of parole shall review the performance record of each inmate and shall grant, consistent with the provisions of this section, an earned time deduction from the sentence imposed. Such review shall be conducted at least annually; except that, in the case of an inmate who has one year or less of his sentence remaining to be served, the review shall be conducted semiannually. The earned time deduction authorized by this section shall vest upon being granted and may not be withdrawn once it is granted.

**17-22.5-103. Parole.** As to any person sentenced for a class 2, class 3, class 4, or class 5 felony committed on or after July 1, 1979, the division of adult services shall provide a one-year period of parole supervision and assistance in securing employment, housing, and such other services as may effect the successful reintegration of such offender into the community while recognizing the need for public safety. The conditions of parole for any such person shall be established by the state board of parole prior to his release from incarceration. Upon a determination that the conditions of parole have been violated in any such parole revocation proceeding, the state board of parole shall order the return of the offender to the institution to which he was originally received for a period of six months. For second and subsequent revocations of parole, the offender shall be reincarcerated, but in no event shall any person spend more than one year under parole supervision and reincarceration as provided in this section and section 18-1-105, C.R.S. 1973. The good time deduction authorized by section 17-22.5-101 shall apply to periods of reincarceration provided for in this section.

Section 15. Part 1 of article 1 of title 18, Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**18-1-102.5. Purposes of code with respect to sentencing.** (1) The purposes of this code with respect to sentencing are:

(a) To punish a convicted offender by assuring the imposition of a sentence he deserves in relation to the seriousness of his offense;

(b) To assure the fair and consistent treatment of all convicted offenders by eliminating unjustified disparity in sentences, providing fair warning of the nature of the sentence to be imposed, and establishing fair procedures for the imposition of sentences;

(c) To prevent crime and promote respect for the law by providing an effective deterrent to others likely to commit similar offenses; and

(d) To promote rehabilitation by encouraging correctional programs that elicit the voluntary cooperation and participation of convicted offenders.

Section 16. 18-1-105 (1), (6), and (7), Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, are REPEALED AND REENACTED, WITH AMENDMENTS, to read:

**18-1-105. Felonies classified, presumptive penalties.** (1) (a) Felonies are divided into five classes which are distinguished from one another by the following presumptive ranges of penalties which are authorized upon conviction:

Class	Presumptive Range
1	Life imprisonment or death
2	Eight to twelve years plus one year of parole
3	Four to eight years plus one year of parole
4	Two to four years plus one year of parole
5	One to two years plus one year of parole

(b) Except as provided in subsection (6) of this section, a person who has been convicted of a class 2, class 3, class 4, or class 5 felony shall be punished by the imposition of a definite sentence which is within the presumptive ranges set forth in paragraph (a) of this subsection (1). In imposing the sentence within the presumptive range, the court shall consider the nature and elements of the offense, the character and record of the offender, and all aggravating or mitigating circumstances surrounding the offense and the offender. The prediction of the potential for future criminality by a particular defendant, unless based on prior criminal conduct, shall not be considered in determining the length of sentence to be imposed.

(c) Except as otherwise provided by statute, felonies are punishable by imprisonment in the state penitentiary. Nothing in this section shall limit the authority granted in part 1 of article 13 of title 16, C.R.S. 1973, to increase sentences for habitual criminals. Nothing in this section shall limit the authority granted in part 2 of article 13 of title 16, C.R.S. 1973, to commit sex offenders to the department of corrections for an indeterminate term.

(6) In imposing a sentence to incarceration, the court shall impose a definite sentence which is within the presumptive ranges set forth in subsection (1) of this section unless it concludes that extraordinary mitigating or aggravating circumstances are present, are based on evidence in the record of the sentencing hearing and the presentence report, and support a different sentence which better serves the purposes of this code with respect to sentencing, as set forth in section 18-1-102.5. If the court finds such extraordinary mitigating or aggravating circumstances, it may impose a sentence which is lesser or greater than the presumptive range; except that in no case shall the term of sentence be greater than twice the maximum nor less than

one-half the minimum term authorized in the presumptive range for the punishment of the offense.

(7) In all cases in which a sentence which is not within the presumptive range is imposed, the court shall make specific written findings on the record of the case, detailing the specific extraordinary circumstances which constitute the reasons for varying from the presumptive sentence. Whenever a sentence to incarceration is imposed which is not within the presumptive range, the court of appeals shall review the sentence pursuant to section 18-1-409.5. No sentence to incarceration which is not within the presumptive range shall be deemed final until it has been reviewed by the court of appeals.

Section 17. 18-1-409 (2.2), Colorado Revised Statutes 1973, 1978 Repl. Vol., is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

**18-1-409. Appellate review of sentence for a felony.** (2.2) If the sentence imposed is within the presumptive range established in section 18-1-105 (1) (a), or if the sentence imposed is less than the presumptive range, there shall be no right to appellate review other than that provided in section 18-1-409.5.

Section 18. Part 4 of article 1 of title 18, Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

**18-1-409.5. Appellate review of sentence not within the presumptive range.** (1) In addition to the review authorized in section 18-1-409, whenever a sentence to incarceration is imposed upon any person following a conviction of a felony and the sentence imposed is lesser or greater than the presumptive range established in section 18-1-105 (1) (a), the court of appeals shall review the propriety of the sentence. The court of appeals in its review shall determine if the findings made by the sentencing court pursuant to section 18-1-105 (7) are supported by the record of the sentencing hearing, the presentence report, and, if ordered by the court of appeals, the record of the case; justify a sentence which is not within the presumptive range; and are consistent with the purposes of this code with respect to sentencing, as set forth in section 18-1-102.5.

(2) The court of appeals may affirm the sentence under review or remand the case for resentencing. Such review shall be a nonadversary proceeding, and the procedures to be employed shall be as provided by supreme court rule.

(3) This section shall not apply to any person sentenced as a sex offender, as defined in section 16-13-202 (5), C.R.S. 1973, or any person sentenced as a habitual criminal pursuant to section 16-13-101, C.R.S. 1973.

Section 19. 16-8-114 (1), Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended to read:

**16-8-114. Procedure after hearing concerning restoration to competency.** (1) If a defendant is found to be restored to competency after hearing as provided in section 16-8-113, the court shall resume or recommence the trial or sentencing proceedings or order the sentence carried out. The court shall credit any time the defendant spent in confinement while committed pursuant

to section 16-8-112 against the maximum and minimum of any term of imprisonment imposed after restoration to competency.

Section 20. 17-22-103 (1), Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended to read:

**17-22-103. Parole - discharge.** (1) It is the duty of the superintendent of the Colorado state reformatory, in cooperation with the parole officer stationed at the Colorado state reformatory, and the duty of the superintendent of the state penitentiary, in cooperation with the parole officer stationed at the state penitentiary, as to persons transferred to the state penitentiary from the Colorado state reformatory, to bring to the consideration of the state board of parole the matter of parole of every person sentenced or committed to the Colorado state reformatory or returned thereto for reason of violation of parole within nine months after the arrival of such person at the Colorado state reformatory. It is the further duty of such superintendents and parole officers to furnish said board at that time with a full and complete report of the record of such person in the institution where he has been serving his sentence or commitment, together with all other information in the possession of the institution respecting such person and a recommendation to said board as to whether such person should be paroled. The state board of parole shall be the sole judge of whether the parole shall be granted in any case, and, if it is refused, the appropriate officers shall bring the consideration of the matter of parole of such person to said board, with such a report and recommendation, within each six months thereafter until the person sentenced or committed is paroled or has served the maximum term for which he may be imprisoned under section 16-11-302, C.R.S. 1973, in which latter event he shall be discharged. THIS SUBSECTION (1) SHALL NOT APPLY TO ANY PERSON SENTENCED PURSUANT TO SECTION 18-1-105, C.R.S. 1973, FOR A FELONY COMMITTED ON OR AFTER JULY 1, 1979.

Section 21. 18-1-108, Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended to read:

**18-1-108. Offenses not classified.** Any felony, misdemeanor, or petty offense defined by state statute outside this code or in section 18-8-208.1 without specification of its class shall be punishable as provided in the statute defining it, or as otherwise provided by law outside this code.

Section 22. 18-8-208.1 (5), Colorado Revised Statutes 1973, 1978 Repl. Vol., is amended to read:

**18-8-208.1. Attempt to escape.** (5) THE SENTENCES IMPOSED BY SUBSECTIONS (1) AND (2) OF THIS SECTION AND the minimum sentences imposed by subsections (1) to (3) AND (4) of this section shall be mandatory, and the court shall not grant probation or a suspended sentence, in whole or in part.

Section 23. Section 79 of chapter 216, Session Laws of Colorado 1977, as amended by section 1 of chapter 1, Session Laws of Colorado 1978, First Extraordinary Session, is amended to read:

Section 79. **Effective date.** This act shall take effect April 1, 1979 JULY 1, 1979.

Section 24. Repeal. 16-11-101 (1) (d) and 18-1-409 (2.1), Colorado Revised Statutes 1973, 1978 Repl. Vol., as amended, are repealed.

Section 25. Effective date - applicability. This act shall take effect July 1, 1979, shall apply to offenses committed on or after said date, and, notwithstanding any other provision of law or court rule, shall not apply to offenses committed prior to said date.

Section 26. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 29, 1979

APPENDIX C

BLUE RIBBON PANEL

MEMBERS

Dr. Gerald Allen  
Director of Economic Research  
University of Colorado  
College of Business  
Campus Box 420  
Boulder, Colorado 80309

Mr. Bill Kendall  
Director of Economic Research  
Office of State Planning and  
Budgeting  
State Capitol Building, Room 102  
Denver, Colorado 80203

Dr. Kathleen Cooper  
Corporate Economist  
United Bank of Colorado  
1700 Broadway, Suite 2100  
Denver, Colorado 80217

Mr. Chris Neil  
Senior Research Analyst  
Public Service Company  
550 15th Street, Room 484  
Denver, Colorado 80202

Dr. Thomas Crago  
Director of Information Management  
Systems and Research  
Colorado Department of Corrections  
6385 North Academy Boulevard  
Colorado Springs, Colorado 80917

Mr. Gary Pon  
Deputy Director  
Colorado Division of Labor  
State Centennial Building  
Room 314  
Denver, Colorado 80203

Dr. Reid Reynolds  
State Demographer  
Colorado Division of Planning  
State Centennial Building, Room 421  
Denver, Colorado 80203

STAFF

Mr. Bill Woodward  
Deputy Director  
Colorado Division of Criminal  
Justice  
1313 Sherman Street, Room 419  
Denver, Colorado 80203

Ms. Patricia Malak  
Director of Planning  
Colorado Division of Criminal  
Justice  
1313 Sherman Street, Room 419  
Denver, Colorado 80203

Mr. Bill Johnson  
Evaluator  
Colorado Division of Criminal  
Justice  
1313 Sherman Street, Room 419  
Denver, Colorado 80203

APPENDIX D

## APPENDIX D

### HISTORY OF COMMUNITY CORRECTIONS IN COLORADO

The Criminal Sentencing Act of 1967 (C.R.S. 1973, 16-17-101 to 103) allowed the wardens of the state correctional institutions to transfer inmates to work release programs. In 1969, the Bails Hall Work Release Program (Denver) was established. In 1973, the Division of Correctional Services established a joint state-county work release facility in Grand Junction. This facility is currently county-operated and continues to serve community placements from the state correctional facilities and offenders sentenced to work release by the district and county courts. In April, 1973, the Boulder County Commissioners appointed a committee to study and implement the programs recommended in a recent Boulder planning report. These recommendations included jail programs, volunteer programs for the jail and probation, halfway houses, medical diversion programs and facilities and evaluation and monitoring procedures. The establishment of a community corrections program in Boulder was a result of this effort.

In June of 1974, the Colorado General Assembly enacted C.R.S. 1973, 27-27-101 through 110, the first community corrections act, hereafter referred to as SB 55. Limited funding of \$67,562 was appropriated to the Division of Correctional Services to establish three experimental community residential programs. The Division in turn contracted with three nonprofit mental health agencies to provide residential services to offenders as a transitional step between incarceration and parole. In November 1975, the Division of Correctional Services established the Fort Logan Community Corrections Center, the Division's third state operated residential community corrections program.

In October of 1975, The State Council on Criminal Justice funded a community corrections program in Larimer County. The Larimer County project has a nonresidential program which provides an alternative to incarceration by supplementing probation services, offering recreational, educational and treatment programs in the county jail and establishing reintegration services for parolees. In the fall of 1975, Larimer County created the first community corrections board in Colorado. The board serves as the advisory and policy-setting board for the project and the county commissioners. The board is composed of representatives of criminal justice and social service agencies in Larimer County. The program currently has a residential component. The underlying concept of the Larimer County Community Corrections Program is to develop and coordinate a wide range of adult correctional services at the local level through the community corrections board.

By June, 1976, three state and six private residential programs were operating in Boulder, Denver, Grand Junction, Pueblo and Colorado Springs; one county jail work release program had been established in Pueblo; and one county operated nonresidential community corrections program was functioning in Larimer County. The private programs initially contracted with the Federal Bureau of Prisons for halfway house placements or provided

alcohol/drug treatment to state and local agencies. As state and federal funds became more available, the private programs increased their emphasis on community corrections. Primarily, these programs provided treatment services for community placements from the Division of Correctional Services and the Federal Bureau of Prisons.

In May 1976, the Community Correctional Facilities Act (C.R.S. 1973, 27-27-101 through 112, hereafter referred to as SB 4, was enacted to replace SB 55. This new community corrections act emphasized diversion of offenders from incarceration and reintegration of offenders after incarceration. Senate Bill 4 was largely a response to increased institutional commitments, rising prison populations and the projected increase in the prison population due to the enactment of the mandatory minimum sentencing law for violent and repeat offenders.

The FY1976-77 SB 4 appropriation of \$301,500 for community corrections was divided between the Division of Correctional Services and the Judicial Department. The Division received an additional \$203,940 appropriation for reintegration services.

In addition to contracting with several private programs, the Judicial Department and Division of Correctional Services each separately provided match for LEAA funds and established three new residential programs in Denver, La Plata, and Adams Counties. The Division of Correctional Services contracted with the program in Denver and the Judicial Department contracted with the La Plata and Adams County programs. The three programs became operational in early 1977. Their purpose was to serve as a sentencing alternative to the courts. Currently, there are seven community corrections programs operating in Denver.

The Division of Correctional Services requested that all FY1977-78 funds for community corrections diversion programs be appropriated to the Judicial Department because the Division had no jurisdiction over offenders sentenced to these programs by the courts. Therefore, the two agencies agreed that all community corrections programs used by sentencing courts as an alternative to incarceration would be funded from the Judicial Department's appropriation. Reintegrative community programs used by the Division of Correctional Services would be paid from its appropriation.

In July of 1977, two new residential community corrections programs in El Paso and Jefferson counties were granted match funds by the Judicial Department and LEAA funds by the State Council on Criminal Justice. Also in July 1977, the General Assembly enacted SB 587 which created a separate Department of Corrections. Senate Bill 4 was repealed and re-enacted, with only minor revisions, in SB 587 and exists now as C.R.S. 1973, 17-27-101 through 112.

APPENDIX E

APPENDIX E  
COMMUNITY PLACEMENT CRITERIA

SECTIONS FROM DEPARTMENT OF CORRECTIONS  
POLICY STATEMENT - OFFENDER SECURITY DESIGNATIONS  
AND OFFENDER ASSIGNMENT CRITERIA

- VI. E. MINIMUM B SECURITY - An offender classified in the minimum B security designation must meet the criteria in the minimum A security designation with the following additional requirements:
- Written recommendation from housing case manager and approval from the facility's superintendent/director;
  - Conduct record clear of serious misconduct offenses for one (1) year;
  - No escape or attempt to escape within past two years;
  - Not sentenced under death penalty.
1. An offender classified in minimum B security designation requires occasional checks by staff while both inside and outside of the facility's security perimeter.
  2. An offender classified in the minimum B security designation shall be assigned to housing, work stations and other programs and permitted privileges that are consistent with the degree of supervision indicated by his/her security designation.
- VII. E. PRE-RELEASE FACILITY - Can be assigned to a pre-release facility if:
1. Less than five months remain to parole eligibility;
- NOTE: Offenders with a minimum B security designation who are within one year of parole eligibility may be assigned to provide permanent help.
- \*\*\*2. Although violence\*, manslaughter\*\*, use of weapons or serious threats against persons may have been involved in current conviction(s) or past history, current casework evaluation indicates offender's performance in a more restrictive facility warrants transfer;
  3. Those persons sentenced to a life sentence are not eligible for assignment;
  4. No escape or attempt to escape within the past two years;



5. No active felony detainer or pending charges for felony crime;
6. No Class I misconduct offense within the past year or serious Class II\*\*\*\* misconduct offense within the past one year;
7. Level of medical attention does not require on-site access to hospital infirmary;
8. Placement in the community would not create undue public reaction;
9. To degree possible, placement is compatible with the offender's needs and desires.

\* Murder, Aggravated Robbery, Kidnapping, Assault.

\*\* Evaluate Manslaughter convictions for seriousness on an individual basis.

\*\*\* Requires careful evaluation.

\*\*\*\* Serious Class II misconduct offenses should include: assault, sexual abuse, possession or use of dangerous drugs, threats, receiving stolen property, possession of a syringe, possession of a key or a key pattern, possession of unnotched shoe, tampering with locks, falsifying, unauthorized absence, tampering with a witness, failure to return to a place of confinement at a prescribed time. The remaining Class II offenses should be evaluated as to seriousness on a case-by-case basis.

DENVER COMMUNITY CORRECTIONS BOARD

ELIGIBILITY POLICY FOR COMMUNITY CORRECTIONS

This policy is adopted by the Denver Community Corrections Board pursuant to CRS (1973) 127-27-103(3), as amended (Senate Bill #4, 1976);

A. Offenders, when lawfully assigned, shall be accepted in community corrections facilities and programs in Denver without further action of the Community Corrections Board or its staff, except that persons charged with or convicted of the following crimes shall not be accepted:

1. Murder, first or second degree assault, kidnapping, sexual assault, robbery, first degree arson, first or second degree burglary, escape or criminal extortion, in which the defendant used, or possessed and threatened the use of a deadly weapon during the commission of any such crime or crimes, or during the immediate flight therefrom.
2. A class 1 misdemeanor in which a deadly weapon is used.
3. Sale, dispensing, manufacturing or possession for sale of any narcotic or dangerous drug.
4. Any felony charge under the Bribery and Corrupt Influences and Abuse of Public Office provisions of the Colorado Criminal Code, namely 18-8-301 through 18-8-407, inclusive, CRS (1973), as amended.

B. The Community Corrections Board may make exceptions to this policy in individual cases for good cause, and thereby accept a person otherwise ineligible or refuse or reject a person otherwise eligible for any community corrections facility or program in Denver.

17-27-103  
ESTABLISHMENT OF COMMUNITY CORRECTIONAL FACILITIES

17-27-103. Community correctional facilities and programs operated by units of local government. (1) Any unit of local government may establish, maintain, and operate such community correctional facilities and programs as it deems necessary to serve the needs of the unit of local government and offenders who are assigned by the department to the facility or program on a contractual basis, or offenders sentenced to the facility or program by a sentencing court pursuant to a contract or agreement entered into between the chief judge of the judicial district and the unit of local government, and in accordance with section 17-27-105. Any unit of local government may contract for services with any nongovernmental agency or another unit of local government for the purpose of providing services to offenders.

(2) The governing board of any unit of local government may establish, by resolution or ordinance, a corrections board, which may be advisory or functional. If a corrections board is established by resolution or ordinance, the governing board may delegate to such corrections board any powers necessary to accomplish the purposes of this article.

(3) The corrections board may establish and enforce standards for the operation of its community correctional facilities and programs and for the conduct of offenders. The corrections board and the department or the judicial district shall establish procedures for screening offenders who are to be placed in its community correctional facility or program. The corrections board has the authority to accept, reject, or reject after acceptance the placement of any offender in its community correctional facility or program pursuant to any contract or agreement with the department or a judicial district. If an offender is rejected by the corrections board after initial acceptance, the offender shall remain in the custody of the corrections board for a reasonable period of time pending receipt of appropriate orders from the judicial district or the department for the transfer of such offender.

Source: R & RE, 1., 77, p. 942, § 10.

Supplement

17-27-103. Community correctional facilities and programs operated by units of local government.

Court cannot increase original sentence. There is nothing in the community correctional facilities act which authorizes the court to increase the length of the original sentence. *People v. Johnson*, 41 Colo. App. 220, 594 P.2d 601 (1979).

Sentence to community correctional facility not same as sentence to probation. *People v. Johnson*, 41 Colo. App. 220, 594 P.2d 601 (1979).

17-27-105  
JUDICIAL AUTHORITY TO SENTENCE OFFENDERS TO COMMUNITY CORRECTIONS

17-27-105. Authority of sentencing courts to utilize existing correctional facilities or programs operated by units of local government or nongovernmental agencies. (1) (a) A sentencing judge is authorized to sentence a nonviolent misdemeanor offender to any nonresidential community correctional facility or program operated by a unit of local government or a nongovernmental agency. A sentencing judge is authorized to sentence a nonviolent felony offender to a residential or nonresidential community correctional facility or program operated by a unit of local government or nongovernmental agency. Such facilities and programs may be utilized for such persons who are awaiting sentence and for persons who have been sentenced, including sentences for probation.

(b) A person charged with a nonviolent misdemeanor offense and granted deferred prosecution or deferred sentencing may be required by the court, as a condition thereof, to participate in a nonresidential community correctional facility or program operated by a unit of local government or a nongovernmental agency.

(c) A person charged with a nonviolent felony offense and granted deferred prosecution or deferred sentencing may be required by the court, as a condition thereof, to participate in a residential or a nonresidential community correctional facility or program operated by a unit of local government or a nongovernmental agency.

(2) (a) The chief probation officer and the unit of local government or nongovernmental agency shall recommend guidelines for the use of any facility or program. Such guidelines must be approved by the chief judge of the judicial district and the judicial department prior to the use of such facility or program by the sentencing judges. The chief judge of the judicial district shall submit any proposed guidelines for the use of any nongovernmental agency to the governing body of all units of local government in the judicial district for their review and recommendations.

(b) Prior to entering into agreement or contract with any nongovernmental community corrections agency, the chief judge of the judicial district shall submit such agreement or contract to the governing body of any affected unit of local government for its review and recommendations.

(c) Prior to the placement of an offender in any nongovernmental community correctional facility, the sentencing judge shall notify or cause to be notified the law enforcement agencies of affected units of local government concerning the identity of the offender to be placed.

(3) The probation officers of a judicial district shall be responsible for including in the presentence report to the sentencing judge recommendations for the utilization of any governmental or nongovernmental community correctional facility or program which has been approved for use by the chief judge of the judicial district and the judicial department.

(4) Contracts or agreements entered into between a unit of local government or a nongovernmental agency and a judicial district with the approval of the judicial department shall provide that, subject to available appropriations for such programs, the judicial district shall reimburse the unit of local government or nongovernmental agency at a rate to be set by the general assembly in the annual long appropriation bill which shall not exceed twenty-five dollars per day for each offender who is participating in a residential or nonresidential program, but in no event shall more than twenty-five percent of the available funds be used for nonresidential programs and facilities. In addition, each facility shall charge each offender, on an ability-to-pay basis, for the reasonable costs of the program in which he has been placed.

Source: R & RE, L. 77, p. 944, § 10; L. 78, p. 361, § 2.

Editor's note: Section 5 of chapter 67, Session Laws of Colorado 1978, provides that the act amending subsection (4) is effective July 1, 1978, and applies to transactions entered into on or after said date.

Two prior felony convictions do not foreclose a court from sentencing a defendant to a community correctional program. People ex rel. VanMeveren v. District Court, Colo. 572 P.2d 483 (1977) (decided under former section 27-27-105).

### Supplement

17-27-105. Authority of sentencing courts to utilize existing correctional facilities or programs operated by units of local government or nongovernmental agencies.

(4) Repealed, L. 79, p. 723, § 2, effective July 1, 1979.

16-11-203. Criteria for granting probation. (1) The court, subject to the provisions of this title, in its discretion may grant probation to a defendant unless, having regard to the nature and circumstances of the offense and to the history and character of the defendant, it is satisfied that imprisonment is the more appropriate sentence for the protection of the public because:

(a) There is undue risk that during a period of probation the defendant will commit another crime; or

(b) The defendant is in need of correctional treatment that can most effectively be provided by a sentence to imprisonment as authorized by section 16-11-101; or

(c) A sentence to probation will unduly depreciate the seriousness of the defendant's crime or undermine respect for law; or

(d) His past criminal record indicates that probation would fail to accomplish its intended purposes.

(2) The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations called for by subsection (1) of this section:

(a) The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property;

(b) The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property;

(c) The defendant acted under strong provocation;

(d) There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct;

(e) The victim of the defendant's conduct induced or facilitated its commission;

(f) The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which was sustained;

(g) The defendant has no history of prior criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present offense;

(h) The defendant's conduct was the result of circumstances unlikely to recur;

(i) The character, history, and attitudes of the defendant indicate that he is unlikely to commit another crime;

(j) The defendant is particularly likely to respond affirmatively to probationary treatment;

(k) The imprisonment of the defendant would entail undue hardship to himself or his dependents;

(l) The defendant is elderly or in poor health;

(m) The defendant did not abuse a public position of responsibility or trust;

(n) The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise;

(o) The defendant has been confined for a considerable period of time prior to sentence.

(3) Nothing in this section shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing.

Source: R & RE, L. 72, p. 242, § 1; C.R.S. 1963, § 39-11-203; L. 76, p. 546, § 2; L. 77, pp. 863, 888, § 4, 78.

Editor's note: Amendments made to this section by House Bill No. 1589 of the 1977 Session, effective April 1, 1979, are contained in the supplement to this volume.

Cross reference. As to criteria for granting probation, see also Rule 32(f), Crim. P.

C.J.S. See 67 C.J.S., Pardons, § 21.  
Annotator's note. Since § 16-11-203 is similar to repealed § 39-16-6, C.R.S. 1963, and § 39-16-6, CRS 53, relevant cases construing these provisions have been included in the annotations to § 16-11-203.

The granting of probation involves the exercise of discretion on the part of a trial judge. *Logan v. People ex rel. Alamosa County*, 138 Colo. 304, 332 P.2d 897 (1958).

It is not a matter of right for a defendant. It is a matter of grace and suspends conditionally what otherwise would be a harsher judgment. It is, in effect, a contract made by the court and sanctioned by the statute with the convicted person. *Holdren v. People*, 168 Colo. 474, 452 P.2d 28 (1969).

Judge considers community, offense, and offender. A trial judge in the exercise of his

discretion in a probation matter considers three facets of the problem: the community, the offense, and the offender, in that order, and if upon consideration of these factors he concludes that the applicant is a worthy risk for probation, he has the power to grant it. *Logan v. People ex rel. Alamosa County*, 138 Colo. 304, 332 P.2d 897 (1958).

The setting, nature, and circumstances of an offense, particularly as they furnish a clue to the personality of an offender, whether an offense is violent or nonviolent, and the motives actuating a defendant in committing an offense are components which a trial court will evaluate when considering the offense as a factor in the question of granting probation, as well as the background of a defendant and information corroborating or denying the defendant's will to reform and his ability to adjust himself to community life. *Logan v. People ex rel. Alamosa County*, 138 Colo. 304, 332 P.2d 897 (1958).

### Supplement

16-11-203. Criteria for granting probation. (1) (c) The crime, the facts surrounding it, or the defendant's history and character when considered in relation to statewide sentencing practices relating to persons in circumstances substantially similar to those of the defendant do not justify the granting of probation.

(2) (a) Repealed. L. 77, p. 888, § 78, effective July 1, 1979.

Source: (1) (c) added, L. 77, p. 863, § 4; (2) (a) repealed, L. 77, p. 888, § 78.

Editor's note: Section 23 of chapter 157, Session Laws of Colorado 1979, provides that the effective date of paragraph (c) of subsection (1) is July 1, 1979.

Power to suspend sentence not affected by failure to grant probation. So long as the circumstances would have justified a grant of probation and the defendant was eligible for

probation, the fact that the judge did not impose it does not vitiate his power to suspend sentences. *People v. Henderson*, 196 Colo. 441, 586 P.2d 229 (1978).

16-11-204. Conditions of probation. (1) The conditions of probation shall be such as the court in its discretion deems reasonably necessary to insure that the defendant will lead a law-abiding life and to assist him to do so. The court shall provide as an explicit condition of every sentence to probation that the defendant not commit another offense during the period for which the sentence remains subject to revocation.

(2) When granting probation, the court may, as a condition of probation, require that the defendant:

(a) Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment;

(b) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose;

(c) Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;

(d) Support his dependents and meet other family responsibilities;

(e) Make restitution or reparation, or both, to the victim of his conduct for the damage or injury which was sustained and may require that the defendant pay reasonable costs of the court proceedings or costs of supervision of probation, or both. When any restitution, reparation, or costs of court or probation supervision is a condition of probation, the court shall fix the amount thereof, which shall not exceed an amount the defendant can or will be able to pay and shall fix the manner of performance;

(f) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the court or probation officer;

(g) Refrain from excessive use of alcohol or any unlawful use of narcotics or of any other dangerous or abusable drug without a prescription;

(h) Report to a probation officer at reasonable times as directed by the court or the probation officer;

(i) Permit the probation officer to visit him at reasonable times at his home and elsewhere;

(j) Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer;

(k) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment;

(l) Satisfy any other conditions reasonably related to his rehabilitation and the purposes of probation.

(3) When a defendant is granted probation, he shall be given a written statement explicitly setting forth the conditions on which he is being released.

(4) For good cause shown and after notice to the defendant, the district attorney, and the probation officer, and after a hearing if the defendant requests it, the judge may reduce or increase the term of probation or alter the conditions or impose new conditions.

Source: R & RE, L. 72, p. 243, § 1; C.R.S. 1963, § 39-11-204; L. 73, p. 505, § 1; L. 77, p. 863, § 5.

Editor's note: Amendments made to this section by House Bill No. 1589 of the 1977 Session, effective April 1, 1979, are contained in the supplement to this volume.

Am. Jur. See 21 Am. Jur.2d, Criminal Law, § 565.

C.J.S. See 67 C.J.S., Pardons, § 22.

Law review. For article, "The Problem of Compelling Fathers to Support their Dependant Children", see 27 Dicta 442 (1950).

Annotator's note. Since § 16-11-204 is similar to repealed § § 39-16-6 and 39-16-7, C.R.S. 1963, and § § 39-16-6 and 39-16-7, CRS 53, relevant cases construing these provisions have been included in the annotations to § 16-11-204.

The purpose of probation is educational and reconstructive rather than primarily punitive or oppressive. Logan v. People ex rel. Alamosa County, 138 Colo. 304, 332 P.2d 897 (1958); People v. Ledford, 173 Colo. 194, 477 P.2d 374 (1970).

The basic purpose of probation is to provide a program which offers an offender the opportunity to rehabilitate himself without confinement, under the tutelage of a probation officer and under the continuing power of the court to impose a sentence for the original offense. People v. Ledford, 173 Colo. 194, 477 P.2d 374 (1970).

By its very nature and definition, probation means and signifies liberty under certain imposed conditions. People v. Ledford, 173 Colo. 194, 477 P.2d 374 (1970).

Trial courts have a wide discretion in imposing certain conditions upon a probationer. People v. Ledford, 173 Colo. 194, 477 P.2d 374 (1970).

The terms of probation must be derived from this section, as probation is purely a statutory creation. People v. Ledford, 173 Colo. 194, 477 P.2d 374 (1970).

The program of probation should envisage

Absent such finding, probation to be reinstated. If the court finds that the defendant did not have the ability to pay at the time of the revocation hearing, it shall reinstate defendant's probation. People v. Romero, Colo., 559 P.2d 1101 (1976).

Court may require defendant to make child support payments. See People v. Silcott, 177 Colo. 451, 494 P.2d 835 (1972).

But may not require posting of appearance bond. Nothing in the statutory law on proba-

only such terms and conditions as are clearly and specifically spelled out in the statutes, and such other conditions as fit the probationer by education and rehabilitation to take his place in society. Logan v. People ex rel. Alamosa County, 138 Colo. 304, 332 P.2d 897 (1958); People v. Ledford, 173 Colo. 194, 477 P.2d 374 (1970).

If an applicant is worthy, his release on probation should not be weighted with terms and conditions having nothing to do with the purpose and policy of probation laws. Logan v. People ex rel. Alamosa County, 138 Colo. 304, 332 P.2d 897 (1958).

A court may require a defendant to make restitution or reparation to the victim of his transgression, and to pay court costs and expenses of supervision by the probation office. Logan v. People ex rel. Alamosa County, 138 Colo. 304, 332 P.2d 897 (1958).

Before revoking probation the court must make a finding of present ability to pay under subsection (2)(e). People v. Romero, Colo., 559 P.2d 1101 (1976).

It is required that one have the present ability to pay which contemplates that (1) a job for which the probationer is qualified is available; (2) the job would produce an income adequate to meet his obligations; and (3) the probationer unjustifiably refuses to take it. People v. Romero, Colo., 559 P.2d 1101 (1976).

Not future ability. It was not adequate that the trial court here made a finding that, at the time conditions for probations were set, defendant "could and would be able to pay" where it failed to make a finding of defendant's ability to make payments as of the time of the revocation hearing. People v. Romero, Colo., 559 P.2d 1101 (1976).

tion expressly or implicitly clothes a trial court with the discretionary power to require the posting of an appearance bond as a condition of probation. Whether a prisoner is worthy of probation should not hinge on his ability to furnish a bond. To permit a court to require such a bond as a condition of probation would enlarge the punitive powers of a court beyond that contemplated by the laws of this state. Logan v. People ex rel. Alamosa County, 138 Colo. 304, 332 P.2d 897 (1958).

## Supplement

**16-11-204. Conditions of probation.** (1) The conditions of probation shall be such as the court in its discretion deems reasonably necessary to insure that the defendant will lead a law-abiding life and to assist him to do so. The court shall provide as explicit conditions of every sentence to probation that the defendant not commit another offense during the period for which the sentence remains subject to revocation and that the defendant make restitution pursuant to section 16-11-204.5.

(2) (e) Pay reasonable costs of the court proceedings or costs of supervision of probation, or both. When the payment of costs of court or probation supervision is a condition of probation, the court shall fix the amount thereof, which shall not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance.

(e.5) Pay any fines or fees imposed by the court;

(2.5) The order of priority for any payments required of a defendant pursuant to paragraph (d), (e), or (e.5) of subsection (2) of this section shall be as follows: Restitution or reparation, support of dependents and meeting other family responsibilities, costs of court proceedings or costs of supervision of probation, and any fines or fees imposed by a court.

Source: (1) and (2) (e) amended, L. 77, p. 863, § 5; (2) (e.5) and (2.5) added, L. 79, p. 601, § 26.

Editor's note: (1) Section 23 of chapter 157, Session Laws of Colorado 1979, provides that the effective date of subsection (1) and paragraph (e) of subsection (2) is July 1, 1979.

(2) Section 31 of chapter 125, Session Laws of Colorado 1979, provides that the act enacting paragraph (e.5) of subsection (2) and subsection (2.5) is effective July 1, 1979, and applies to acts or violations occurring on or after said date.

Probation cannot be contingent upon partial service of sentence in penitentiary. Since this section does not include a provision for service of a portion of a sentence in the state penitentiary as a condition of probation, a court is not free to impose as a condition of probation any period of incarceration in the state penitentiary nor may any period of incarceration in a county jail exceed the prescribed time limits. People ex rel. Gallagher v. District Court, Colo., 593 P.2d 1372 (1979).

Defendant must have ability to pay restitution. The reason for requiring that ability to

pay restitution be established before probation can be revoked is to allow revocation only where the probationer unreasonably or willfully fails to comply with the terms of his probation. Because before revocation of probation for failure to make ordered restitution payments can be effected, the trial court must find that the defendant had the ability to pay at the time the payments should have been made. Strickland v. People, Colo., 594 P.2d 578 (1979).

Before revoking probation, etc.

In accord with 1st and 2nd paragraphs in original. See Strickland v. People, Colo., 594 P.2d 578 (1979).

Where supervisory period extended by defendant's request. Although this section requires notice, a hearing, and a showing of good cause

before a supervisory period is increased, the provisions of this section in this respect are not applicable when an extension of the period of supervision is granted at the defendant's own request. People v. Blackorby, 41 Colo. App. 251, 583 P.2d 949 (1978).

**END**