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A REVIEW OF LITERATURE  
ON SUITABILITY FOR PAROLE

by

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Prepared for



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This review of the literature was suggested by Dr. Robert A. Roos, member of the Board of Prison Terms. It is designed to stimulate discussion regarding the Board's current "suitability criteria" for parole in one session during the Board's week-long meeting in September, 1981.

Two law students from McGeorge School of Law, University of the Pacific, were selected to collect and review relevant materials. As the project developed, Kathleen Connolly took the lead role in analyzing and presenting the materials obtained.

The purpose of the author is not to advocate any philosophical stance or to recommend specific changes in the current "suitability criteria". It is, rather, to present the current "state of the art" of prediction in criminal justice systems as reflected by the authors whose works are cited within this report.

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Article 5. Parole Consideration Criteria and  
Guidelines for Life Prisoners

2280. GENERAL.

A life prisoner shall be considered for parole for the first time at the initial parole consideration hearing. At this hearing, a parole date shall be denied if the prisoner is found to be unsuitable for parole under §2281(c). A parole date shall be set if the prisoner is found to be suitable for parole under §2281(d). A parole date set under this article shall be set in a manner that provides uniform terms for offenses of similar gravity and magnitude in respect to the threat to the public. In setting the parole date, the panel shall consider the Sentencing Rules for the Superior Courts as they specifically relate to life prisoners. The panel shall also consider the criteria and guidelines set forth in this article for determining the suitability for parole and the setting of parole dates, considering the number of victims of the crime for which the prisoner was sentenced and any other circumstances in mitigation or aggravation.

2281. DETERMINATION OF SUITABILITY.

(a) General. The panel shall first determine whether a prisoner is suitable for release on parole. Regardless of the length of time served, a life prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison.

(b) INFORMATION CONSIDERED. All relevant, reliable information available to the panel shall be considered in determining suitability for parole. Such information shall include the circumstances of the prisoner's social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the prisoner may safely be released to the community; and any other information which bears on the prisoner's suitability for release. Circumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability.

(c) CIRCUMSTANCES TENDING TO SHOW UNSUITABILITY. The following circumstances each tend to indicate unsuitability for release. These circumstances are set forth as general guidelines; the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. Circumstances tending to indicate unsuitability include:

(1) COMMITMENT OFFENSE. (See II E)

The prisoner committed the offense in an especially heinous, atrocious or cruel manner. The factors to be considered include:

- (A) Multiple victims were attacked, injured or killed in the same or separate incidents.
- (B) The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.
- (C) The victim was abused, defiled or mutilated during or after the offense.
- (D) The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering.
- (E) The motive for the crime is inexplicable or very trivial in relation to the offense.

(2) PREVIOUS RECORD OF VIOLENCE. (See IV A)

The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age.

(3) UNSTABLE SOCIAL HISTORY. (See IV, V, VI, VIII)

The prisoner has a history of unstable or tumultuous relationships with others.

(4) SADISTIC SEXUAL OFFENSES.

The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.

(5) PSYCHOLOGICAL FACTORS. (See V)

The prisoner has a lengthy history of severe mental problems related to the offense.

(6) INSTITUTIONAL BEHAVIOR. (See VIII D, IX)

The prisoner has engaged in serious misconduct in prison or jail.

(d) CIRCUMSTANCES TENDING TO SHOW SUITABILITY.

The following circumstances each tend to show that the prisoner is suitable for release. The circumstances are set forth as general guidelines; the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel. Circumstances tending to indicate suitability include:

(1) NO JUVENILE RECORD. (See VIII B, X, C)

The prisoner does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims.

(2) STABLE SOCIAL HISTORY. (See IV, V, VI)

The prisoner has experienced reasonably stable relationships with others.

(3) SIGNS OF REMORSE. (See VIII C-1)

The prisoner performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or the prisoner has given indications that he understands the nature and magnitude of the offense.

(4) MOTIVATION FOR CRIME. (See VIII C-1)

The prisoner committed his crime as the result of significant stress in his life, especially if the stress had built over a long period of time.

(5) LACK OF CRIMINAL HISTORY. (See IV A, VIII B 2, 3)

The prisoner lacks any significant history of violent crime.

(6) AGE. (See IV B, VIII B, X, A)

The prisoner's present age reduces the probability of recidivism.

(7) UNDERSTANDING AND PLANS FOR FUTURE. (See VIII C-4, V II A)

The prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release.

(8) INSTITUTIONAL BEHAVIOR. (See VIII D, IX)

Institutional activities indicate an enhanced ability to function within the law upon release.

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## I. Introduction

### A. Purpose of Paper

"Merely saying that certain factors are important in granting or denying parole oversimplifies the issue. Parole selection is not necessarily simply a yes or no decision..."

The power of parole boards over the lives of other human beings has long been a topic of public debate. A study of the way in which parole decisions were made in 1967 indicated that the factor considered the most important was the estimate of the chances for commission of another serious crime while on parole (O'Leary, 1972). Further research indicated that the factors considered by board members when making this parole prognosis varied in reliability and validity (Holland, 1978; Oswald, 1970; Kastenmeier, 1973). "Reliability" refers to the amount of consistency between decision-makers, and "validity" refers to the consistent degree of accuracy over repeated attempts using similar variables. Thus the need for policy decisions which will structure the discretion of parole board members combined with statistical analysis of those factors most highly related to risk of parole failure is well documented (Heinz, 1976). In addition, the possibility of serious legal consequences make it important that any classification procedures be done "fairly, legally, and as objectively as possible." (Bohnstedt, 1979b).

Some of those states which are attempting prediction have replaced parole board intuition with formal devices for assessing the risk of "recidivism" in general or violent recidivism in particular. These devices are usually constructed through statistical analysis of those background factors most considered predictive of parole success in the former prison population of a particular system. An alternative is to "adopt" the device derived from another state's experience for experimentation and development. In any case, the formal instruments offer more accurate predictions and provide greater consistency in decisions regarding similarly situated parole applicants (Bohnstedt, 1979b). To date, these instruments have passed legal challenges, although the Supreme Court has ruled that certain factor categories like race, national ancestry, alienage, or possibly sex, are "suspect" categories and, therefore, unconstitutional. However, so long as a classification strategy is reasonably related to a legitimate government purpose like parole, and excludes "suspect" categories, the "due process", and "equal protection of the laws" constitutional standards appear to have been passed. (Bohnstedt, 1979b)

The California Board of Prison Terms set aside one week in September, 1981 to discuss, among other things, their "suitability criteria" for paroling offenders. In preparation for that meeting one member of the Board, Robert Roos, initiated this review of the

recent literature pertaining to the factors relevant to parole decisions. Two law students were hired to search for pertinent materials and to write this summary of their findings. It is expected that the report may facilitate the Board's discussion.

#### B. Methods

Time constraints suggested the use of phone contacts and surveys of existing computer data banks of relevant literature on the topics of parole prediction in general and the prediction of violent behavior in particular. The following people were contacted:

American Justice Institute, Ben Coats, Marvin Bohnstedt,  
John Conrad  
Carnegie-Mellon University, Alfred Blumstein  
California Department of the Youth Authority, Keith Griffiths  
Elaine Duxbury  
California Department of Corrections, Robert Dickover  
The URSA Institute, San Francisco, California  
University of Southern California, Don Glaser  
U.S. Parole Commission, Peter Hoffman, Director of Research  
Michigan Department of Corrections, William L. Kime  
Iowa Parole Risk Assessment Scale, Darrell Fischer  
State of California, Interdepartmental Library, Tom Dickson  
University of California, Berkeley, Sheldon Messinger  
Drexel University, Pennsylvania, Joan McCord  
Minnesota Sentencing Guidelines Commission, Kay Knapp  
University of California, Norval Morris  
Massachusetts Department of Corrections, Dan LeClaire  
Minnesota-Hennington County Corrections, Bruce Broady  
National Criminal Justice Research Center, Don Pointer  
National Center for Crime and Delinquency Section,  
Dr. Christopher Dunne  
Center for Law and Psychiatry, Dr. Seymour Pollack  
The Rand Corporation, Santa Monica, Peter Greenwood,  
Joan Petersilia, and Mark Peterson  
The Rand Corporation, Sacramento, Al Lipson  
Rutgers University, Dick Sparks  
Research Foundation for Mental Hygiene, Albany, N.Y.,  
Henry Steadman, Ph.D.  
Policy Research and Planning Group, St. Louis, Missouri,  
Nancy Shields, Ph.D.  
Stanford Law Review, Bernie Black, Book Review Editor  
Iowa Urban Commission Research Center, University of Iowa,  
Lyle Shannon  
California Youth and Adult Correctional Agency, Brian Taugher  
Yale University, Barbara Underwood  
University of Pennsylvania, School of Criminology,  
Marvin Wolfgang, Neil Weiner  
Responsible Action, Inc., Davis, Ernest Wenk  
California Board of Prison Terms,  
Joan Cavanaugh and Erik Schlueter

The computer "banks" of information available through the State library were polled in the following areas: sociology,

criminology, psychiatry and psychology. Additionally, the National Criminal Justice Research Service provided over 100 abstracts of relevant articles, books and other publications.

#### C. Issues (Monahan, 1981)

##### 1. Predict or Not

A major controversy facing the criminal justice systems of this country today is whether or not to attempt prediction of future behaviors such as violence, and the potential for parole success. Many are concerned with attempts at prediction in the criminal justice field because of the problems involved (Von Hirsch, 1972; Bennett, 1979; Steadman, 1980).

Monahan (1981), however, points out that prediction is a reality of life that humans all do, consciously or not. In his recent monograph, published by the National Institute of Mental Health, he delineates the major issues involved in prediction and proposes some possible directions for further exploration. A summary of a portion of his work follows.

Shah enumerated fifteen points in the criminal justice system where prediction of future harmful conduct is involved. One of these points is the parole (or other conditional release) decision, which is the issue discussed here.

Criticism of the use of prediction stems from three major sources: 1) it's statistically impossible to accurately predict individual violent behavior; 2) even if accurate prediction were possible, it would violate the civil rights of those deprived of their liberty as a result; and 3) that the involvement of professional "helpers" in this type of social control creates a conflict of interest for those professionals.

##### a. Accuracy Argument

Monahan (1981) states: "Rarely has research data been as quickly or nearly universally accepted by the academic and professional communities as those supporting the proposition that mental health professionals are highly inaccurate at predicting violent behavior." Studies indicate a range consisting of 54% accuracy at best, to 5% accuracy at worst. This creates the problem commonly referred to as "false positives". "False positives" occur when persons positively predicted to be violent do not, in fact, engage in reported violent behavior. (also Wenk, 1980)

##### b. Legal Argument

The incarceration of "false positives" — persons falsely predicted to be potentially violent — produces the serious legal problem of depriving citizens of their civil rights without

sufficient due process provisions. In other words, the margin of error may be too great to legally justify the deprivation of liberty indefinitely. (Monahan, 1981, pp.44-9 and Bohnstedt, 1979b)

### c. Professional Argument

Finally, the "political" role within the institutions served by psychiatrists and psychologists involved in prediction is deemed by some an inappropriate role for them. It is regarded as at odds with their "helping" role of concern for the welfare of their clients. Therefore, separation of "political" decisions from "helping" ones has been advocated recently with regards to criminal justice systems.

## 2. Moral and Political Considerations

What constitutes sufficient justification for the incarceration of "false positives" is a question determined by moral and political judgments in four areas: (a) the nature of what is being predicted, (b) the factors used to predict it, (c) the degree of predictability that should trigger preventive action, and (d) the nature of preventive action taken. (Monahan, 1981)

### a. What Is Being Predicted

Before a rational discussion and decision can be reached about the prediction of violent behavior, it's necessary that the nature of what is being predicted is clear. Monahan (1981) points out that the word "violence" is capable of different interpretations — ranging from street violence to corporate crime. Also, "dangerousness", another common term, is loosely defined, with confused results possible. Monahan (1981) cites Shah's explanation that "dangerousness" confuses issues regarding what one is predicting with the probability one is assigning to its prediction. In other words, the probability of a "dangerous" act by a person becomes confused with identifying the entire person as "dangerous". (also Wenk, 1980)

Monahan suggests the "conceptually crisper" approach of referring to "violence" or "violent behavior" only. He adopts Megargee's definition of violence — "acts characterized by the application or overt threat of force which is likely to result in injury to people." This definition, however, fails to take into account the many degrees of threat of force which are possible.

It is important to recognize that some acts fit this description (such as self-defense killing) which would not receive the negative evaluation associated with the idea of predicting "violence."

Further, an individual's decision to label an activity as "violent" is influenced by that person's biases resulting from his or her own age, sex, educational level, and political orientation.

Similar problems exist for the prediction of general recidivism. The terms "recidivism" and "parole failure" may include returns to prison for anything from technical violations to arrest to reconviction. When one study uses one definition but another study uses a different one, comparison of the two studies becomes extremely difficult. This makes it difficult to draw conclusions and make generalizations about words like "recidivism".

### b. Factors

The second moral/political consideration involved in the prediction of violence is which factors to consider and which ones to throw out for ethical reasons. For example, statistical use of background factors raises questions of penalizing that segment of society often viewed as "victimized" by social injustice. Even the use of prior violent acts to predict future violent acts raises moral questions of whether we are punishing for past action or in anticipation of future action. Monahan quotes Wilkins, that "ideally, one would hope to develop predictors which would be based only upon statistically valid factors and weights which were simultaneously proper from an ethical standpoint."

### c. Relationship Between Prediction and Required Accuracy

The third moral/political problem involved in prediction is that of deciding "how much is enough." In the words of Wenk et al quoted by Monahan (1981), "What represents an acceptable trade-off between the values of public safety and individual liberty?" The probability of violent behavior may be expressed as a percentage or as a quantifying phrase like "more likely than not." In either case perfection is not required by the law. However, the exact meaning of the phrases needs to be clear to those using them and to those setting policy with them. The acceptable level of accuracy required for a specific decision or purpose needs to be clear to all those making such decisions.

### d. Consequences/Costs For Mistakes

Finally, the nature of the preventive action to be taken must be considered when determining the acceptable level of accuracy for any prediction. The analysis resembles a cost/benefit analysis. For example, in a situation where the "cost" of predicting too many people is negligible and the "benefit" of correct prediction is great, inaccurate prediction might be justified. One example of this type of situation occurs when physicians place drops of silver nitrate into the eyes of all newborn infants to prevent blindness from congenital gonorrhea which occurs infrequently. (Heller & Monahan, 1977 in Monahan, 1981).

On the other hand, the level of accuracy required would obviously be different when the end purpose was the death penalty rather than incarceration. The California Supreme Court recently reversed a death penalty sentence for a first-time, multiple-victim murderer based on expert testimony of the potential for violence in the offender's prison experience. The Court, in its opinion, asserted that:

- "1) expert predictions that persons will commit future acts of violence are unreliable, and frequently erroneous;
- 2) forecasts of future violence have little relevance to any of the factors which the jury must consider [defined by legislative mandate] in determining whether to impose the death penalty;
- 3) such forecasts, despite their unreliability and doubtful relevance, may be extremely prejudicial to the defendant."

(The People v. David Leslie Murtishaw , 81 Daily Journal D.A.R. 2393)

## II. Background on Criminal Justice Systems

### A. Geographical Values

Before a discussion about the factors to be considered by parole boards regarding a particular case file can be meaningfully undertaken, some background understanding is important. One underlying assumption of this paper is that each state and the federal government has a unique criminal justice system. The uniqueness comes from the values of each particular area expressed as legal structures, and the overall aims and underlying philosophies regarding the purpose of criminal justice sanctions. (Gottfredson, 1978a) Wenk (1980) provides statistics regarding the increase of violence, in particular, throughout the U.S. He suggests increased urbanization and age redistribution as providing some explanation for this phenomena. He goes on to explore regional differences and subgroup differences in violent crime rates. Thus, influences like urbanization, age distribution and crime rates influence criminal justice systems. Each state can, therefore, learn from the experience of others to some extent, but it must also develop its own system.

### B. Philosophy

As a result of the various influences, individual criminal justice systems have varying goals and objectives and emphasize different criteria. (Bohnstedt, 1979a) They even utilize different

types of statistical methods. Some legislatures have implemented determinate sentencing laws, while in other states where indeterminate sentencing remains, parole guidelines have been implemented. Still other states have adopted sentencing guidelines for disposal of cases at the initial point of entry into the criminal justice system. One state, Michigan, is using violence risk classification throughout the criminal justice system -- for sentencing, for institutional transfer, and for parole.

"Parole and sentencing policy reflects a variety of competing purposes, i.e., just deserts, public protection against crime, and the regulation of prison populations. Classification systems designed for use in such decisions must take into account a variety of competing factors if they are to be effective and useful." (Bohnstedt, 1979a)

Today, more than ever, policy decisions about the moral and effectiveness issues involved in criminal justice sanctions are being tested and debated. Philosophies of the various states are shifting away from a traditional rehabilitation philosophy to either a different general philosophy or to new methods of implementation (like in Massachusetts).

One government publication, Crime & Justice, (1976), listed four primary purposes of criminal justice sanctions: retribution, rehabilitation, deterrence and incapacitation. Retribution, or punishment, seeks to place blame upon the offender for violating society's norms. This goal is currently gaining popularity under the "just deserts" label, i.e., severity of punishment = seriousness of conduct. Rehabilitation seeks to change the person's character habits or behavior patterns so as to diminish his criminal propensities. Deterrence seeks to discourage further crime of both the individual and those observing his or her treatment by threat of punishment. Incapacitation seeks to immobilize the offender, thus preventing further harm to society. (Von Hirsch, 1979)

Retribution and deterrence were the most prominent goals of criminal justice before the 19th century. Then sentencing and penal reform swung towards a philosophy of rehabilitation based on the notion that criminals were "sick" and could be "cured" by being "treated" individually. This was especially true of the violent offender and the sex offender. Whereas a legalistic, punitive philosophy concentrates on the act committed, the therapeutic approach concentrates on the actor. (Sleffel, 1977) Popular under the rehabilitation philosophy was the indeterminate sentencing law where the length of an inmate's term was left to the discretion of administrative authorities considering the in-prison behavior of the offender. Part of this approach to corrections was parole. Parole allows for the release of a prisoner to serve the remainder of a prison sentence in the community under certain restrictions and requirements. (Crime & Justice, 1976).

Recently, however, the rehabilitation philosophy has been abandoned to varying degrees by many states. Both experience and policy decisions have contributed to this trend. Riots during the early 70's protested prison conditions and sparked renewed interest in prisoner rights to "due process" in the legal community. (Crime and Justice, 1976) Indeed, "punishment and deterrence are now discussed as prominent aims of the system". (Gottfredson, 1978a)

Those who support the continuation of rehabilitation — at least in some form — point out that (1) not enough attention has been given to differential treatment effects, (2) not enough quality research has yet been conducted to be conclusive, (3) more money is needed to address problems 1 and 2, and (4) more and better qualified professionals are needed in the criminal justice fields. (LeClair, 1981)

Another author, discussing issues and problems surrounding the rehabilitation of the violent offender, presented three different views of what rehabilitation means: 1) prevention of recidivism by any means, 2) prevention of recidivism while guarding the welfare of the offender, and 3) the prevention of recidivism while attempting to make the offender a good citizen. He also presented the following arguments for retaining rehabilitation as a criminal justice goal: 1) rehabilitation has really not been proven ineffective, 2) deterrence and rehabilitation can be compatible goals, 3) length of rehabilitation should not be confused with length of incarceration (need not be the same), 4) humane people attempt to rehabilitate others, and 5) rehabilitation is ultimately economical. (Halleck, 1978)

Those who criticize the goal of rehabilitation express concern about the manipulative nature of the traditional parole process where an inmate is "rewarded" by the parole board for cooperation with corrections programming by being granted parole. (Irwin, 1974) They point to two reviews of rehabilitation efforts which concluded that such efforts fail to reduce recidivism. (Wilson, 1980, Sechrest, 1979)

In 1976 the Committee for the Study of Incarceration recommended that an offender be sentenced according to the severity of his or her crime, rather than according to his need for treatment. This model was termed the "just deserts" model. In addition, the abolition of parole as a means of serving one's sentence was suggested. (Crime & Justice, 1976; Von Hirsch, 1979)

One result of this public discussion of the overall aims of criminal justice has been various changes in the traditional rehabilitative models previously used. Most states have made

decisions to change the nature of their criminal justice system in some way. A recently completed study of four jurisdictions by a Washington, D.C.-based research firm states in its preface, "Jurisdictions moved at different times and in different ways, some provoked by their own desire to change, some by legislative or judicial action. Although their correctional philosophies differed and their goals were specific to their individual jurisdictions, all were making an attempt to reduce disparity and provide for consistent decision-making through a system of structured discretion." (Burke, 1981a)

### C. Types of Systems

Some states passed determinate sentencing laws to reform their particular system. Other states moved to establish sentencing or parole guidelines, based on past experience but incorporating the mechanisms for future adjustment.

Meanwhile, other states have maintained some indeterminacy in their laws and have attempted new rehabilitation programs. New and more sophisticated program evaluation techniques are being utilized. (LeClair, 1981)

Finally, a few states (like Michigan) are attempting to identify particularly "dangerous" offenders for "selective" incarceration. This means that offenders with particularly high violence potential are immobilized the maximum amount of time possible.

#### 1. Determinate Sentencing

Some legislatures passed determinate sentencing laws with fixed sentences for certain offenses along with clearly defined circumstances for aggravating or mitigating the presumptive middle term.

#### 2. Guidelines

A system model with the underlying assumption that some discretion (within the necessary legal and ethical constraints) is necessary in decision-making is the guidelines system.

The guidelines concept was originally developed by the U.S. Parole Commission and was later implemented in other jurisdictions where it was tailored to meet their particular needs. Some states decided to apply the guidelines concept at the sentencing level. Guidelines — whether at the sentencing or parole level — assist decision-makers with both individual case decisions and with policy choices. Most guidelines systems were derived directly from the experience of the particular system, then continued as management tools for policy control. (Gottfredson, 1978a) A recent study cited seven states developing sentencing guidelines programs. (Bohnstedt, 1979b)



Once Congress incorporated the parole guidelines concept for the U.S. Parole Commission into statute, three areas of substantial impact were noted: 1) it changed procedures from a closed to an open system so that the interconnectedness of the system was clearer, 2) it provided a built-in method for continuous modification as environmental changes dictated policy change, and 3) it reduced disparity in decisions. (Gottfredson, 1978a)

James Galvin (1981) of the Research Center of the National Council for Crime and Delinquency in San Francisco, California, recently listed three characteristics of parole guidelines systems 1) they systematically relate sentence to offense severity and specified factors, 2) they protect the public through systematic use of risk assessment techniques, and 3) the offender's institutional performance is one factor considered regarding the question of whether or not to grant parole. He also noted that two factors--number of prior offenses and age at first offense--seemed to remain important across state parole data bases.

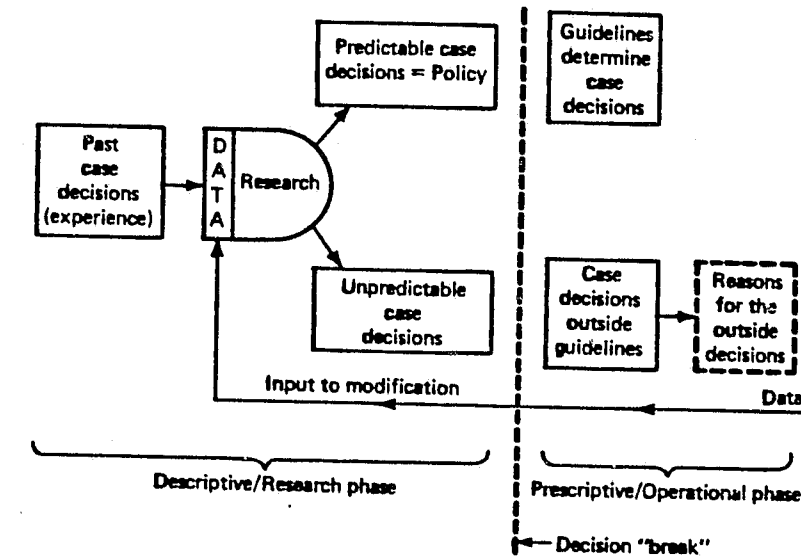
Some would argue that sentencing guidelines are superior to both total judicial discretion and the rigidity of legislatively attempted discretionary control like mandatory sentencing. (Gottfredson, 1978a)

A particular strength of the guidelines model is the evolutionary nature of such a system (See Figure 1). Any departures from the "guidelines" require explanation of the reasons, thus over a period of time, new data is collected for revision of the guidelines. Also, the statistical validity of the factors considered as elements of the guidelines must be periodically checked to insure their predictive accuracy (validity). "Policy control guidelines appear to work because they permit of deviation — which preserve the system as a learning process." Another strength of a guidelines system is its adaptability to the various philosophical approaches to criminal justice issues. Guidelines have been shown to provide a tool for yielding consistent decisions along varying policy lines by the experience of those jurisdictions currently utilizing them. This consistency insures structured discretion and equity in case decision-making. Significant discretion remaining in these systems lies in guideline rating for offense severity and risk level. (Burke, 1981a) Several guidelines systems will be described later.

### 3. Violence Risk Assessment Devices

An innovative approach to today's criminal justice problem is the use of a formal risk assessment device designed to identify those offenders with a high risk of violent behavior while on parole. Like guidelines, it's development is based on the past experience of the jurisdiction rather than theory alone.

Figure 1



Evolutionary Nature of a Guidelines System (Gottfredson, 1978a)

However, it is uniquely keyed to the violent offender rather than general recidivism like most guidelines risk assessment devices. It aims at reducing prison populations by identifying those offenders who can be safely paroled or placed within community-based programs. (Bohnstedt, 1979a)

#### D. Risk Assessment in Each Type of System

The role of risk assessment devices within each of the above three types of criminal justice systems varies. Theoretically, determinate sentencing laws would not involve any risk prediction because the sentences would be consistent for everyone committing the same crime.

Sentencing and parole guidelines usually include some sort of formal instrument for prediction of risk of parole failure. Typically, the "risk score" is then plotted on a grid or matrix with offense severity to determine the degree of supervision necessary. The type of factors included in these risk prediction instruments depend upon those suggested by statistical analysis of past cases, as well as policy decisions to include or exclude particular factors. Such policy choices are influenced by the general goals of that particular criminal justice system. Also, legal and moral constraints have led some policy-setters to exclude such factors as race, sex and socioeconomic status even in cases where research shows they are highly predictive.

Finally, as mentioned earlier, the "assaultive potential" risk screening devices focus primarily on those offenders with a high potential for violent behavior on parole. The factors involved must include a category over which the offender has some future control, like institutional behavior, in order to meet constitutional challenges.

#### E. "Seriousness of the Offense" in Each Type of System

Under a determinate sentence legal system, offenses are defined by statute. Mitigating and aggravating circumstances are also defined. This type of system allows implicit discretion at the prosecution stage where plea bargaining can affect the ultimate sentence for the criminal involved.

Guidelines systems provide policy-makers with the basic dilemma of whether to use the offense of conviction or "total offense behavior" as the basis for determining sentence length and parole release. Those who favor use of the offense of conviction point to: 1) apparent legal "unfairness" of using anything but the conviction made in a court of law, 2) the impracticality of basing policy decisions on criminal justice records which are often incomplete and/or inaccurate, and 3) it is consistent within the criminal justice system to use the decision made by judge and jury in sentencing and parole decisions. On the other hand, arguments which favor "total

offense behavior" include: a) sentence and parole decisions should be based on the factual reality that cases are often plea bargained before the conviction stage, b) this approach attempts to "balance" inequities in other parts of the system, and c) this approach enables a parole board to fashion their decisions to individual culpabilities rather than rigid categories which may ignore important situational factors. Under a guidelines system, decisions regarding the base offense, mitigating and aggravating circumstances and consistent implementation of these factors (as defined by policy-makers) need to be explicit, open and monitored, (Burke, et al 1981b). These same principles apply in systems which utilize violence risk assessment devices.

### III. Theories of Crime Causation

What causes crime? Every individual has a "pet" theory, but no evidence has yet been conclusive that "the answer" has been identified.

URSA Institute (Fagan, 1981) recently categorized the major theories regarding the causes of juvenile delinquency and violence as falling into two major groups. One group focuses on the individual's personality. The other group focuses on the contribution of social, economic, cultural, and situational factors in the development of criminal behavior. "...Recent theoretical research and development has tended to borrow from both orientations..." Those theories that deal with the individual personality include both biological theories and psychological theories.

#### A. Individual Theories

##### 1. Biological

The most prominent biological theory explains urban violence with the same biological basis as instinctive territorial fight of animals, (Lorenz, 1966, in Fagan, 1981). Sociological theories would tend to complement this theory with the idea that weak social institutions create cultural vacuums allowing for open expression of aggressive instincts without control. Other biological theories focus on learning disabilities, i.e., minimal brain dysfunction, and the effects of substance abuse.

##### 2. Psychological

Traditional psychological studies of delinquency and violence have been concerned with intellectual structure, physiological constitution and personality characteristics. Evidence of differences in physique with delinquents tending toward being more muscular or having physical immaturities have been published, (Sheldon, 1949; Glueck & Glueck, 1950b; Stafford-Clark, 1951; in Fagan, 1981). Disorders of neurological functioning have been pointed out as criminal type related. (Ostrow & Ostrow,

1946; Lewis & Pincus, 1979; in Fagan, 1981). Recent research shows that "while delinquents do not differ significantly from non-delinquents in general intelligence, (Siebert, 1962; Caplan, 1965; in Fagan, 1981) they do exhibit specific differences in cognitive functioning. In other words, they view the world less perceptually and are less able to tolerate ambiguities; they tend to deal with others as if they were "mirror images" of themselves (Baker and Sarvin, 1956; in Fagan, 1981). (One would need to know the definition used for "delinquent" here in order to fully understand this type of comparison.) Dependence of homicidal youth upon emotion more than logic to interpret the world was found by King, 1975 and Fagan, 1981.

Personality studies have focused on various personality labels. Characteristics of violent juveniles include a lack of impulse control (Sorrells, 1977; Russell, 1973; in Fagan, 1981), social alienation and desire for immediate gratification (Vachss, 1979), an overpowering fearfulness (Sorrells, 1980), and greater needs for personal space. (Boorhem and Flowers, 1977; in Fagan, 1981) A recent powerful theory suggests that juvenile violence may be explained by "episodic discontrol of aggressive impulses" (Sorrells, 1977; in Fagan, 1981), rather than inability to control behavior due to poor ego development (Schoenfeld, 1971; in Fagan, 1981).

## B. Social Theories

Social theories include those theories regarding the role of socialization and learning, as well as economic, cultural, and situational factors in the development of criminal behavior.

### 1. Learning and Behavior

Learning and behavioral theories of violence and aggression focus on the tendency for youth to learn from significant members of their families, their peers, and the mass media to use violence as an interpersonal coping strategy. "Situational and personal factors affect individual responses and susceptibility." (Crawford, Campbell, in Fagan, 1981).

### 2. Sociological

URSA split the major classes of sociological theory relevant to juvenile crime causation into four groups: 1) structural/strain theories, 2) cultural theories, 3) control theories, and 4) labelling theory.

### a. Structural/Strain Theory

The structural/strain theory explains juvenile crime as the product of extreme frustration as a result of socially induced pressures, rather than individual pathological impulses. While these theories may explain some delinquent behavior, it does not appear to explain violence in particular.

### b. Cultural Theory

The cultural theories attempt to explain juvenile violence as a result of the juveniles ascribing to subcultures where violence is acceptable and even encouraged. This explanation seems especially appropriate for the phenomena of youth gang violence.

### c. Control Theory

The control theories conceptualize criminal behavior as the result of weakening internal and external bonds to socially acceptable behavior, together with strengthened bonds to deviant behavior. "Control theories assume that delinquent acts result when an individual's bond to society is weak or broken." (Hirschi, 1969; in Fagan, 1981) One version of this theory describes a "neutralization" process where youth learn to rationalize misconduct as a viable option.

### d. Labelling Theory

The fourth and final socialization theory -- called the "labelling" theory -- focuses on the effects of the identification and processing of offenders through the juvenile justice system. Labelling theories have been largely rejected recently. The effects of labelling upon subsequent violent behavior have not been tested. (Fagan, 1981)

## IV. Demographic/Background Factors

Monahan (1981) reviewed the studies regarding background factors related to violence. Because each Board member has a copy of this work, those reports will simply be summarized and referenced to Monahan's book, The Clinical Prediction of Violent Behavior, 1981.

### A. Past Crime, Particularly Violent Crime

The more arrests for crime in general, and violent crime, in particular, the greater the chances an offender will be re-arrested. There is some evidence that a great proportion of crime committed is done by a small proportion of the general population. (Monahan, 1981, pp. 71-2)

## B. Age

Street crime, which we are considering here, is strongly correlated with youth. (Monahan, 1981, pp.72-3)

## C. Sex

Men are more likely to commit violent crimes. They are also more likely to recidivate generally. (Monahan, 1981, pp.73-4)

## D. Race

The correlation between racial minority status and involvement in "street" crime is inescapable. (Monahan, 1981, pp. 74-5) This factor shows a high statistical correlation with other related factors like socioeconomic status, education, and employment.

## E. Socioeconomic Status and Employment Stability

There seems to be a positive correlation between pre-prison employment stability and post-prison performance (Monahan, 1981, pp.75-6).

## F. Opiate or Alcohol Abuse

As noted in the criminal career section, opiate and alcohol use and abuse are positively related to crime and criminal recidivism. (Monahan, 1981, pp.76-7)

## G. Other Factors

1. IQ has been recently identified as having substantial effect upon criminal behavior.

2. Residential mobility and marital status seem to impact recidivism potential.

3. The interrelationship between factors may be more significant, at least as significant, as each factor independently. One advantage of statistical analyses is that the interrelationship can be taken into consideration by a computer.

## V. Mental Illness

Contrary to the popular belief that the mentally ill are prone to violence, recent evidence indicates this is not so. "Prisoners do not appear to have higher rates of diagnosable mental illness than their class-matched peers in the open community." (Monahan, 1981, pp.78-9)

The incidence of violent crime among former mental patients can, generally, be explained by prior criminal record. "The real issue, therefore, is not what psychological factors account for the increased crime rate among released mental patients, but rather what sociological and economic factors underlie the administrative and political decision to send more criminals to mental hospitals in the first place." (Monahan, 1981, pp.79-81)

## VI. Family

URSA reported, "The consensus today seems to be that it is the quality of the parent-child relationship, not the number of parents in the household, that may be related to juvenile violence." (NCCD, 1980, in Fagan, 1981)

Further significant family relationship variables related with juvenile violence include family disturbance and turbulence, deprivation of normal affection and exertion of enormous emotional pressure, poor supervision and discipline, lack of modeling of appropriate behaviors (by adults), involvement with the criminal justice or mental health systems, and physical and sexual abuse. (See Fagan, 1981 for a complete list of studies cited.)

## VII. Situational Correlates of Violent Behavior

Monahan (1981) also summarizes available evidence of the importance of certain environmental situations to an individual's propensity for violent behavior. (pp.94-7)

The first three — family environment, peer environment, and job environment — may be viewed as those "support systems" which tend to support criminal or non-criminal behavior in general.

The next three may be seen as factors specific to a situation where violence may occur — availability of victims, weapons, and alcohol. These factors may influence the progression and extent of violence that actually transpires in a given incident. (Monahan, 1981)

## VIII. Criminal Careers Research

### A. Introduction

Along with study into the causes of criminality, some research has been done into the nature of criminal careers. The study of criminal careers is concerned not with a few isolated acts of deviance, but with criminality persisting over a period of many years. It deals with systematic changes in individual behavior over time or as a result of more than one criminal justice contact.

Joan Petersilia (1980) of the Rand Corporation recently reviewed the results of the four criminal career projects. The following is a summary of her article. The four programs reported are: 1) the Rand Corporation projects directed by Peter Greenwood, 2) the Philadelphia birth cohort studies directed by Marvin Wolfgang, 3) the Racine, Wisconsin birth cohort studies directed by Lyle Shannon; and 4) the Carnegie-Mellon incapacitation project directed by Alfred Blumstein.

After a brief description of each study listed above, Petersilia listed some of the methodological issues involved in comparison of the four studies. These include: data sources, research design, and population studied. Comparison of studies -- each using different data, design and population -- involves careful analysis of such factors in order to avoid hidden bias.

Next Petersilia discusses the percentage of the population who are offenders, the percentage with repeated contacts with the criminal justice system, the amount of crime attributable to repetitive offenders, and the fact that there is no basis for predicting that a particular juvenile will become a repetitive offender. The above summarized portions of the article are not covered in detail here. However, the information relating to the characteristics of criminal careers as well as the effects of criminal justice sanctions have been included because of their applicability to the prison population seen by the California Board of Prison Terms.

#### B. Characteristics of Criminal Careers

Research into the nature of criminal careers reflects the "selective incapacitation" philosophy of incarceration. In other words, if it is possible to identify the development of criminality as a lifestyle, and the factors which contribute to its continued growth, then it is possible to incarcerate those particular offenders during that period of highest risk to the community.

However, to date no technique has been developed to predict which individuals are becoming career criminals while they are accumulating their records. Some offenders will, undoubtedly, go on to commit more crimes while others, the majority, will pursue a different course. Distinguishing between these two groups can currently only be done retrospectively. Therefore, from a policy perspective, the findings of the criminal career research are only useful for understanding. They provide little assistance in terms of prediction.

1. The age of onset of a criminal career is in the early to mid-teens.
2. The initial type of crime is usually minor misconduct, sometimes even status offenses.
3. Progression of crime seriousness has only weak supporting evidence, and some contrary evidence has also been found.
4. The latest studies appear to show that career criminals do not specialize even at the later stages of their crimes. They continue to commit a variety of offenses in a fairly random manner. There is some evidence that offenses may fall under broad classes of offense types, e.g., violent offenses and property offenses.
5. Offense, Arrest, Conviction, and Incarceration Rates

##### a. Offense Rates

There are two methods of collecting actual offense rates of offenders. One way is to ask them -- called "self-report" -- and the other is to review official police and arrest records. The Rand studies have concentrated, primarily, on self-reports, while Blumstein et al have examined official records. Considering that the studies were done in different parts of the country with different legal offense definitions, the estimated offense rates are surprisingly close.

The Rand study of forty-nine imprisoned serious offenders (Greenwood, 1977) showed an average of two hundred crime commissions per person over a career length of approximately twenty years. The offenders were imprisoned, on the average, for about half of the period of their careers. A rough estimate of yearly rates during periods without incarceration would be an offense rate of about twenty crimes per year -- four violent crimes and sixteen property crimes. Petersilia suggests, however, that "their average offense rate probably exaggerates the rate to be found in a more inclusive population of repeat offenders."

Both the Rand criminal careers study and the Philadelphia cohort study found that criminality peaks early in the criminal career and declines with age terminating around age 30. The usefulness of this data is, unfortunately, limited by our inability to predict the youth most likely to continue their criminal careers.

##### b. Arrest Rates

When the question of arrests for crimes committed over time is raised, again two studies have produced similar estimates. Offenders over thirty years of age may have higher probabilities

of actually being arrested for criminal behavior than do younger offenders. This information is contrary to the belief that career criminals grow more sophisticated with age. To further explore this possibility, the Rand study questioned inmates about their level of planning activity prior to crime. Most of the sample reported a low level of pre-crime planning and preparation. Those who reported some level of planning were five times less likely to be arrested for a criminal act. The propensity for planning appeared to be less a function of age and experience than a personal characteristic evidenced initially as a juvenile. Thus, "it appears unlikely that the observed relation between declining arrests and age results from more skillful crimes by more seasoned criminals."

#### c. Conviction and Incarceration Rates

Conviction rates did not appear to vary systematically according to the prior record of an offender, according to the Rand criminal study. It also showed that cases against defendants with less serious past records tended to drop out of the criminal justice system before the incarceration stage. Therefore, as an offender's age increases, the "at risk" rate, i.e., percentage of time he is on the street, decreases.

#### C. Other Aspects of Criminal Careers

##### 1. Criminal Motivation

One Rand study requested information about the main reason for the offenders' first becoming involved in crime. The factor listed most often was "economic distress". This included unemployment, indebtedness, and need for routine income. The second most frequent response was "high times", and the third was "temper". It is interesting to note that different motivations seemed to correlate with different patterns of criminal activity. Those offenders who listed "high times" as their primary motivation tended to have the greatest amount of crime reported. Those who rated "economic distress" as important committed fewer violent crimes. "Temper" did not appear to affect the amount of crime committed, but it did appear to affect the type of crime. Nonpecuniary violent crimes were more likely to be committed by persons who indicated "temper" as their primary motivation for criminal activity.

##### 2. Criminal Sophistication

Some aspects of criminal sophistication have already been discussed. Generally, career criminals do not plan their crimes or specialize in certain types of crimes, even in later career stages. The Rand criminal careers study showed, also, that the tendency for that sample studied was to work alone as the career progresses rather than to increase sophistication in terms of the use of partners, informants, and fences.

The actual geographical range of offenses has been studied with mixed results. One study seemed to show expansion beyond the offender's own neighborhood as the career progressed, but the "outer limits" were usually confined to nearby cities. On the other hand, another study showed that 67% of those arrested for violent crime or burglary, with a record of at least two prior arrests, had been arrested in at least two states.

The amount of income derived from criminal career activity was generally low, averaging only a few thousand dollars per year according to the Rand study. One possible explanation for this factor might be that the more planning-oriented offender may be less susceptible to arrest and conviction, thus underrepresented in this prison population study. In that respect, criminal sophistication may influence the amount of remunerative benefit reported by the Rand study.

##### 3. Drugs and Alcohol Involvement

The relationship between "chemical use" and criminal careers is a strong one, but the patterns of interrelationship are complex.

About half of the inmates studied in the criminal careers research had a history of drug involvement by official records. Two-thirds had been heavy users of drugs, alcohol or both by their own admission. Over 60% reported being under the influence of alcohol or drugs when committing crimes as adults. The desire for money to buy drugs and alcohol was the single most frequently cited reason for committing crimes. Offenders involved with alcohol alone appeared to commit less serious crimes less frequently than those involved in both alcohol and drugs. Also, inmates reporting frequent use of drugs reported committing more property crimes than non-drug users.

##### 4. Employment Performance

Although the Rand studies seemed to show that loss of employment rarely triggered a criminal career, employment problems contributed to the continuation of a career already started. "Nearly 30% of the sample in the inmate survey said that inability to get a job was a very important motivating factor to their continued criminality." It was also found that better employed offenders committed fewer crimes against persons and fewer crimes in general.

The Racine, Wisconsin cohort study showed that those who worked during their teens or early twenties, particularly the males, had more police contacts and higher seriousness scores than those who were unemployed. Petersilia offers one possible

explanation for this phenomena -- that juveniles from lower socioeconomic status homes begin work earlier and socioeconomic status correlates with number of police contacts, therefore, "early employment may thus be indirectly correlated with police contacts".

#### D. Effect of Criminal Justice Sanctions

The available evidence from the two cohort studies suggests that criminal justice sanctions may be counterproductive. These studies may be biased by the fact that the persons selected for study were serious offenders.

The Racine birth cohort study showed that the number of police contacts and the seriousness of the resulting sanctions prior to age 18 are related to the number of police contacts after age 18. Also, the Philadelphia cohort study indicated that "a higher proportion of those who receive criminal sanctions continue to violate the law, committing more serious crimes with greater rapidity, than do those who were treated more leniently." While the effect of criminal justice sanctions upon criminal careers is unclear, it may be that "imprisonment may create pressures to continue a criminal career". The only definite fact we now have is that "the outcome varies from one offender to another".

To summarize, the information provided by the four longitudinal studies of criminal careers provides some insight into the sequence of experiences through which a person moves in the process of developing a "career" of criminal activity. There is extensive evidence that some variables remain relatively constant -- like age at onset of the criminal career -- while others fluctuate with age, societal placement and economic opportunity -- like offense, arrest, conviction and incarceration rates.

Unfortunately, from the standpoint of policy-makers attempting to predict the development of such a career, little empirical evidence exists. Petersilia lists five areas of further research needed: 1) whether crime commission rates decline with age, 2) when and how developing careers terminate, 3) what triggers criminal career relapse, 4) offense characteristics associated with high offense rates, and 5) prediction of criminal careers before they have run their full course.

In conclusion Petersilia states: "Past experiences with a number of seemingly promising strategies should suggest that there are not likely to be any easy or universal answers to criminal behavior and the problems it poses for society. Nor...is criminal career research likely to produce any panaceas. But it does offer a unique perspective, which can inform efforts to improve the criminal justice system."

## IX. In-Prison Experience

### A. Mental Health Diagnosis and Treatment

Whereas parole performance prediction and violence potential prediction have traditionally been reserved for the mental health professionals within prison, Monahan (1981) documented the mixed results of their attempts to successfully accomplish that task to an acceptable level. Because of society's need to continue trying to predict even in the face of discouraging failures, Monahan suggests some ways for mental health professionals to improve prediction accuracy. He includes suggestions for "combined" techniques utilizing clinical and statistical methodologies while incorporating situational factors.

Other authors have suggested similar improvements in clinical prediction accuracy by using statistical techniques and factors, as well as by addressing the situational or "interactionist" influences upon the individual which contribute to that person's violence potential. (Wenk, 1980; Gough, 1965; Gottfredson, 1978a)

At least one attempt has been made to implement a device incorporating both clinical and statistical (or actuarial) factors. It is called the Diagnostic Parole Prediction Index. (Wenk, 1979) This might be an area for further research.

Such situational approaches could possibly address the phenomena that many murders are committed by relatives of, or persons well acquainted with, the victim. It would also be congruent with different theories of violence and/or aggression. (Wenk, 1980)

A review of clinical techniques for psychiatric and psychological evaluation of murderers showed that test findings are often not integrated with the psychopathology of the crime itself, limiting the utility of the evaluations. Five classification categories are proposed, and it is suggested that the best prognosis for success goes to situational offenders. Compulsive offenders with ritualistic patterns are most likely to repeat the same crime again and again. Finally, it includes that the "correctional treatment model" is appropriate only for the situationally and environmentally stimulated offenders -- not for those who are pathological. (Kutash, 1978)

Monahan lists common clinical errors in prediction: 1) lack of specificity in defining the behavior being predicted, 2) failure to include statistical base rates (most common and most significant problem), i.e., statistical prevalence of violent behavior in a given group of frequency in a given time period, 3) reliance upon personal biases regarding importance of various factors rather than reality, and 4) failure to incorporate environmental information.

As mentioned earlier, Massachusetts has used clinical prediction of recidivism for program placement purposes. They have also suggested that a psychiatric treatment can, in fact, modify one's "dangerous" potential. (Kozol, 1972) More recently, a review of Massachusetts' treatment of sexually dangerous offenders and follow-up success rates, concluded that about 15% of dangerous sexual offenders are not responsive to any available treatment. Otherwise, some effect could be shown. (Cohen, 1978)

As previously discussed, the idea that criminal offenders can be effectively rehabilitated while imprisoned has largely been rejected under current corrections philosophies. A leading review by the National Academy of Sciences of twenty-three existing studies concluded that "there is no body of evidence for any treatment or intervention with criminal offenders that can be relied upon to produce a decrease in recidivism." (Sechrest, 1979)

The ethical problems of conflict of interest connected with the role of the mental health professional in the corrections setting have been discussed. (Lane, 1978) Those who advocate a "just deserts" theory of punishment also advocate the separation of corrections as "punishment" for acts from treatment programs for helping individuals. (Irwin, 1974)

Blumstein (1979) has recently demonstrated one way to address methodological problems associated with the study of correctional program success in the past. Glaser (1981) advocates similar methods and also suggests some new perspectives for cost/benefit analysis of such programs.

#### B. Vocational/Educational Programming

Vocational and educational programs have had somewhat better results predicting recidivism than therapeutic programs in California prisons. However, programming in this area still suffers from handicaps of obsolescence or inapplicability to the "outside" world. (Irwin, 1974) This may be due to "selection effects" of better risk offenders for those programs.

One study concluded that for chronic delinquents in Chicago deterrence and rehabilitation might be the same thing. (Wilson, 1980)

In a study of five federal correctional institutions' practices, Glaser (1964) found that the maximum rehabilitative influence of cash to prisoners seemed to come from wages earned for work done, savings, piecemeal disbursement following release, and limited gratuity funds.

The Rand Corporation's career criminal research project concluded that "career criminals do not have greater treatment needs than the general prison population and do not participate less in relevant treatment programs." Also, "career criminals were also not the greatest source of prison violence."

In other words, neither conviction offense nor prior record had any impact on participation rates in programs or on the rate of disciplinary infractions. Prior or current institutional behavior appeared to be more important than criminal record in institutional placement and programming.

The four most frequent types of treatment programs and the inmates appearing to "need" them were:

Education: Less than a 9th grade education or reading level below the 9th grade;

Vocational Training: No employment or schooling during the two years preceding the current commitment;

Alcohol: Self-report of serious drinking problem during the two years preceding the current commitment;

Drugs: Self-report of daily use of hard drugs during the two years preceding the current commitment. (Greenwood, 1981)

#### C. Factors Affecting Prison Adjustment

##### 1. Institutional Social Climate

Prison adjustment is generally viewed by parole boards as an important factor to be considered regarding suitability for parole. Glaser (1964) found this factor important to later success in interaction with one or more prior institutional commitments. For inmates with no prior commitment, prison adjustment showed no predictive power.

The negative effects of imprisonment, or "prisonization" as it is called in Massachusetts, upon general recidivism rates has been documented. (Rico, 1978; DeWolfe, 1979) However, what effect should this information have upon the decisions made by parole board members? The answer is not yet clear.

One author argues that it is not yet an established fact that prisons do, in fact, promote recidivism. He cites the fact that 50% of released offenders do not engage in repeat crimes. (Schwartz, 1975)



A study of 1400 inmates of six federal prisons explored the relationship between institution size and inmate health and behavior. It concluded that "sheer population size of an institution exerts a negative influence on inmates." (McGain, 1980)

A clinical measure of the social climate in prisons, called "The Correctional Institutional Environment Scale," has been developed and is used currently in some places. (Wenk, 1972) It appears that prison environment affects inmate prison adjustment, and may be a situational factor to be considered in future research regarding prediction of potential inmate behavior.

## 2. Length of Incarceration

Length of incarceration is sometimes considered regarding suitability of an inmate for parole. A study in Ohio to determine if length of time served was related to parole success concluded that, generally, success rates for men decreased with increasing time served — up to 50 months. After that, success rate seemed to increase somewhat, or remain the same. However, when each risk category was considered separately, no single pattern was obtained. (Gottfredson, 1977)

A Rhode Island study (Fontaine, 1979) showed increased recidivism rates for those serving second or subsequent sentences over those serving a first sentence.

## 3. Outside Support

One theory for crime causation involves the idea that when positive social bonds become weaker than the negative ones in a person's life, personal "costs" of crime are diminished. A program consistent with this theory is the California M-2 program, where visitors from the community are "matched" with prison inmates. A recent report indicated both cost benefits and lower recidivism for those inmates involved. (Dabel, 1979)

Social factors related to parole failure in Glaser's study of federal prison inmates were: return to previous community residence, living alone, persistent renewal of prison contacts, and failure to develop new friendships following release. (Glaser, 1964)

## X. Decision to Parole in Four Sample Systems

### A. U.S. Parole Commission

The pioneer in the guidelines area was the U.S. Parole Commission. Operating under the general philosophies of punishment and deterrence, a risk of recidivism prediction instrument was devised

from previous case information. Each offender is rated and receives a "Salient Factor Score" which is then plotted on a matrix against the offense severity for appropriate length of sentence.

The original device for risk prediction included predictive factors which did not accord with the "just deserts" model desired. Those original factors:

- number of prior convictions
- number of prior incarcerations
- age at first commitment
- type of commitment offense  
(not auto or check-related)
- previous parole performance
- previous heroin/opiate or barbituate dependence
- prior employment or school attendance in the community
- educational achievement level
- parole plans

were derived from statistical analysis of the significance of over 60 variables in relation to recidivism potential. Following development of the predictive instrument, a validation study was completed to insure that the instrument would maintain its validity as a predictor. "The results obtained indicate that the salient factor score developed for the Parole Commission displays considerable stability over the period studied in its ability to assign cases to distinct "risk" groups ..." (Hoffman, 1978) At that time, educational level and parole plans were dropped from the scoring device.

More recently, a revalidation study was completed, resulting in further revisions. The socioeconomic factor, "prior employment or school attendance in the community", was dropped completely because of problems with verification, as was the "type of offense" category. (Fed Reg., 1981) The "Living arrangement" item was dropped because it was easily manipulated, difficult to document, and subject to criticisms of inequity (Burke, 1981a) "Custody and escape violations" were added to the previous "parole performance" category. Age was modified from "age of first commitment" to "age at current commitment." "Prior incarcerations" was switched to "prior commitments of more than 30 days." (See Figure 2 for recently revised instrument.)

Thus while maintaining its predictive power for recidivism risk, the Commission has brought the factors considered closer to the "just deserts" model desired by eliminating or changing those "status" factors reminiscent of a more rehabilitation-oriented philosophy. (Fed Reg., 1981)

### B. Minnesota Sentencing Commission

One state which has utilized the guidelines concept is Minnesota, although guidelines are used at the sentencing level

SALIENT FACTOR SCORE (Revised 9-1-81)

Figure 2

ITEM A: Prior Conviction(s)/adjudications (adult or juvenile)
No prior convictions (adult or juvenile) = 3
One prior conviction = 2
Two or three prior convictions = 1
Four or more prior convictions = 0



ITEM B: Prior Commitment(s) of more than 30 days (adult or juvenile)
None = 2
One or two = 1
Three or more prior incarcerations = 0



ITEM C: Age at Current Offense/Prior Commitment(s)
Age at current commitment
\*\*26 or older = 2
20-25 = 1
19 or younger = 0



ITEM D: Recent Commitment-free period (3 yrs.)
\*\*Less than 30 days = 1
Less than 3 years = 0



ITEM E: Probation/Parole/Confinement/Escape Status Violator
Never had parole revoked or been committed for a new offense while on parole, and not a probation violator this time = 1
Has had parole revoked or been committed for a new offense while on parole, or is a probation violator this time, or both = 0



ITEM F: Heroin/Opiate Dependence
No history of heroin or opiate dependence = 1
Otherwise = 0



TOTAL SCORE . . . . .



\*\*Exception: If 5+ prior commitments of more than 30 days (adult or juvenile) place an X here and score this item= 0.

to determine type of sanction to be applied.

Formerly, a parole risk assessment device called the "Risk of Failure" instrument was used. Factors considered were:

- prior convictions
prior commitments
age at first offense
parole or probation failure
prior conviction for exactly same offense
prior conviction for burglary

The policy decision has been made to assess criminal sanction according to offense of conviction. The circumstances of the offense (like victim injury) which indicate a reason for exception from the guidelines are listed in the special decision rules. Another policy decision involved dropping all juvenile record items because of the inconsistent availability of such information and the ethical considerations involved in penalizing an individual on the basis of juvenile behavior. Finally, the Minnesota device concentrated on offender behavior rather than socioeconomic factors, as a matter of policy.

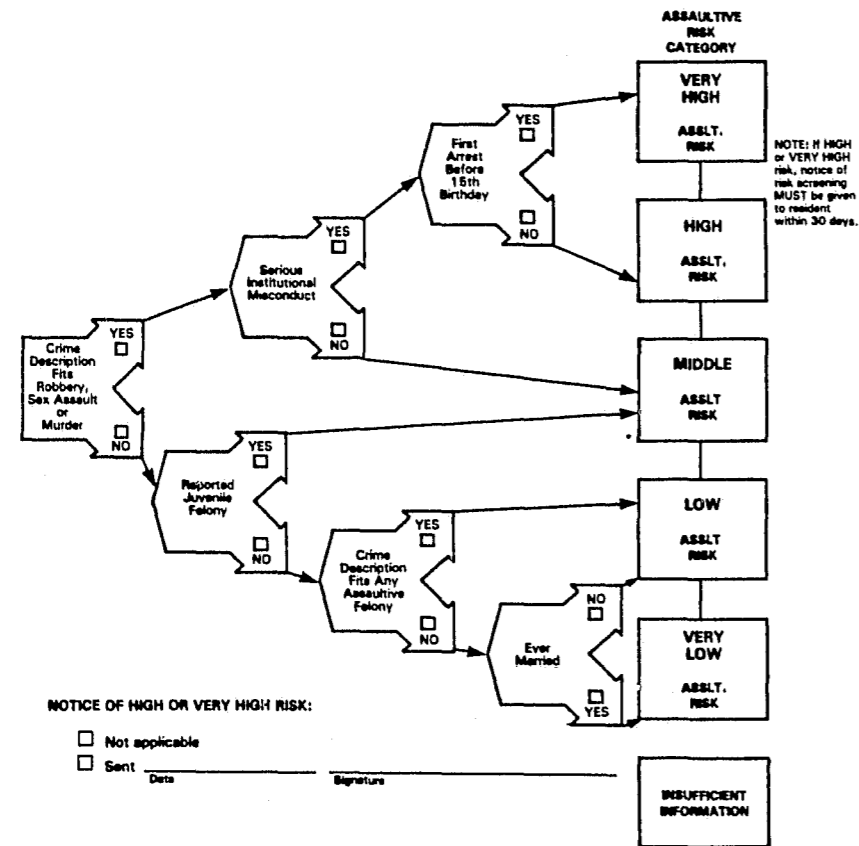
Recently, Minnesota has dropped the Risk of Failure instrument when it failed to be sufficiently valid over a period of time. In its place a Sentencing Commission has been established. The research director for the Commission, Kay Knapp, indicated in a phone conversation that problems of overprediction, lack of stability over time and population, and expense of continual revision were reasons for the change. This represents a shift of emphasis to a primary goal of "selective incapacitation" with the twin objectives of reducing disparity in sentencing and reducing the prison population by utilizing community-based programs. Sentences are currently based on the offense of conviction and a few modifying factors only.

C. Michigan Department of Corrections

As was mentioned earlier, Michigan has utilized a device to predict potential for violence. Concern about overcrowded prisons and fear of rigid determinate sentencing laws prompted Michigan to move to this "selective incapacitation" system. Although aware of the legal and ethical problems of prediction generally, Michigan personnel were persuaded by counter-arguments that; 1) the system is applied only to currently convicted people, 2) terms are not extended beyond the maximum sentence, and 3) preliminary results promised higher predictive accuracy than traditional prediction studies had provided.

By using a sophisticated computer that identified variables with "interaction effects," Michigan developed two tree-like

Figure 3



(Monahan, 1981)

prediction devices. These are called "Assaultive Risk Screening Sheet" and "Property Risk Screening Sheet," and are used for program placement as well as for parole decisions. The presumption is that the parole board may grant parole in spite of the device's rating when there are factors in the offender's record that strongly favor release, such as medical problems.

Initially, seven key variables were identified with high risk of violent behavior.

- previous commission of a violent crime
- previous commission of robbery
- single marital status
- prior juvenile commitment
- under 15 at first arrest
- raised predominantly by mother
- more than half of present term spent under involuntary segregation
- race

Race was immediately dropped for legal and policy reasons. Further statistical work designed to increase predictive power resulted in the "raised predominantly by mother" category being dropped. The "time spent in involuntary segregation" category was changed to "serious institutional misconduct" to make it less arbitrary and more equitable.

Thus three variables:

- violent offense of present conviction
- institution misconduct, and
- first arrest before 15th birthday

are indicators of the very high assault risk categories (see Figure 3). Four factors:

- violent offense of present conviction
- juvenile felony record
- assaultive felony, and
- marital status

indicate low and very low assaultive risk categories, depending upon the relationship between each factor (see Figure 3). Each factor may be viewed as a "hurdle" to be overcome before the next is considered. (Bohnstedt, 1979a)

The "Assaultive Risk Screening Sheet" seems to have a higher accuracy rate than most prediction devices. Monahan (1981) suggests this may be explained by the fact that Michigan uses arrest for a violent crime as its standard of "violence", rather than conviction and/or return to prison. A later validation study showed that the device had maintained its predictive ability for Michigan's offender population over time. However,

future validation will be necessary to allow for the effects of social conditions upon risk groups and also for policy based revisions.

Michigan experienced a number of implementation problems like clinical staff resistance, adequacy of case data, and legal challenges. As a result of the legal questions, notice and appeals rights have been added for offenders classified as high risk. Frequent court challenges have focused on the juvenile history categories, but so far no court has ruled out the use of the device. This may be a result of the "institutional behavior" category over which the offender has control subsequent to the commitment offense. The inmate is shown the device and his role in the rating is explained as soon as he enters the corrections system, thus motivating institutional behavior. Another possible explanation for the court's acceptance of the device may be the fact that corrections personnel can use corrections records of juvenile history rather than the public records which may be expunged after a certain period of time and under certain conditions.

Other potential problems with Michigan's system were outlined in the American Justice Institute's Classification Instruments for Criminal Justice Decisions, Vol. 4, 1979. Reduction of prison population has not occurred. A number of compounding factors make the actual effect of the instrument upon size of prison population difficult to assess. There has, certainly, been a parole board trend towards stricter treatment of the very high risk offenders, and some institutional officials perceive this as a "potential management problem." The potential for actually reducing the rate of violent crimes overall seems to be dubious at best and requires further research. (Bohnstedt, 1979a)

#### D. Massachusetts Department of Corrections

Massachusetts is a state which has continued to adhere to a rehabilitation philosophy, and appears to be experiencing success at lowering recidivism rates. They are currently utilizing parole guidelines. A basic underlying assumption of its system is that the failure of rehabilitation treatment can be attributed to the devastating effects of the prisonization process. As a result of this belief, programs termed "reintegrative" (as opposed to rehabilitative) are utilized. These reintegrative efforts include prison furloughs, work and education release, organized pre-release activities, and half-way houses. Other programs include more liberal visiting privileges, conjugal visits, co-ed institutions, and classification programs that provide movement among institutions in descending order of security level and population size. (LeClair, 1981)

Traditionally, risk classification was done by clinical personnel. However, a "Salient Factor Score" similar to that used by the U.S. Parole Commission was recently developed. Validation results were weak, so continuing experimentation will be necessary.

Implementation of the reintegrative programs is credited with a general drop in recidivism rates from 25% in 1971 to the current rate of 16% for a one-year followup period. (LeClair, 1981) The Massachusetts system is frequently cited by proponents of the rehabilitation corrections model as evidence that rehabilitation can, indeed, work. (Claser, 1981)

#### XI. Conclusions

From the wealth of information available, it is obvious that decisions in the criminal justice system are being discussed, studied and revised continually. Each state system is unique.

Professionals in the legal, mental health, corrections and statistical research fields are making decisions, defining terms and setting limits. Time and experience are providing temporary "answers" to specific questions within those limits. The complexity of the process requires continual monitoring so that discretionary judgments may be documented and structured. In the process, more is being learned about the predictive validity of certain factors and the effect of different policy decisions.

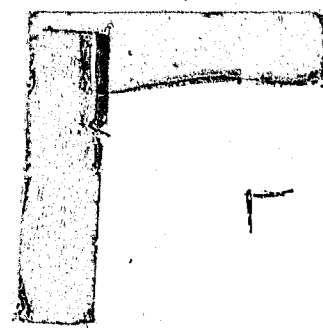
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