HB

174

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
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Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM February 22, 1991

SUBJECT: Alternative Incarceration Programs (W.O. 17LS-0787\A)

TO: Representative Niilo Koponen
Attn: Shari Paul

FROM: Jerry Luckhaupt JEL
Legislative Counsel

You have requested a sectional analysis of the above-referenced bill draft. Preliminarily, please note that a sectional analysis should not be considered an authoritative interpretation of a bill - the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it relates to a particular set of circumstances, please advise.

Section 1 of the bill amends AS 11.56.340(a) to provide that a person while charged with or convicted of a felony and while sentenced or assigned to an alternative incarceration program leaves the place of alternative incarceration without permission is guilty of unlawful evasion in the first degree.

Section 2 of the bill amends AS 11.56.350(a) to provide that a person is guilty of unlawful evasion in the second degree if while charged with or convicted of a misdemeanor leaves a place of alternative incarceration without permission.

Section 3 of the bill provides a definition of alternative incarceration program for AS 11.56.

Section 4 of the bill amends AS 12.55.015(a) to provide a court with the authority to order a defendant to complete a term of alternative incarceration as the sentence or part of the sentence for the crime committed.

Section 5 of the bill amends AS 12.55.085(b) to provide that a court may revoke probation if the defendant fails to successfully complete a term of alternative incarceration.

Section 6 of the bill amends AS 12.55.100(a) to provide that as a condition of probation a court may order a defendant to successfully complete a term of alternative incarceration.

Section 7 of the bill amends AS 12.55.100 by providing that a suspended sentence may be revoked by a court upon the defendant's violation of a term or condition of an alternative incarceration program.

Section 8 amends AS 12.55.185 to provide a definition for alternative incarceration program in AS 12.55.

Section 9 amends AS 33.30.011 and requires the commissioner of corrections to establish alternative incarceration programs.

Section 10 amends AS 33.30.091 to provide that the commissioner may not assign a prisoner to an alternative incarceration program except as provided in new AS 33.30.096.

Section 11 creates a new section AS 33.30.096 that provides for the assignment of prisoners to an alternative incarceration program and other duties of the commissioner in relation to such a program.

Section 12 amends AS 33.30.901 to provide a definition of alternative incarceration program.

Section 13 provides for the establishment of a pilot alternative incarceration program in two judicial districts to get the program started and allow for evaluation.

Section 14 provides for reports by the commissioner of corrections concerning the pilot program to the legislature.

Section 15 repeals the pilot program.

Section 16 provides an immediate effective date for the bill.

GPL:pl
91-105.plm

Alaska State Legislature

Representative Niilo Koponen

House District 21

Pouch V
Juneau, Alaska 99811
(907) 465-4992

119 N. Cushman, Suite 207
Fairbanks, Alaska 99701
(907) 456-8172

M E M O R A N D U M

To: Representative Dave Donley

From: Representative Niilo Koponen

Re: CSHB 174 and HB 151 Relating to Corrections

Date: April 16, 1991

I would like to request the Judiciary Committee to hear both House Bill 174 and House Bill 151 relating to corrections at your earliest convenience.

Attached are position papers relating to these bills. If you have any questions, please feel free to contact me or my aide, Shari Paul. Thank you.

Alaska State Legislature

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SPONSOR STATEMENT (ADDENDUM)

Since the Hammond Administration the Corrections operating budget has increased 272% the highest rate of increase of any department of the State government. The Corrections Budget actually exceeded the 272% increase due to the fact that facility leases are hidden in the Department of Administration budget, and lease purchases in excess of $20 million annually (principally the Spring Creek prison near Seward) occur in the "front end" of the annual operating budget.

Higher incarceration rates have not decreased crime rates in Alaska or elsewhere. In fact, prisons often appear to have operated as "crime schools" in some states. Crowded conditions have limited supervision of inmate activities leading to organization of groups such as the "Aryan Brotherhood", the "Mexican Mafia", the "Black Panthers," and other, lesser- known, networks, both vicious and benign. This does not appear to have occurred to any great extent in Alaska, but a facility such as Spring Creek does pose that possibility.

The Alaska Constitution allows incarceration for two reasons: protection of the public and rehabilitation of the offender. In reality, the two are one, as protection of the public is not served if the offender is not rehabilitated prior to final release from supervision by the courts and Corrections. Alaska has only a limited number of programs which contribute to rehabilitation, and they suffer from constraints imposed by statutes and underfunding. Successful sexual offender programs in other states (e.g. Vermont) rely on release from incarceration upon successful completion of the program, followed by community supervision and transitional counseling. Nationally, it has been found that continued incarceration after program completion without community transitional counseling, leads to <u>increased</u> recidivism.

HB 174 provides for the design and implementation of alternative sentencing plans under the control of the courts and the corrections system, appropriate to individual offenders and their offenses, designed to meet the constitutional requirements of rehabilitation of offenders, and public protection. This bill provides for pilot programs in at least two judicial districts, under direct control of the Department.

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POSITION PAPER

HB 174 "An Act relating to sentencing and the service of sentences; providing for alternative incarceration programs; providing for an alternative incarceration pilot program..."

In the last ten years, Alaska's prison population has increased at the fastest rate in the nation. Our oil wealth has allowed us to keep pace with this increase and we simply keep building new prison facilities. Unfortunately, the experience of other states shows that trying to match rising incarceration rates with new prison construction is a losing proposition. Building prisons cannot remain our only response to a growing population.

Clearly, offenders presenting serious threats to public safety should be in prison. However, AS 33.30.011 directs the Commissioner of the Department of Corrections to establish programs reasonably calculated to provide for the rehabilitation and reformation of prisoners, facilitating their reintegration into society. The success of alternatives to confinement to prison in other states presents promising courses of action, several of which are contained in this bill.

"Alternative incarceration program" means incarceration of a prisoner other than in a correctional facility and exclusive of assignment of the prisoner to a furlough or correctional restitution center; the term includes home arrest or detention enforced through electronic monitoring or phone checks with intensive supervision.

This bill allows judges to impose such detention upon offenders, with the added safeguard that an offender not meeting the terms of the sentence shall be re-arrested. Also, the commissioner may assign a prisoner committed to the commissioner's custody to an alternative incarceration program.

The commissioner must establish alternative incarceration pilot programs in at least two judicial districts in the state, and report regularly to the legislature concerning the progress and success of the programs.

The sponsor believes this measure provides an effective means of relieving prison overcrowding, while protecting the public.

STATE OF ALASKA
Department of Corrections
LEGISLATIVE POSITION PAPER

Lloyd Hamee, Commissioner

P.O. Box "T", Juneau, AK 99811-2000 (907) 465-3475 Carl Michel, Legislative Liaison

POSITION PAPER HB 174

The Department of Corrections supports House Bill 174 with certain modifications.

* The provision allowing the court to sentence offenders directly to electronic monitoring should be deleted.

Direct sentencing to electronic monitoring can easily bring about "net widening." Low risk offenders are placed on electronic monitoring who would routinely go to regular probation supervision. Probation supervision is less expensive than monitoring; to be cost effective, electronic monitoring has to impact offenders who are incarcerated.

* July 1, 1991 is too early to establish an electronic monitoring pilot program, as set in Section 13 of HB 174.

The RFP process, alone, would make this impossible. To best meet the needs of the program, it would be better to have a six month feasibility study to assure the Department develops the most effective program.

* The mandatory urinalysis section should be deleted.

This makes the assumption that all offenders being monitored have a substance abuse problem. This, in turn, puts a potentially excessive fiscal burden on this legislation and the Department.

* Allow the program to be introduced in only one Judicial District.

This allows the opportunity to establish a profile before the program is expanded.

Conceptually, electronic monitoring can be a viable intermediate sanction for corrections. It should, however, be cautioned that electronic monitoring does not necessarily mean great savings to the Department. In fact, it costs more than simple probation and conceivably more than furloughing offenders into halfway houses. Before electronic monitoring can save large sums of money, it must have a great enough impact on prison populations to enable reducing staffing and/or closing facilities. It could serve well, potential overcrowding and conceivably postpone construction.

A detailed analysis is attached which further discusses the Department's position, as well as elaborating on what could be accomplished with a pilot project.

FISCAL NOTE:
ZERO
ATTACHED ☑

APPROVED: _____
Commissioner

DATE: 4/2/91

DEPARTMENT OF CORRECTIONS

POSITION PAPER

The Department of Corrections recommends that House Bill 174 be modified to provide for a feasibility study prior to implementing electronic monitoring programs as defined in the bill.

The feasibility study would last approximately one year. This would include five to six months to solicit bids from various electronic monitoring equipment and service vendors.

Following the selection of a vendor, the equipment would be used by the Intensive Supervision Unit of adult probation in Anchorage. This unit is staffed by three specially trained probation officers who work flexible hours and receive on-call pay to provide around-the-clock coverage of a caseload of 25 parolees. This type of coverage would be needed to supervise an electronic monitoring program to ensure adequate staff response to curfew violations and tamper alarms reported by the computer monitoring service 24 hours per day.

There are approximately 25 parolees supervised by the ISP unit. The estimated cost per day for ISP supervision is $10.00, compared to $4.81 for regular community corrections supervision. With the addition of electronic monitoring equipment, this cost could almost double. However, it is possible that use of the equipment may decrease the staff time needed for surveillance, thus allowing the staff to supervise more offenders and mitigating the cost increase.

Use of the equipment by the ISP unit on their current caseload would not require any additional staff, vehicles, radios, beepers, or other security equipment since the unit is already set up for intensive supervision. No legislation would be required to use the equipment to enforce the curfews to which ISP participants are already subject. Electronic monitoring would have to be added as a condition of discretionary parole by the Parole Board for each participant.

ISP officers visit offenders' homes as often as five times per week currently. They conduct breathalyzer testing, and the parolees are subject to urinalysis performed by a contract agency.

Currently, although the offenders are subject to curfews, the ISP staff are not on active duty after 11:00 p.m., so there is no certainty that the curfews are enforced during late night hours. It is expected that if the equipment is reliable enough to improve curfew enforcement, it may enable the Parole Board to place more offenders on ISP supervision, thus reducing prison populations.

During the feasibility study, the Department would also survey all community custody offenders to determine how many could be reasonably supervised in an electronic monitoring program in lieu of community residential center placement. This would be broken down by geographical area to determine if there are enough candidates to make a program feasible in each area. The community custody offenders would be broken down into two risk categories: those whose violation of an electronic monitoring program condition or curfew could present an immediate risk to public safety and those whose violation(s) would not. The type of staffing for the first category would need to be similar to that of the ISP unit. Those in the second category might be able to participate in an electronic monitoring program that is staffed by a private contractor, and/or is not staffed 24 hours per day, since a curfew violation report would not necessarily require immediate staff response or home visit.

The cost of the feasibility study would include the lease of monitoring equipment for 25 offenders for 183 days, at $5.50 per day per offender. The cost of a contract to monitor the computer and report all violations and tamper alarms to an on-call officer would be $3.00 per day per offender. The lease of one drive-by unit at $8.50 per day would enable the officers to check on the location of the offender at work or any other place away from home by driving by the offender's reported location and receiving confirmation of his/her presence on the equipment in the officer's vehicle. These cost estimates are based on the most expensive vendor's prices and may be lower if another vendor can provide similar reliable equipment and/or monitoring services:

25 units	$25,254.00
Computer monitoring/reporting service	13,725.00
1 drive-by unit	1,556.00
	$40,535.00

The total cost of equipment per offender would be $9.00 per day if 100% utilized. The lease agreement would include provisions for returning any unused equipment, so that if only a portion of the 25 ISP offenders were placed on electronic monitoring, the cost of equipment would be lower.

At the end of the six month monitoring period, the Department would provide a written report within 90 days, addressing the feasibility of further use of electronic monitoring on ISP and other populations. The report would address:

- effectiveness and reliability of equipment and vendor service performance;

- staff time required to respond to violation/tamper alarms, broken down by times of day;

- frequency of false alarms requiring on-site visits by officers;

- offender reactions to equipment;

- numbers of violations, abscondments, and re-offenses, compared with the rates reported on ISP without electronic monitoring during the previous six months for the same number of offenders;

- estimates of the caseload which can be effectively supervised with electronic monitoring equipment compared to current ISP caseloads;

- estimates of the number of offenders who might be placed on ISP with electronic monitoring who would otherwise remain incarcerated, based on consultation with the Parole Board;

- estimates of the number of community custody offenders who could be placed on electronic monitoring in lieu of community residential center placement, or following a period of community residential center placement and recommendations for the type of staffing needed to supervise them in at least three geographical locations;

- proposed eligibility criteria and screening procedures for placing furloughees in an electronic monitoring program;

- proposed procedures for collecting fees from furloughees to help cover the costs of an electronic monitoring program and estimates of the amount to be collected based on records from community residential centers;

- training requirements for staff supervising offenders in an electronic monitoring program;

- procedures for data collection and recidivism figures on electronic monitoring participants;

- recommendations as to the feasibility of placing offenders directly in an electronic monitoring program following sentencing by the courts, based on studies in other jurisdictions.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. H.B. 174

Revision Date: _____ Department Affected: Corrections

Title: "An Act relating to sentencing.. BRU: Statewide Operations

roviding for an alternative incar pilot program..." Component: Southcentral Probation. Northern Probation

Sponsor: Rep. Koponen

Requestor: _____ COMPONENT SERIAL NO. [ ][ ][ ][ ]

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	285.0	285.0				
TRAVEL						
CONTRACTUAL	166.8	166.8				
SUPPLIES						
EQUIPMENT	5.0	5.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	456.8	456.8				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	456.8	456.8				
FEDERAL FUNDS						
OTHER						
TOTAL	456.8	456.8				

POSITIONS:

FULL-TIME	5.0	5.0				
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

See attached pages.

Prepared By: Tom Sutton, Director Phone: 465-3376

Division: Administrative Services Date: 04/01/91

Approved by Commissioner: _____

Agency: Department of Corrections Date: 04/01/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Bill Analysis

The bill seeks to establish an alternative incarceration pilot program and to provide for an alternative sentencing options for offenders. The bill requires the Department to establish an alternative incarceration pilot program by July 1, 1991 in at least two judicial districts of the State. The program is to be designed to accommodate at least 20 inmates in each judicial district (Anchorage and Fairbanks would be the most likely locations). The law establishing the pilot program will be repealed June 30, 1993.

Estimated Costs

The following estimates are based upon quotes obtained from applicable venders and/or historical expenditure data for applicable costs:

	Anchorage	Fairbanks	Total
Leased Electronic Monitoring Equip	$40.2	$40.2	$80.4
Monitoring Services of Contractor	21.9	21.9	43.8
Drive-by Unit	3.1	3.1	6.2
Urinalysis	13.0	13.0	26.0
Probation Officers II	114.0	171.0	285.0
Leased Vehicle	5.2	5.2	10.4
Radios	2.5	2.5	5.0
Total Cost	$199.9	$256.9	$456.8
Costs Per Day (Divided by 20 offenders per location)	$27	$35	

Narrative Explanation of Costs

Although daily costs are lower if the equipment is purchased, it is recommended that the Department lease the equipment. By leasing, we will avoid purchasing equipment which becomes obsolete because of technological improvements. The cost of electronic monitoring equipment ranges from about $2.50 to $8.50 a day. Our best estimate is $5.50 a day. The annual rate for each location is $5.50 x 365 days x 20 offenders = $40,150.

Once the monitoring equipment is in place, an employee is required to moni or the equipment on a computer terminal. The monitoring of the equipment requires a 24-hour, post seven days a week. A contractor has expressed an interest in providing this services for an additional $3.00 a day per offender. The contractor would notify the probation officer whenever a violation occurs or the equipment tampered with. The cost of the vender's service on an annual basis is $3.00 a day x 365 days x 20 offenders = $21,900. The alternative would be even more expensive if a new State position was added to monitor the computer terminal.

To monitor offenders at work or other locations away from the home, a telephone a drive-by unit should be leased. The cost to lease this unit would be $8.50 a day x 365 days = $3,103.

The bill requires a weekly urinalysis of offenders. The cost of the weekly urinalysis is about $12.50 per test x 20 offenders x 52 weeks = $13,000 per year.

Department staff are required to respond to violations and the tampering with the equipment. If a violation is reported by the computer terminal, a failure to respond in a timely manner could create serious liability problems. The only staff currently available for 24 hour monitoring are correctional officers within the institutions. However, there isn't sufficient staff available to allow an officer to leave their post to respond to offender violations.

Anchorage currently has an intensive supervision unit. For the purposes of the pilot project, the Department could use a portion of existing staff to monitor the offenders. Therefore, only two probation officers are required in Anchorage to implement the program (two PO II's x $57,000 = $114,000). Fairbanks does not have a intensive supervision unit, so a staff of three is required to implement the program (three PO II's x $57,000 = $171,000).

A vehicle is needed to respond to violations and to conduct drive-by verifications of offenders at locations away from home. Yearly lease for a vehicle costs about $5,200 a year. To supply the vehicle with radio equipment costs approximately $2,500.

[redacted]USE COMMITTEE REPO[redacted]

(7)

Date Referred: March 1, 1991

FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 4/16/91

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered HB 174

HOUSE BILL NO. 174 ALTERNATIVE INCARCERATION PROGRAM

"An Act related to sentencing and the service of sentences; providing for alternative incarceration programs; providing for an alternative incarceration pilot program; and providing for an effective date."

RECOMMENDATIONS:
be replaced with CS HB 174 (HES) [x] the same title [ ] a new title

[ ] have attached amendments(s)
[x] do pass
[ ] do not pass
[ ] no recommendations
[x] individual recommendations
[ ] additional referral to the ______ Committee

ADOPTS: ______ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[x] fiscal impact Dept. of Corr. 4/1/91
[ ] zero fiscal note ______

APPROVES PREVIOUS: (Dept/Date)
[ ] fiscal note(s) ______
[ ] zero fiscal note(s) ______

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Cheri Davis	✓				
[illegible signature]	✓				
[illegible signature]	✓				
[illegible signature]	✓				
		Mark Hanley		X	

[signature]
CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. 1

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Version: CSHB 174(HES)
(H) Publish Date: 4/17/91

Revision Date: _____ Department Affected: Corrections

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Component: Southcentral Probation, Northern Probation

Sponsor: Rep. Koponen

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COMMITTEE COPY

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Penal administration shall be based on the principle of reformation and upon the need for protecting the public.[1]

Introduction

Under Alaska's constitution, the principles of reformation and the necessity of protecting the public constitute the touchstones of penal administration. The operation of the state penal system is dependent upon a properly staffed and functioning department which has, in addition to probation and parole functions, the responsibility for treatment, rehabilitation, and custody of incarcerated offenders.[2] The goals anticipated by these broad constitutional standards include

- rehabilitation of the offender into a noncriminal member of society
- isolation of the offender from society to prevent criminal conduct during the period of confinement
- deterrence of the offender after release from confinement or other treatment

The State Constitution and appellate court decisions do no implied that Penal administration of justice would be inexpensive. In fact, Alaska ranked second in the country, behind Washington, D.C., in the amount of state and local revenue consumed on justice systems.[3] There are, however, many factors which drive the cost of criminal justice. For corrections, serious consideration must be given to the consequences of understaffing, inadequate training and idle time for prisoners.

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1 Constitution of Alaska, Art. I, § 12

2 State v. Chaney, Sup. Ct. Op. No. 653, 477 P.2d 441 (1970)

3 Alaska Sentencing Commission, 1990 Annual Report to the Governor and the Alaska Legislature, December 1990, pg. 27.

Prisons: $100 million problem

The Alaska prison system is overflowing with prisoners. All prisons and jails are over capacity levels. Why? It seems to me the Department of Corrections is very reluctant to release any prisoners; and once free, why do so many violate their parole? I'm not talking about a few, but 85 percent of paroled prisoners end up back in jail. This is because DOC gets 100 million dollars a year, and wants even more. DOC is stealing your taxes and oil money. They have purposefully kept prisoners months past their due release date, by taking their good time for the slightest infraction, and leaving them behind bars to add to the congestion and ever crowding at chaotic levels.

Releasing prisoners on non-violent crimes, with six months or less to their release date, and putting a stop to the prisons taking a prisoner's good time would drop prison levels 20 percent and save the taxpayer and state millions of dollars in costly additions due to overcrowding.

Also, put a stop to parole officers who violate a parolee's rights about such things as missing AA meetings because of work, or buying a car without telling the parole officer. Violations like these small infractions are sick and unjust, when a person has a job and a place to live and a family to support. Why punish a man when he has solid goals and a new positive chance in life and has learned from his mistakes? Let prisoners out with less than six months, for a non-violent crime. Keeping them in jail and taking their good time just adds to this $100 million problem.

— *Robert Britton*

House arrest

Electronic gadget keeps track of man awaiting criminal trial

By SHEILA TOOMEY ANCH. DAILY NEWS 3/18/91
Daily News reporter

Life gets boring for Charlie Jenkins, having to stay home all the time except when he's at work. Or when one of his court-appointed custodians takes him somewhere — shopping, or to visit a friend.

But Jenkins is definitely not complaining. He'd rather be home and bored than in jail.

"Compared to being in jail, this is real good," he said.

Jenkins, a 35-year-old warehouse supervisor, is under house arrest in Spenard, tethered by an invisible cord to a monitor two miles away, on the 13th floor of the Denali Towers. He is one of three "prisoners" in Anchorage who are not occupying a pretrial cell thanks to a new electronic monitoring service being offered to the state as a way to save money and free up prison beds.

Jenkins is charged with drunken driving — his fifth such offense in seven years. He was arrested the morning after the Fur Rondy fireworks, although he says he doesn't remember the arrest itself. Bail was set at $5,000, cash only, an amount he couldn't come up with.

By all accounts, Jenkins isn't a danger to anyone except when he's drunk and behind the wheel of a car. But given his record, it looked like the only way to keep him out of cars was to keep him in jail at a cost of about $96 a day to the state.

For Jenkins, jail would have cost much more — his job, losing his rented home, finding someone to keep his dog, Bunker. If he had a family, it would mean loss of support for a wife and kids — maybe welfare.

Longtime Anchorage bail bondsman Fred Adkerson has a new business that offers an alternative. Jenkins has been fitted with a sealed, tamper-resistant "bracelet" that straps a beeper-size gray plastic gizmo to his ankle — not noticeable under Jenkins' white socks and work pants.

The gizmo transmits a signal to a receiver that looks like a cable box. The box is wired to a telephone in Jenkins' spare bedroom. It forwards the signal to Adkerson's office on Fireweed Lane, where a computer monitors the signal 24 hours a day, keeping relentless track of Charlie Jenkins.

The computer knows what time Jenkins leaves for work in the morning, accompanied by a court appointed guardian. It knows when he is due home in the evening,

ERIK HILL / Anchorage Daily News

After a fifth DWI charge, Charlie Jenkins is under house arrest. The monitor on his ankle records his movements.

when he goes to counseling sessions, when he is due to check in with his human monitor once a week.

When Jenkins gets more than 150 feet from the phone box, the computer printer back in Adkerson's office begins to chatter. If Jenkins' approved schedule doesn't include an absence at that time, the computer registers a violation and a computer voice pages John Hastie, a former police officer who runs the program for Adkerson.

"You're restricted virtually as much as in jail," Hastie said.

Please see Page E-2, HOUSE ARREST

HOUSE ARREST: Ankle strap makes him toe line

Continued from Page E-1

A judge lowered Jenkins' bail to $1,500 with the electronic monitoring, an amount Jenkins could afford. As long as he obeys his bail restrictions and pays Adkerson's $15-per-day fee, he can live at home and keep earning a salary. He can't leave his house alone for any reason. He is better monitored than most people out on bail and isn't costing the state any money or using up a jail bed.

"Being able to work is most important," Jenkins said. "They're going to hit you with the fines and all that. How are you going to pay for it?"

Jenkins speaks hesitantly, an ordinary working man with a personal problem that becomes a public safety issue when he gets behind the wheel of a car. Adkerson says he checked out Jenkins before signing him up to make sure he had no history of violence.

> *"Being able to work is most important. They're going to hit you with the fines and all that. How are you going to pay for it?"*
>
> — Charlie Jenkins

"This program is not designed for a person with a long criminal history," Adkerson said. "Non-violent, low risk, no threat to the community." Shoplifters, thieves, people like that. He thinks there are hundreds, maybe a thousand, prisoners in Alaska jails who could be freed on this system.

A spokeswoman for the Department of Corrections says that is most unlikely.

As of 1989, 37 states used such systems, with widely varying regulations and widely varying results. The Texas electronic monitoring program for early parolees has been successful to the extent that no serious crimes had been committed by the 322 people on the program as of 1988. Florida uses electronic monitoring as a solution to prison overcrowding, putting 10,000 convicts a year on the system. Four murders and a series of rapes in Broward County alone have been attributed to electronically monitored prisoners, according to the Fort Lauderdale Sun-Sentinel.

Jenkins did four months in jail on his last conviction and faces a longer sentence this time. If convicted, he hopes to do his time on house arrest also, which is most unlikely. Right now, the system is used in Alaska only for pretrial defendants, whose restrictions are determined by judges.

Once convicted, a defendant moves under the control of the Department of Corrections, which has just begun to examine a variety of electronic monitoring systems and their possible uses here.

Home Monitoring of Criminals Is Poised To Break Loose, Industry Analysts Say

Special to THE WALL STREET JOURNAL

NEW YORK -- As budget constraints mean less money to build and maintain prisons, states and cities are turning to companies that provide products for home monitoring of criminals and those awaiting trial.

"The absence of new prison facilities in the face of an ever-rising criminal population means alternative means of detention are becoming necessary," says David Leibowitz, an analyst at American Securities. Electronic monitoring of some criminals in their homes "is one approach to meeting that need."

Companies in this industry generally are still small. Market leader BI Inc. has annual revenue of about $11 million. And only those convicted for non-violent crimes tend to be considered for electronic monitoring. But many analysts say the industry is poised for big gains.

Jyoti Aggarwala, analyst at Ladenburg Thalmann & Co., says electronic monitoring of offenders has about tripled each year since the first quarter of 1987. Installed monitoring units stood at more than 12,000 by the first quarter of this year, she says. "Since this market still is in its initial growth phase, we expect the number of offenders on [electronic monitoring home arrest] to double each year through 1995," she adds.

A spokesman for the National Institute of Justice estimates it costs taxpayers on average $75,000 per bed to build a prison and $60 per inmate per day to operate it. Home-arrest equipment, Ms. Aggarwala says, costs about $4,500 per inmate and less than $10 per inmate per day to provide monitoring. She adds that some offenders pay for the privilege of electronic monitoring, rather than do jail time, and that those under such house arrest can continue to work, adding to the tax base of their communities.

Baton Rouge, La., is one community using electronic monitoring of criminals on a limited basis. Milton R. Skyring, court clerk-judicial administrator, says he is pleased with the program, which has been in effect there for just under two years.

Three different surveillance methods are used in Baton Rouge: television monitoring, a digital telephone monitor that alerts police when someone leaves home, and a wrist device that tracks offenders.

Mr. Skyring says electronic monitoring is typically used when unusual hardships would befall a family if an offender was sentenced to jail. He says the program has only had one failure--an offender who took all the television surveillance equipment "and kept on walking." A bench warrant for that person is outstanding.

Ms. Aggarwala says there are about 10 companies, private and public, that either make products or provide services in the electronically monitored home arrest industry.

She rates BI a "buy," calling it the "largest and best-seasoned player in the field." In the first quarter ended Sept. 30, net income rose to $497,000 on revenue of $3.7 million from $251,000 on revenue of $2.2 million a year earlier.

In October, the company sold one million common shares to the public at $9.75 each.

Ms. Aggarwala also recommends Digital Products Corp., which she calls "'an emerging participant with major turnaround potential."

Electronic Monitoring

The Missing Link For Successful House Arrest

by Mike Goss

The past seven years have seen a dramatic expansion in the use of electronic monitoring. Currently, there are approximately 7,500 offenders or pre-trial detainees, who would otherwise be in a cell, living in their own residences.

Most of these electronically monitored house arrestees are employed and *paying* taxes rather than consuming them. Those who have families are supporting them, rather than draining heavily burdened welfare rolls. These are offenders who could not otherwise have been legally released under the rules of criminal justice today.

Parole officer Tanya Murray puts an electronic monitor on a parolee, who has been placed under house arrest.

Without electronically monitored house arrest (or electronic home detention), these 7,500 offenders would need 10 prisons with 500 beds each to hold them. Otherwise, they would be turned loose with no method of determining whether they were observing their court-imposed curfews.

House arrest had previously been used effectively by the military, where carefully controlled conditions and a regimented milieu made it possible to enforce curfews and limited access to the community. However, outside military bases, home detention has always been both ineffectual and fraught with danger because no reasonable amount of added personnel could hope to determine whether an offender had left his/her residence.

With the added dimension of electronically monitoring curfews, it is now feasible to impose reasonable restrictions on the freedom of an individual and be certain those restrictions are being observed.

Suddenly, house arrest has the missing component that makes it effective. The offender's presence at home can be confirmed 24 hours a day, seven days a week. This provides credibility for a program that previously had to be run on trust with persons who had proved they could not be trusted.

One advantage of equipment that has

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been designed from day one as a high-security, large-volume system for use with high-risk offenders is that it can easily be selected for use in statewide systems that want to grow to very large numbers over a broad geographic area. Michigan, for example, uses electronic monitoring for 1,500 offenders, most of whom are being released from 3-7 year prison sentences and have residences all over the state, ranging from downtown Detroit to the rural areas of the Upper Peninsula.

Key Factors

It would be nice to say this all happened without a hitch, but that isn't true. There were many obstacles to overcome, both technical and programmatic. With the benefit of experience, it is possible to specify some of the common factors among the highly successful programs that are now operational:

1. The population to be addressed is defined and researched to determine if the number of eligible offenders justifies the size of the program.
2. Goals are defined and quantified so the program can later be evaluated.
3. Management and legislative support for funding and future operation are solicited and determined to be sufficient.
4. Sufficient officers to handle the caseload are budgeted and volunteers interested in an innovative approach are requested to apply as officers.
5. A risk assessment is done on the population being affected, and specifications for the equipment to be used are determined based on the features available and the hardware's ability to meet that risk level.
6. Personnel selected to supervise the offenders are brought on board well in advance, educated in the policies and procedures of the program, and trained in the operation of the equipment.
7. Equipment is placed on the officers for familiarization and several elected public officials such as sheriffs and judges are "strapped in" for publicity and public awareness. Media coverage is encouraged.
8. Fewer than 10 offenders are placed on the equipment for the first two weeks. Each transaction (message from the offender's residence) is scrutinized carefully to understand its implications in relation to the previous and subsequent transactions.
9. Equipment providers' personnel work hand-in-glove on a daily basis in the early days, providing hardware/software support and program guidance based on previous installations. All transactions are checked by the manufacturer from its office (by remote dial-in) until the implications of all apparent anomalies are understood by agency personnel.

It is now feasible to impose reasonable restrictions on the freedom of an individual and be certain those restrictions are being observed.

10. Curfew violations of even one minute are addressed with the offender so they know how tightly the system has absolute awareness of their schedule.
11. As much as possible, statistics are kept as the program progresses. Justification for subsequent funding is collected and comparisons are prepared to determine how well the program is meeting its intended goals.
12. The agency carefully tracks each monitor to record when and on whom it was used in order to build a history for future use in court if the data should be questioned.

Anyone who has implemented such a program could add several more items to this list. The three primary factors that seem to be present in every successful program are prior planning, prior planning, and prior planning. As many problems as possible are anticipated and addressed in the policies and procedures manual. The policies and procedures manual is assumed to be an evolutionary document that matures and grows as the program progresses.

All the effort involved in meeting these conditions is worth it. Most of the programs running today are effective and reliable. Agencies that had no place to go, with the offender population in rapid growth, are finding relief from those pressures. The law abiding citizen is still safe from the predations of the unscrupulous. The agencies' obligation to the community to punish and control proven offenders has been met. The agencies' mandate from the taxpayer to accomplish these tasks and keep costs under control has been met.

Agencies under court order to reduce their populations can ease the pressure and give themselves time and space to work on the problem instead of just throwing up more construction in a panic.

The evidence so far suggests that house arrest programs, under typical guidelines for intensive supervision probation, give the departments better interaction with the offenders than incarceration could accomplish. This happens because the supervisory personnel do not spend their time resolving the conflicts that occur when people who have shown themselves uncooperative in normal society are clustered in the close confines of an institution. Because most programs require the offender to be employed, and cost of supervision is charged to the participant, the offender is beginning to pick up part of the tab.

Certainly, supervising an offender in the community has its problems, but working on those problems helps to prepare the offender for eventual release to normal society instead of warping him or her from a normal track to an abnormal one.

Federal Parole Commissioner Vince Fechtel stated at a recent professional conference that a new probation or parole officer just starting on a career would be wise to "hitch his wagon to the rising star of electronic-monitored house arrest." The wave of the future in corrections is house arrest, he said, now that the missing link of verification of curfew compliance has been found. It shows promise of playing an increasingly important and valuable role in the profession.

Mike Goss is a private consultant for technology-oriented alternative sentencing programs.

U.S. Department of Justice
Office of Justice Programs

Electronic Monitoring in Intensive Probation and Parole Programs

Bureau of Justice Assistance

MONOGRAPH

U.S. Department of Justice
Office of Justice Programs

Electronic Monitoring in Intensive Probation and Parole Programs

Monograph

Bureau of Justice Assistance

February 1989

U.S. Department of Justice
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The Assistant Attorney General, Office of Justice Programs, coordinates the activities of the following program Offices and Bureaus: National Institute of Justice, Bureau of Justice Statistics, Bureau of Justice Assistance, Office of Juvenile Justice and Delinquency Prevention, and Office for Victims of Crime.

U.S. Department of Justice
Office Justice Programs
Bureau of Justice Assistance

Office of the Director

Washington, D.C. 20531

Few technical innovations in recent years have captured the imagination of corrections officials and criminal justice planners as much as electronic monitoring devices. The use of electronic monitoring for offenders as part of home detention has spread rapidly. However, the use of such devices should be carefully planned and be part of an overall supervision strategy.

Electronic monitoring devices have been used for a variety of criminal justice purposes. This monograph provides a suggested process for defining the objectives of electronic monitoring, developing policies, reviewing equipment bids and securing technical assistance. It is a supplemental document to the previous program brief, Intensive Supervision Probation and Parole (ISP). This document is not intended as a blanket endorsement of electronic monitoring as a component of all community supervision nor as a substitute for jail where appropriate, but as one innovation which can assist certain classes of higher risk offenders on probation or parole supervision.

The Bureau of Justice Assistance and the National Institute of Justice are continuing to evaluate the impact of electronic monitoring for various corrections populations. Over the next two years additional findings will assist probation, parole and other corrections agencies in the best use of electronic monitoring. In the meantime, this monograph should assist those jurisdictions considering the use of electronic monitoring as part of intensive supervision in the best ways to plan, purchase and use these aids. It also summarizes the legal basis for use of electronic monitoring as defined in court cases up to this time.

Sincerely,

Charles P. Smith
Director

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Introduction

Electronic signaling devices for monitoring criminal offenders are often seen as a "magic fence" which isolates offenders and protects the public at relatively little cost. Their use has spread rapidly and widely. First used in December 1984, by early 1987 electronic monitoring devices were being used in twenty states and by early 1988 in thirty-two states.

Electronic monitoring equipment is usually classified in terms of its signaling characteristics. One type, capable of programmed contact, is a receiver which requires the offender to respond on cue as directed; the other type has a miniaturized transmitter which emits a continuous signal. The availability of a telephone in the offender's home is implicit to the use of most monitoring technologies.

The programmed contact models operate from a central computer which is programmed to call offenders during times (randomly or specifically) required by the supervision plan. The types of equipment currently available include coded wristlets/anklets, voice verification, visual verification and pagers.

The continuously signaling devices consist of three parts. The first part is a small transmitter which is strapped to the offender. Coded radio signals are transmitted (generally six to ten times per minute) to a receiver/dialer in the offender's home. The devices have a receiving range of 100 to 200 feet. The second part, the receiver-dialer, receives the signal from the transmitter and dials the central computer when the transmitter first is within range or when the signal stops. The central computer compares data to the offender's schedule and reports on offender activities. Some systems alert supervision officers to violations; others simply record the violation, which is handled according to the program design.

Newly introduced "hybrid" systems have combined programmed contact and continuously signaling technology so that some of the limitations of each are reduced or eliminated by the strengths of the complementing system. These systems generally employ voice verification technology to support/verify a continuously signaling system's report of a violation.

2/1/91

AMERICA'S CORRECTIONAL CRISIS

A REPORT TO STATE AND LOCAL BAR ASSOCIATIONS

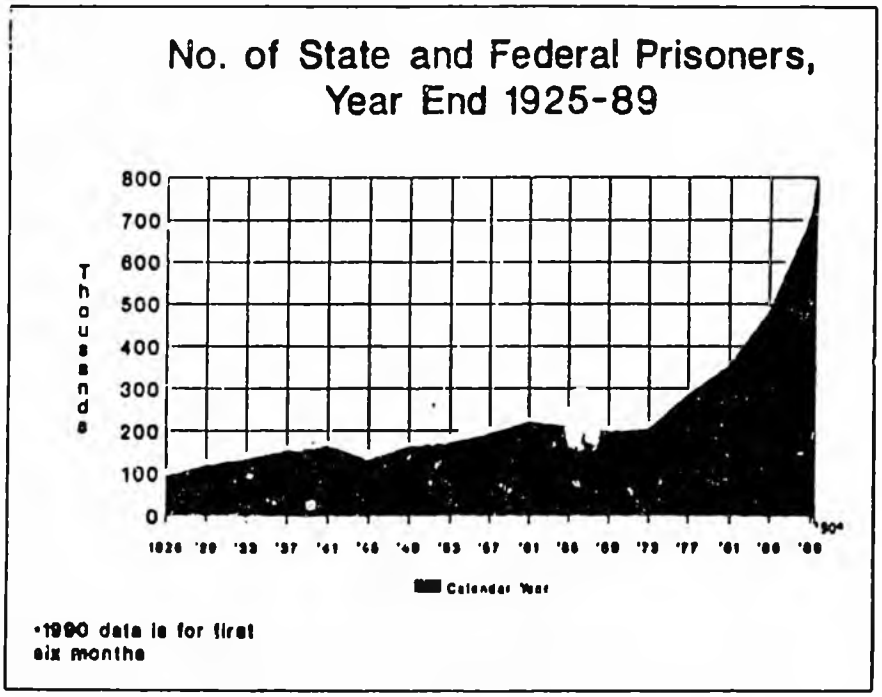
FROM

THE SECTION OF CRIMINAL JUSTICE

The growth of America's prison population is out of control. We need the help of the organized bar to bring reason to public debate on this issue.

What is happening?

Despite a basically static crime rate, we have almost quadrupled the number of persons in state and federal prisons since 1970. In 1970 we had roughly 197,000 persons behind bars.[1] In 1980 the number was 316,000.[2] As of June 30, 1990, it had jumped to 755,425.[3] Chart 1 presents the data from 1925 to mid-year 1990.



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[1] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: State and Federal Prisoners, 1925-85, at 2 (Washington, D.C., October 1986).

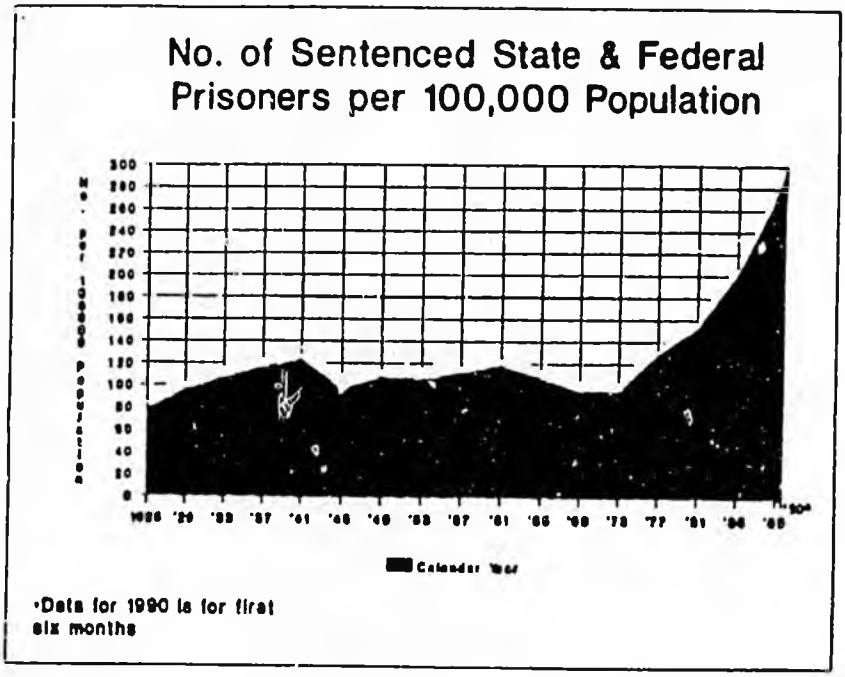
[2] Ibid.

[3] Department of Justice Press Release 90-54(H), at page 1 (October 7, 1990).

The growth is not slowing. It is getting steeper. During the past few years, the rate of growth has been roughly 7% to 8% per year.[4] During 1989, however, the prison population grew at a rate of 13.1%. We added more than 82,000 inmates last year, more than during any previou twelve months in our history.[5] That is the equivalent of 1600 more inmates, or four new prisons, per week.

The phenomenal growth rate continued during the first half of 1990, rising another 42,862 inmates--a 12% annual growth rate. The Director of the Justice Department's Bureau of Justice Statistics reported the twelve month growth as "the largest annual growth in 65 years of prison population statistics."[6]

The number of inmates per capita has grown at the same rate. See Chart 2. In 1980 we incarcerated 138 Americans per 100,000 adults in the population.[7] On June 30, 1990, the number had grown to 289 per 100,000 adults.[8]



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[4] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: Prisoners in 1989, at 1 (Washington, D.C., May 1990).

[5] Ibid.

[6] Department of Justice press release, supra note 3.

[7] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: State and Federal Prisoners, 1925-85, supra, note 1.

[8] Department of Justice Press Release, supra, note 3.

Add the number of inmates in local jails (344,000 in 1988).[9] The result is more than 1 million Americans behind bars, or one for every 250 adults.

If all of our prison and jail inmates were in one place, its population would exceed that of nine states. Vermont, Rhode Island, North Dakota, South Dakota, Delaware, Montana, Wyoming, Nevada and Alaska each have fewer inhabitants than do our prisons and jails combined.

There are almost 2.5 million persons on probation[10] and another 400,000 on parole.[11] Altogether there are almost 4 million Americans under correctional supervision. One in 49 adults is serving a criminal sentence.[12] One in 27 men.[13] Among men between the ages of 20 and 29, 1 in 4 blacks, 1 in 10 Hispanics and 1 in 16 whites are serving a criminal sentence.[14]

The rates of growth are different in different states. The populations in ten states have increased by more than 150% during the past ten years: California (263%); New Hampshire (258%); New Jersey (249%); Alaska (234%); Nevada (193%); Arizona (192%); Ohio (162%); Pennsylvania (162%); Hawaii (157%); Utah (154%).[15]

We have been building new prisons at an unprecedented rate. In 1989 alone, we added 40,000 to 60,000 new beds[16] (an 8 to 10%

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[9] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: Census of Local Jails 1988 (Washington, D.C., February 1990).

[10] U.S. Department of Justice, Bureau of Justice Statistics, Probation and Parole (Washington, D.C., November 1989).

[11] Ibid.

[12] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: Probation and Parole 1988 at 1 (Washington, D.C., November 1989).

[13] Ibid.

[14] Marc Mauer, Young Black Men and The Criminal Justice System: A Growing National Problem, at 3 (The Sentencing Project, Washington, D.C., February 1990).

[15] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: Prisoners in 1989, supra, note 4 at 3.

[16] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: Prisoners in 1989, supra, note 4 at 7. (differences based on highest and lowest rated capacities)

increase) at a capital cost of about $1.5 billion.[17] As a nation, we will spend about $16 billion this year to build and operate prisons and jails.[18]

But we are falling hopelessly behind. At last report, only 10 states were operating at or below 95% or their rated capacity (using the highest of several measures of rated capacity).[19] The Federal system and those of 38 states are filled beyond their highest rated capacities. Prisons in the District of Columbia and 42 states and territories are under federal court order for unconstitutional crowding.[20]One in every eight jails has a federal court "cap."[21]

The consequence--a proliferation of "back door" release mechanisms, including more liberal parole policies, increased good time, and emergency release programs when institutions reach their federally-imposed "caps."

It is interesting to note that all seven states reporting a prison population decline during the first six months of 1990 (Colorado, New Mexico, Rhode Island, Tennessee, Alaska, Oregon, and West Virginia) are all under court orders dealing with unconstitutional conditions of confinement.

Why are we doing this--spending fortunes in public funds, at a time of hugh public budget deficits, to lock up more and more people?

It is not because of increased crime. While per capita imprisonment has increased by more than 100% during the past ten years, per capital reported crime has decreased by 3.5%.[22] Per

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[17] Estimate, based on average construction cost of $50,000 per cell. National Council on Crime and Delinquency, NCCD Focus (San Francisco, California, December 1989).

[18] Marc Mauer, Americans Behind Bars: A Comparison of International Rates of Incarceration, at 3 (The Sentencing Project, Washington, D.C., January 1991).

[19] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: Prisoners in 1989, supra, note 4 at 7.

[20] National Prison Project, Status Report: The Courts and Prisons, Page i (Washington, D.C., January 1, 1990).

[21] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: Census of Local Jails 1988, supra, note 8 at 7.

[22] U.S. Department of Justice, Federal Bureau of Investigation, Uniform Crime Reports 1989, at 48 (Washington, D.C. 1990).

capita violent crimes have increased by 11%,[23] but per capita murders and burglaries have both actually decreased, by 15% and 24% respectively, over that time.[24] The number of households touched by crimes of violence and theft has dropped from one in three in 1975 to one in four in 1989.[25]

It is true that crime rates in America remain high. One in every 13 households is affected by a burglary or violent crime committed by a stranger each year.[26] But it is not true that higher crime rates justify the increases in incarceration that we have experienced.

What other explanations are there?

- Public opinion. Crime has become a major political issue in this country. Public officials attempt to outdo each other in their "get tough on crime" rhetoric, thereby reinforcing public misperceptions that crime is increasing. In particular, the public perceives, unrealistically, that tougher law enforcement can rid our streets of drugs.

- Mandatory minimum sentences. The legislative response is ever higher mandatory minimum sentences, which have one overall effect--to force judges to send first offenders, especially first-time drug offenders, to prison.

- Technology. Better law enforcement information systems produce more complete prior criminal history information. An offender who would have appeared to be a first-offender ten years ago is now shown to have several prior convictions. As a result, he will get a much longer sentence.

  Massive urine testing is a second technological factor. Most states now require persons on probation or parole to submit regular urine samples. Courts revoke their status if the samples show drug use. The number of persons entering prison from parole violations is increasing faster than the number of new admissions from court. In California today, more persons are coming into the prisons from parole violations than from new sentenc-

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[23] Ibid.

[24] Ibid.

[25] U.S. Department of Justice, Bureau of Justice Statistics, Bulletin: Households Touched by Crime, 1989, at 1 (Washington, D.C., September 1990.

[26] Id., at 5.

es (including probation violations). The primary reason for parole revocation is "dirty urine."

What should we do?

No one today contends that we should attempt to return to the level of incarceration of 1970, or even 1980. But we do need to stop the trend of ever-higher prison populations. Enough is enough, for our public pocketbooks if for no other reason.

The decade of the '80s was a time for expanding our correctional capacity. The decade of the '90s needs to be devoted to making more effective use of that capacity--by ensuring that space is available to lock up all truly dangerous criminals. To do that, we have to find other ways to punish the non-dangerous.

Two knowledgeable commentators have observed recently that our current process is both too lenient and too severe.[27] Because we have few options other than prison and probation, judges put some persons on probation, when they need a more severe sanction, only because their crimes don't warrant jail. Others go to prison merely because their crimes are "too serious" for probation.

A number of programs have been developed in recent years to punish criminals without locking them up. Electronic monitoring to incarcerate an offender in his own home is one. Fines, community service, and restitution are others. Shock probation (including a very short prison stay), night and weekend confinement, and "boot camps" for drug offenders are still others.[28]

But there is no single answer for the whole country. Our correctional and crime problems differ in different parts of the country and from state to state. Each state will therefore have to devise its own unique answer.

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[27] Norval Morris and Michael Tonry, Between Prison and Probation--Intermediate Punishments in a Rational Sentencing System (New York, Oxford University Press 1990). See also, Daniel J. Freed and Barry Mahoney, Between Prison and Probation: Using Intermediate Sanctions Effectively, The Judges' Journal, Vol. 29, No. 1 at 6 (Winter 1990).

[28] For information on the general topic see Petersilia, Expanding Options for Criminal Sentencing (The Rand Corporation, Santa Monica, California, November, 1987); Electronic Monitoring and Correctional Policy: Techniques and Applications (NIJ Research Report, NCJ 104817); Fines as Criminal Sanctions (NIJ Research in Brief, NCJ 106773); Shock Incarceration: An Overview of Existing Programs (NIJ Issues and Practices, NCJ 114902); Roger J. Lauren, Community Managed Corrections (American Correctional Association, 1988).

What can the organized bar do?

Get involved.

The integrity and legitimacy of our legal system is at stake. The public's view of the courts and the justice system--and hence its view of the legal profession as a whole--is determined by its perception of how well the criminal justice system is working. It is not working very well today.

Almost every state has some sort of statewide advisory committee working on its correctional problems. A representative of the organized bar on such a group could make a difference. Judges and prosecutors, especially those who have to stand for election, have great difficulty taking a strong public position that could be mischaracterized as "soft on crime." Criminal defense lawyers do not have the same public credibility on this issue that the leaders of the organized bar can have.

Lawyers are needed for prison conditions litigation. ABA President Jack Curtin has asked the National Conference of Bar Presidents to create a special committee on this topic. Its goal would be experimental programs in several jurisdictions involving the bar in ensuring that our bulging prisons and jails operate consistently with constitutional requirements.

The ABA's criminal Justice Section stands ready to assist, with information, materials, and speakers with up-to-date information on the problem and possible solutions.

CRIME: Despite popular theories, the answer is not bigger jails

Continued from Page E-1

tion derived from his role in co-authoring a 1975 survey of 231 studies on offender rehabilitation spanning the previous 30 years. Titled "The Effectiveness of Correctional Treatment," it became the most politically influential criminological study of the past half century.

The time was ripe. From 1963 to 1973, murder, assault and burglary rates doubled while robberies tripled. Martinson's views were enthusiastically embraced by the national media, often under the headline, "Nothing Works." Yet curiously, all the Sturm und Drang was over something that scarcely existed. Even at the height of the so-called "rehabilitative era," a corrections department spending more than 2 percent of its budget on treatment was unusual. But the attack was taken up by liberals and conservatives alike — many of whom felt that belief in rehabilitation, as Harvard's James Wilson put it, "requires not merely optimistic but heroic assumptions about the nature of man."

But as Berkeley criminologist Elliott Currie would later explain, "programs cited by Martinson and other critics as evidence that rehabilitation did not work were often not only underfunded and understaffed, but typically staffed by poorly trained and often unmotivated people. These early critics of rehabilitation made little effort to separate reasonably serious and intensive programs from those — vastly more common — that at best offered minimal counseling or tutoring to people who were otherwise allowed to languish in the enforced bleakness of institutions or in the shattered, dead-end communities from which they had come."

The classic 30-year "Cambridge-Somerville Youth Study" is a premier example. In the Harvard-sponsored program begun in 1937, researchers followed 320 boys for 30 years. The boys were assigned to 10 "counselors" who had no training in mental health or psychotherapy and were told to do "whatever they thought best." Each youth was seen only five times annually during the early years of the project. Not surprisingly, the program had little effect on subsequent criminal behavior.

□

Part of the problem in evaluating rehabilitation is deciding what constitutes success. For example, in studying the effectiveness of family therapy with hard-core delinquents (each having 20 or more previous convictions), one survey found that after 15 months, 60 percent of those in therapy had re-offended. However, 93 percent of the matched "non-therapy" control group re-offended. A medical procedure that suppressed symptoms in 40 percent of a group of chronically ill patients, 93 percent of whom deteriorate without treatment, would be seen as a virtual triumph. In corrections, however, such results are usually regarded failure.

Moreover, simply residing in some com-

Thus contemporary corrections theory offers a choice between equally unattractive extremes: ineffective probation-parole or debilitating prisons.

of the boys in some areas will appear in juvenile court during their teen years. Among young black men in certain parts of the country, seven out of 10 can anticipate being arrested at least once. Though this may suggest failure, it may not measure individual criminal behavior. Indeed, among chronic delinquents the simple fact of rearrest may be less important than whether the young offender is winding down his criminal activity.

But the biggest problem in getting a fair hearing for rehabilitation is that so many efforts have failed spectacularly. A team of researchers from the Academy for Contemporary Problems found that the "velocity of recidivism" among youthful offenders actually increased with each trip to a state reform school for rehabilitation. Rand Corp. researchers repored similar patterns among adults.

Nonetheless, some theorists maintain that the very fact that a prison is dangerous and violent makes it rehabilitative. It's a variation on the "Scared Straight" theory. Unfortunately, repeated studies have shown that it doesn't work.

□

So, runs the presently popular notion, if we can't get a complete "cure," why not simply lock up all offenders? Simon Dinitz from the Academy for Contemporary Problems' "Dangerous Offenders Project" considered this Draconian option. He estimates that incarcerating every first-time felony offender for five years would likely yield no more than a modest 7.3 percent decrease in crime rates. But U.S. prisons (already overcrowded) would have to increase their populations 300 to 500 percent, entailing construction costs of $130 billion and increasing annual operating budgets from $12 billion to between $36 billion and $60 billion. And even that would not guarantee that crime rates would stay down for long. Those in prison are often replaced by others waiting in the wings (particularly among drug offenders). More ominously, such a policy would yield 3 to 5 million slightly more hardened ex-convicts dumped into the streets every five years.

The most unusual case for incapacitation was made late last year by Richard Abell, an assistant attorney general in the Justice Department. Writing in Policy Review, and using figures compiled by a Justice economist, Abell concluded that we save $40 million annually in crime costs for every 100 offenders we incarcerate — based on the extraordinary assumption that a typical offender commits 187 crimes per year at an average $2,300 per crime, or $430,100 annually.

of California researchers Franklin Zimring and Gordon Hawkins noted that at a rate of 187 crimes per offender per year, putting a half-million more persons in prison would lower the number of crimes nationally by almost 80 million — thus making the nation crime-free, since there are about 45 million crimes reported annually. By Abell's calculations, in fact, crime must have disappeared sometime in late 1985 as a result of the doubling of prison and jail populations from approximately 300,000 in 1976 to about 800,000 in 1985. Nonetheless, President Bush — who pledged during the campaign to double the federal prison-building budget over four years — has used the same argument.

All this suggests that we are willing to invest large sums in variations on themes of retribution and deterrence. Yet Canadian psychologist Paul Gendreau and University of Ottawa sociologist Robert Ross, citing sophisticated new mathematical analyses of the data on rehabilitation, concluded that "the (substantiated) claims for effective rehabilitation of offenders far outdistanced those of the major competing ideology: applied deterrence or punishment."

□

As early as 1976, a Rand Corp. report had suggested that the "nothing works" conclusion was probably premature. Three years later, a National Academy of Sciences panel concluded that "when it is asserted that 'nothing works,' the panel is uncertain as to just what has been been given a fair trial." And now, in their latest survey of the rehabilitative literature, from 1980 to 1987, Gendreau and Ross found "reductions in recidivism, sometimes as substantial as 80 percent had been achieved in a considerable number of well-controlled studies. Effective programs were conducted in a variety of community and (to a lesser degree) institutional settings, involving pre-delinquents, hard-core adolescent offenders and recidivistic adult offenders, including criminal heroin addicts."

The literature of the '80s demonstrates that a number of techniques can reduce recidivism among both property and violent offenders. These include substance-abuse treatment (combining intensive counseling with drug screening), family therapy, individual therapy stressing support rather than pathology and punishment, and — particularly with young offenders — assigning "advocates" to work with individuals on a daily basis, including crisis intervention at odd hours. In Massachusetts, Harvard researchers found that reconvictions fell among older former reform-school youth when a range of such alternatives was available. In those regions of the state remained the same or increased.

Educational programs for hard-core adult offenders have also shown promising results. Inmates of a Canadian federal prison, many with long and serious criminal histories, were assigned randomly either to normal prison routine, or to a special humanities program stressing individual tutoring using Socratic dialogue. In a report prepared for the Canadian government, psychologist D.J. Ayers and his colleagues found that after 20 months of post-prison follow-up, the recidivism rate of those in the program was 14 percent as compared to a 52-percent rate for those randomly assigned to prison routines.

Discovering what works is less a matter of deciding on a specific treatment technique than of creating programs that are intensive, taken seriously, last a reasonable period of time and focus on high-risk offenders. (In fact, programs directed at low-risk offenders can sometimes be counter-productive if they are allowed to pick up antisocial skills and attitudes from higher-risk persons.) Canadian psychologists D.A. Andrews and J. Kelssling found that effective therapy promoted prosocial attitudes, rewarded non-criminal pursuits, made use of a wide range of community resources, taught skills for handling relapse and treated the offender with respect and empathy — many of the very qualities that characterize effective psychotherapy with non-offenders.

Ironically, even Martinson himself changed his mind on the efficacy of rehabilitation. In a 1979 article in the Hofstra Law Review, he wrote that "startling results are found again and again ... for treatment programs as diverse as individual psychotherapy, group counseling, intensive supervision and what we have called individual help." The man who started it all had come full circle. But by then no one was listening. And apparently they still aren't. On Jan. 18, the U.S. Supreme Court confirmed the abandonment of rehabilitation. In Mistretta vs. U.S., the Court upheld federal sentencing guidelines which all but remove rehabilitation from serious consideration. The dissonant reverberation from a decade earlier has become the national anthem. As a result, federal prison populations are expected to double.

Thus contemporary corrections theory offers a choice between equally unattractive extremes: ineffective probation-parole or debilitating prisons. Finding help is akin to asking a doctor for headache relief and being told there are only two treatments — an aspirin or a lobotomy. Harsher sentences, warehouse prisons and an ideology which militantly rejects the idea of salvaging offenders are the rule of the land. Meanwhile, violent crime surges. We must now wait for the swing of the pendulum. It may be a long wait.

□ Jerome Miller, director of National Center on Institutions and Alternatives, also headed Massachusetts and Pennsylvania youth corrections systems.

Doing dishes, not time. *Sentencing adviser Christopher McPhatter, left, meets with a Fayetteville, N.C., client.*

Personalized penalties

LAW ■ Sentencing consultants stress rehabilitation over imprisonment

Once a model soldier, George Jenkins now is a model for easing the prison-crowding crisis. But it did not seem destined to turn out that way when Jenkins returned home to North Carolina after earning a Bronze Star and a Purple Heart in Vietnam. He started out by continuing the drug habit he had picked up in Southeast Asia. Convictions on two successive drug charges were followed by a year in federal prison on a firearms offense. Then he was back in court for helping to steal $2 million in farm equipment. As a four-time offender, Jenkins (not his real name) was a prime candidate for a lengthy stay behind bars.

Shackled. *Cabinet's electronic monitor.*

Enter a new breed of crime expert, the sentencing consultant. Seeing hope for Jenkins despite his extensive criminal past, a local nonprofit group called Western Carolinians for Criminal Justice got a character reference from his employer at a steel plant and had him evaluated by a psychologist, who found that Jenkins suffered from post-traumatic stress disorder as a result of his battle experiences. The organization presented the judge with a 6-point sentencing plan that began with outpatient psychiatric treatment at a veterans' center and included repayment to his victims for theft losses and 300 hours of work for the local fire department. All this while, Jenkins would be subject to unannounced checks from court officers and urine tests for drug use. The judge accepted the plan over the objections of probation officers. And his judgment paid off: Now 38, Jenkins has abided by the rules and has stayed out of trouble for almost four years, keeping one of North Carolina's scarce prison beds open for a truly violent offender.

Sentencing experts are plying their trade in a crunch era for prisons. Crime is rising—the FBI said this week that reports of violent offenses were up 5 percent in the first six months of 1989—and so are mandatory penalties. Federal and state penal institutions recorded their biggest population increase ever in the same period, when the rolls grew by 46,000 to 673,000. Including local jails and detention centers for juvenile delinquents, the number of Americans in custody has exceeded the million mark. As the numbers ratchet upward, a growing corps of specialists is making a career out of helping those they believe can be rehabilitated rather than warehoused with hard-core offenders. Fewer than two dozen such experts were in business as recently as 1980. According to The Sentencing Project, a Washington, D.C.-based group that promotes sentencing reform, that number has jumped to more than 115.

Paying debts. Former prison wardens, probation officers and defense lawyers are entering the personalized-sentence business to fill gaps in the justice system. Theoretically, judges are supposed to assess defendants' backgrounds before pronouncing sentences. In practice, "overworked officials crank out presentence reports" that give judges little guidance, says Thom Allen, a public defender

turned sentencing arranger in New Jersey.

Criminal defense lawyers are committed to acquitting clients or at least hammering out plea bargains that minimize prison time but do little for the cause of rehabilitation. Sentencing consultants argue that courts should emphasize paying convicts' debts and preventing repeat crime. "Defendants can be held accountable in ways other than prison terms," says Joan Gauche of Sentencing Options, a nonprofit agency in Portland, Me., that arranges alternatives. Such options are particularly appealing to judges deciding the fates of white-collar defendants who pose little risk of violent crime. The sentencing of Oliver North in the Iran-Contra scandal to 1,200 hours of community service with an inner-city antidrug program provoked little public outrage. In Maine last year, Gauche helped arrange an unusual sentence for an organizer of a huge marijuana-smuggling ring: Open and operate a hospice for AIDS patients.

It is tougher to argue the case for aiding street criminals, but sentencing advocates insist that a carrot-and-stick approach will help many of them walk a straighter path. Such efforts seem to fly in the face of a powerful trend: Reflecting the get-tough attitude of a public tired of high crime rates, state legislatures and Congress have steadily increased sentences for offenses such as drug sales and burglary. Consultants frequently bow to these laws and recommend at least *some* prison time for clients, coupled with an earlier-than-usual release that includes mandatory work or training. Violating any rules quickly lands a participant back in custody.

No joy ride. To avoid the impression that convicts who benefit from consultants' proposals are getting off easy, programs tend to choose neutral-sounding names. The North Carolina agency that arranged George Lee Jones's sentence, for example, advertises itself as a "community penalties program" to make the point that it believes in punishment. The agency's director, Grady Waccaster, is a former prison warden who believes many offenders *should* be locked up. "I'm no liberal bleeding heart," Waccaster says. "But if a guy is manageable, I'll go to bat for him to stay out of prison."

Convicts affirm that they regard nonprison sentences as punishment. The sheriff's office in Tennessee's Knox County proposes sentences for felons that couple drug or alcohol treatment with victim restitution and 96 hours of community service. "I've never heard any participant say it's easy," says Linda McLaughlin, director of Community Alternatives to Prison, who notes that the sentences cost taxpayers an average of $3,300 per offender, compared with $21,000 to house them in prison. Mark Morgan of Washington, D.C., a three-time convict whose required service as a drug counselor thrust him into a new career managing a methadone center, says: "I didn't like my sentence, but it made me a more responsible person." Many suspects actually prefer incarceration when the alternative is living at home with such strictures as random drug tests and constant electronic monitoring to check their movements. "In prison they just have to make their bed, and don't have to work or enter treatment," says David Norat, who arranges alternative sentences in Kentucky.

One promising target group for new sentencing schemes is special populations who commit crimes at disproportionately high levels. One such group is the mentally retarded, who occupy as many as 1 in 5 prison beds. Norat, who sets up treatment for such defendants, cites the case of a retarded man who sodomized a teenage boy, an offense carrying a required prison term of about 20 years. Concluding that such a sentence would help neither victim nor defendant, Norat recommended instead that the defendant finance psychological counseling for the victim, which the family could not afford, and enroll himself in treatment. A judge agreed and reduced the charge. Norat's office has had 42 plans for the retarded accepted in its year of operation, saving the state hundreds of thousands of dollars in incarceration costs.

Community service: *Mark Morgan runs a methadone clinic.*

The jury remains out on the long-term benefits of alternative sentencing. In North Carolina's program, the most extensive in the country, judges have accepted 1,080 of 1,271 plans proposed in recent years. Convicts have performed 36,543 hours of community service and paid their victims $332,000. Fewer than 200 have had their probation revoked for new offenses. Backers say this record is better than any claimed by advocates of punitive incarceration. "Prison populations have doubled in eight years, but that has demonstrably not reduced crime," says Malcolm Young of the Sentencing Project.

Economic spurs. Judges and prosecutors are beginning to endorse the work of sentencing consultants, but their enthusiasm stems from more than humanitarian concerns. "Economics is forcing us to explore these programs," says Cornelius Sullivan, a trial judge in Mount Holly, N.J. "We just opened up a $13 million jail, and the county does not want to spend any more money on cells."

The rise of sentencing consultants is unlikely to stem the fast flow of new convicts into the penal system. So far, experts have been able to handle only a minuscule number of cases. Most special sentences are available only to those who are able to finance their preparation, which costs anywhere from several hundred to several thousand dollars. The Maine sentencing project, which recently obtained money to extend its services to needy defendants, is one of the few exceptions. For most convicts, creative sentencing remains but a modest way to set them straight while holding down the galloping costs and stunning failure of incarceration. ■

by Tod Gost

A Conservative Perspective

Alternatives to Incarceration

by Charles Colson and Daniel W. Van Ness

Conservative politicans are leading the search for alternatives to prison. Such programs are more effective and less costly in the battle against crime than imprisonment for non-violent offenders.

In Michigan, conservative Republican legislators Jack Welborn and William Van Regenmorter worked with liberal Democrat Carolyn Cheeks Kilpatrick to pass a Community Corrections Act (CCA). The result: Non-violent offenders will be punished in their communities instead of prison, which will save money and ease the state's prison overcrowding crisis.

In Indiana, Republican State Sen. Ed Pease led a successful legislative effort to establish home detention as a means of easing the pressure of the state's expanding prison population. Russ Pulliam, editorial writer of the conservative Pulliam newspaper chain, voiced support for the legislation as "one step in the right direction for the future of the criminal justice system in Indiana" (*Indianapolis News* Jan. 20, 1988). (The bill was included in The Council of State Governments' *Suggested State Legislation*, 1989).

In Florida, conservative businessman Jack Eckerd and former Federal Bureau of Prisons Director Norm Carlson are leading a campaign for expanded use of house arrest, drug treatment and restitution centers as alternatives to imprisonment for non-violent offenders.

In Alabama, conservative Democratic Rep. Claud Walker is sponsoring a Community Corrections Act aimed at reducing the large percentage of non-violent inmates in state prisons. Alabama Commissioner of Corrections Morris Thigpen and the Alabama Sheriffs Association are backing the bill.

In Arizona, Republican State Sen. Tony West sponsored the Community Punishment Act. The legislation, which recently passed with the support of Arizona Chief Justice Frank Gordon and Maricopa County Chief Presiding Judge B. Michael Dann, will provide communities with state money to establish restitution, community service, victim-offender reconciliation and other non-prison programs for non-dangerous offenders.

Conservatives are often typecast as champions of the "lock 'em up and throw away the key" battle cry of this "get tough on crime" era. Yet, increasingly, all around the country, conservatives of both parties are advocating alternatives to incarceration for non-violent offenders. They may well be the single most potent force for practical, prudent criminal justice reform today.

What's Going On?

No one can deny the crying need for reform in our nation's criminal justice system. In December 1988 there were 627,402 state and federal prisoners in American institutions — twice as many as in 1978 (Department of Justice press release April 23, 1989). The prison population explosion has filled prisons to overflowing. Federal prisons are 73 percent over capacity, while state prisons are on average 20 percent over capacity, according to the Bureau of Justice Statistics (BJS 1988a).

Prison systems in 45 states have been sued because of overcrowding. In 37 states, at least one

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major institution is under court order or consent decree. In nine of those 37 states, the entire prison system is under court order. Litigation is pending in eight states (National Prison Project 1988).

The future looks no brighter. The National Council of Crime and Delinquency (NCCD 1988a) estimates that U.S. prison populations will increase by an additional 50 percent in the next 10 years.

Non-violent offenders who might be sentenced to alternative punishments are taking up precious prison space that should be reserved for violent criminals.

Although our country is incarcerating more people than ever, violent and property crimes continue to escalate (BJS 1988b). The indiscriminate "get tough" approach is a grand success in filling prisons. But it fails miserably at reducing crime.

Thankfully, many conservatives actively are pushing saner, wiser solutions to crime's stranglehold on our nation and the prison population explosion.

Why conservatives? Based on Justice Fellowship's work with politicians across the United States, it's clear that many see alternatives to incarceration for non-violent offenders as a natural extension of conservative political philosophy. Legislators cite the following principles: Punishment is appropriate; it should serve victims' needs; public safety is essential; local is better, and wise use of limited government resources is needed.

Let's look at each.

Punishment is appropriate. Since the first "penitentiary" was established in 1790, American criminal justice has been predicated on the belief that crime is the result of environmental or psychiatric factors. Criminals were seen as victims and were sent to prison to be rehabilitated.

This human engineering approach has proven a dismal failure. Studies over the last two decades consistently have concluded that three out of four ex-offenders are rearrested within four years of their release form prison (Federal Bureau of Investigation 1975; Petersilia, Turner and Peterson 1986). Far from rehabilitating offenders, prisons seem better suited to train them in the finer arts of crime.

Pursuing false dreams of rehabilitation undermines the principle of personal accountability. No matter how many environmental factors weigh upon the individual, committing a criminal act is a personal choice. By treating victimizers as victims, society robs them of the dignity belonging to moral agents. They are denied the opportunity to "pay the price" and move on with life. C. S. Lewis ([1949] 1983) put it this way, "To be punished, however severely, because we have deserved it, because we 'ought to have known better' is to be treated as a human person made in God's image."

Treatment programs should be available to offenders who would be helped by them — but justice requires that offenders also must be held accountable for their behavior.

The issue should not be *whether* to punish but *how*. The problem is that our society has increasingly equated "punishment" with "prison" and seems unable to conceive of the notion of punishments aside from prison. Prisons are, of course, necessary for violent offenders. But nearly 50 percent of the American prison population is behind bars for non-violent offenses. Many of them would pose little danger to their communities; they are imprisoned solely for punishment.

For the reasons that follow, many conservatives are concluding that society is not well served by punishing non-violent offenders behind bars. Sound alternatives to prison are available. Restitution, community service and intensive supervision probation are tough and effective punishments that limit freedom and place demands for compensation upon offenders.

Punishment should serve victims' needs. While victims suffer most from crime — physically, emotionally and financially (to the tune of $13 billion per year) (BJS 1988c) — victims' interests are represented least. From the moment a crime is committed, through the time the offender is convicted and sent to prison, the victim is virtually ignored by the criminal justice system. As Roberta Roper, whose daughter was murdered seven years ago, said, "Crime doesn't pay — but victims do."

This injustice has sparked the growth of victims' rights groups across the United States. In addition to supporting an increased role for victims in the system, many have promoted restitution and other alternatives to incarceration — not to make life easier for offenders but to benefit victims.

For example, the Alabama Victims Compensation Group and Victims of Crime Against Leniency are supporting the Alabama Community Corrections Act because it holds offenders accountable for their crimes and provides for victim assistance officers to help victims secure restitution and compensation. In Maryland, Justice Fellowship worked with the effective and well-respected Stephanie Roper Committee to promote recently passed mandatory restitution legislation.

Victim restitution must become an essential part of criminal punishments. This a matter of simple justice. In an article describing the Sentencing Improvement Act of 1983, U.S. Sens. William Armstrong, R-Colorado, and Sam Nunn, D-Georgia, (1986) recognized the importance of alternative punishments based on restitution:

"Because of growing public concern for crime victims, the restitution concept holds great promise of gaining broad public support. . . . Recent surveys indicate that a great percentage of Americans would prefer to have the non-violent offender repay his victim rather than serve time at public expense."

Public safety is essential. Non-violent offenders who might be sentenced to alternative punishments are taking up precious prison space that should be reserved for violent criminals. (As noted, nearly half of all state prisoners were convicted of non-violent crimes. And 34 percent have *never* committed a violent crime (BJS 1988d).)

But, prisons are so overcrowded that many states rely on early release to reduce prison populations. This means that some dangerous offenders are let out well before they have served their full sentence. This is the irony of the "get tough" response to crime: By indiscriminately sending more people to prison, communities are less safe.

The case of Charlie Street is illustrative. Street was released from Florida's Martin Correctional Institution in the fall of 1988 after serving only half of his sentence for attempted murder. Ten days later, he gunned down two Dade County police officers — a tragedy that could have been avoided if Street had been kept off the streets and in prison where he belonged. As Jack Eckerd wrote in the *Orlando Sentinel* (Dec. 4, 1988), "We must restore sanity to the system, slamming the door and keeping it shut on violent and career criminals like Charlie Street, while expanding alternate punishments for non-violent offenders."

Any discussion of public safety eventually includes the issue of deterrence. The argument that prisons alone deter is defeated by the facts. Swift and certain punishment deters, not harsh punishment that is neither swift nor certain.

Consider the odds. The federal government reports that out of 100 crimes, 33 will be reported to the police and seven will result in an arrest. Four will end with a conviction, with one offender going to jail, one to prison and two to probation. In other words, for every 100 crimes committed in the United States, one person goes to prison (Colson and Van Ness 1989).

Can we reasonably believe that doubling or tripling the number of people in prison would significantly deter crime? Would a 2 or 3 percent chance of imprisonment actually deter more crime than a 1 percent chance of imprisonment?

Fortunately, experienced criminal justice practitioners know that tough alternative punishments are feared more by convicted offenders than prison. Trial judges in Florida, for example, say that defendants request prison sentences to avoid the state's tough Community Control Program.

Alternatives promote public safety in other ways as well. For example, they keep the non-violent offender out of prison, the ideal training ground for becoming a more accomplished and dangerous criminal. The Rand Corporation found in a 1986 study (Petersilia, Turner and Peterson) that a group of probationers committed fewer new crimes than an identical group of ex-prisoners. The researchers concluded that "imprisonment was associated with a higher probability of recidivism."

A federal study of Georgia's Intensive Probation Supervision program (National Institute of Justice 1987) found that probationers committed fewer new crimes than comparable prisoners and no violent new crimes.

Community safety depends on increased use of community sanctions.

Can we reasonably believe that doubling or tripling the number of people in prison would significantly deter crime? Would a 2 or 3 percent chance of imprisonment actually deter more crime than a 1 percent chance of imprisonment?

Local is better. Many alternatives to incarceration significantly benefit local communities. Community corrections acts, for example, allow communities to tailor programs to meet their own needs, by dealing with non-violent offenders in their own ways. This also means that communities are involved with their own offenders, who will most likely continue to live in the community after serving their sentences.

Local punishments benefit the state as well. Every offender who stays in a local program is one less person taking up scarce prison space at state expense.

Community service performed by offenders can be another important local benefit. Instead of sending offenders to state prisons, some communities reap the benefits of free or low-pay labor for charitable or governmental agencies. Genesee County, New York, has honed this practice into an art form. Since the establishment of the county's widely acclaimed Genesee Justice program in 1981, offenders performed more than 97,000 hours of community service for 118 community agencies, a total value of $389,000 (Genesee County Sheriff's Department 1988).

Wise use of limited government resources. There is no question that states will have to increase their prison capacities. But state governments cannot afford to rely on prison construction as the sole means to solve the overcrowding crisis. It costs an average of $15,900 to keep an inmate in prison for one year (Camp and Camp 1988). In fiscal 1987 alone, state and federal governments spent almost $5 billion in new prison construction (American Correctional Association 1988).

This is placing an extraordinary strain on state budgets. Norman Carlson (1988), writing of the situation in Florida, summarizes the dilemma facing many states, "Constructing sufficient prison space is not a viable solution. The tremendous costs involved in building and operating the required number of new prisons would overwhelm the limited resources available in the state treasury and would compete with other high priority needs, such as education, medical care and transportation."

No one could deny the severity of America's criminal justice crisis. The time has come for real solutions rather than overheated rhetoric that fuels public passions, reinforces stereotypes about prisons and prisoners and, in the end, results in taxpayers being punished far more than offenders.

Explaining why he worked so hard for passage of the Michigan Community Corrections Act, Michigan State Rep. William Van Regenmorter (1988) said, "Michigan's prison system has been overcrowded since 1975. (In) . . . 1984, the system held about 300 prisoners more than its intended capacity. To combat this problem, the Department of Corrections constructed many new prisons, almost doubling the system's capacity in just three years. The result of this expensive building program? The system was still overcrowded, this time by some 3,000 prisoners!"

And because of the extraordinary increase (141 percent over the last five years), in the corrections budget — due to the massive prison construction program (*Grand Rapids Press* Jan. 2, 1989) — Michigan now faces cuts in social service programs.

New prison construction costs an average of $80,000 per maximum security cell. The total cost of all current or planned prison construction will be $25 billion (NCCD 1988b). States cannot afford to make such budget-busting investments in concrete and steel condominiums with bars.

To reduce overcrowding and avoid bankrupting other key state programs, conservatives argue in favor of investing in alternatives to prison, so that prisons can be reserved for the dangerous offenders who must be locked away from society. Some states are taking initiatives to do so.

Program Profiles

Community Corrections Acts (CCAs). These acts provide a statewide mechanism allowing local governments to design, develop and deliver — and state governments to fund — local correctional tools such as intensive supervision, restitution, community service, and drug and alcohol treatment. Thirteen states now have CCAs.

Tennessee diverted 504 offenders from prison in fiscal 1987-88 at a cost of $7,599 per offender, compared to the state average of $19,710 for incarceration. In addition, offenders sentenced to community corrections paid $59,145 in restitution to victims and performed 76,294 hours of community service. The estimated total savings to the state was $6.1 million (Mike Jones, Tennessee Department of Corrections, telephone interview, September 1988).

Virginia diverted 699 felons from its prisons and jails in fiscal 1987-88. As a result, it saved more than $8 million, which does not include savings realized by diverting more than 6,500 local felons and misdemeanants from jails. Diverted offenders performed 229,812 hours of community service and paid $76,870 in restitution (Gwen Cunningham, Virginia Department of Corrections, telephone interview, September 1988).

House arrest confines offenders to their own homes. They are not allowed out except for approved activities such as health care, special religious services, community service or employment, which in turn most often leads to restitution payments to victims (Petersilia 1987). Many jurisdictions are using electronic surveillance measures to ensure compliance.

Florida's Community Control Program is a nationally recognized house arrest program. Established in 1983, Community Control uses community service and restitution sanctions for some 8,000 offenders statewide. The cost to the state is $2,650 per year per offender, which is 80 percent less than the $13,140 cost for imprisonment (Carlson 1989). By reducing prison commitments by 180 people a month, Community Control has proven a valuable weapon in Florida's fight against overcrowding. Because only 9 percent of its offenders commit new crimes, it is also an effective weapon against crime.

Intensive Probation Supervision (IPS). The key to this program's success is low caseloads. Ideally, officers maintain caseloads of 15-25 people — as opposed to the supervision possible when harried officers in "normal" probation programs carry caseloads of between 120 and 300 offenders. In many IPS programs, offenders must make daily contact with their officers. Most intensive supervision programs require offenders to maintain employment or go to school and to abide by a strict curfew. Many also include restitution and community service as sanctions.

Illinois regularly supervises 570 offenders in its IPS program — a ratio of 25 offenders for every two officers. The annual cost per offender is $2,367. Since the program was established in 1984, Illinois has collected approximately $1 million in restitution, taxes, fines and court costs. Its Intensive Probation Supervision participants

performed 146,349 hours of public service valued at $489,921. All told, the state saved $7.7 million in the last five years through IPS (Anderson 1988). And prospects look good for expanding the program to more offenders.

Restitution centers are residential facilities designed to house offenders requiring more supervision than regular or intensive supervision probation but less than total confinement in prison. These centers, which are a tightened-up version of "work release" with a focus on restitution, are used in six states as an alternative to imprisonment.

Georgia's restitution centers can house 2,600 offenders yearly. During fiscal 1987, the state collected from offenders $256,817 in restitution, $626,516 in family support, $1.4 million in room and board, $940,274 in fines and court fees and $1.4 million in taxes. The offenders also performed community service worth $266,516. The annual cost per offender was $8,249. Seventy-five percent of the residents successfully complete the program (Larry Anderson, Georgia Department of Corrections, telephone interview, 1988).

Florida's Probation and Restitution Centers can hold 382 offenders, far below the 900 offenders who would have qualified for the program in 1987, according to a 1988 report by the state Office of the Auditor General. The annual cost per offender is $10,909, which the state partially defrays by collecting average annual fees of $1,900 per offender. Jack Eckerd and Norm Carlson are among those calling for expanded use of these centers in Florida.

Conclusion

No one could deny the severity of America's criminal justice crisis. The time has come for real solutions rather than overheated rhetoric that fuels public passions, reinforces stereotypes about prisons and prisoners and, in the end, results in taxpayers being punished far more than offenders.

Historically, conservatives have been at the forefront of many great movements in the West: the battle for abolition of the slave trade and of slavery, the fight to end industrial abuses in the late 19th century and in efforts to establish public education. We believe the criminal justice arena is one in which conservatives are beginning to lead the way toward measures that will benefit offenders, victims, correctional officials and taxpayers.

[illegible] Pursuing [illegible] offenders [illegible] take the [illegible] and cooperation [illegible] [illegible] with moderate [illegible] criminal justice policy.

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Reducing Prison Admissions:
The Potential of Intermediate Sanctions

by Joan Petersilia and Susan Turner

States are placing under intensive supervision offenders who don't need to be confined to prison, but who require more oversight than afforded by regular probation or parole. Intensive supervision programs can reduce prison crowding and are an important option for fitting the punishment to the crime and the criminal.

Spurred by the crisis in prison crowding, more than 40 states offer intermediate sanction programs for offenders who might otherwise go to prison. These community-based programs are designed to be tougher than traditional probation, but less punitive and costly than imprisonment. Intensive supervision, electronically monitored house arrest and community service sentences are among the most popular programs. Although most of these programs are less than five years old, proponents believe that participants have lower recidivism rates than those on regular probation or parole. If that belief is accurate and if participants would have been sentenced to prison in the absence of the programs, then intermediate sanctions could have important benefits. They could take some pressure off crowded prison systems without threatening public safety, keep offenders and their families together and off welfare rolls, and rehabilitate as well as punish.

Whether these programs will deliver such benefits depend largely on how many prison-bound offenders are appropriate candidates for intermediate sanctions. We recently conducted a nationwide survey of intermediate-sanction programs and identified the criteria these programs commonly use for selecting participants (Petersilia 1987). This article applies these criteria to offenders sentenced to U.S. prisons in 1986 to estimate how many of them would have qualified for intermediate sanction programs, had such programs been in existence.[1] Our analyses are based on the Bureau of Justice Statistics' 1986 *Survey of Inmates of State Correctional Facilities* (NPS). The NPS contains interviews of a sample of imprisoned offenders, which when weighted produces a database reflecting the total U.S. state prison population. The NPS records information on each respondent's criminal background, use of drugs and alcohol, personal background and violent offenders, their victims (Innes 1988).

By using information on sentence length for NPS offenders' convictions, we approximated an "admissions" cohort to use for this research project.[2]

Determining Eligibility

Intermediate-sanction programs use a variety of criteria to select eligible participants. Generally, the criteria reflect a jurisdiction's principles regarding punishment and its degree of prison crowding. Jurisdictions with tough punitive philosophies and the budgets to back them up use more restrictive, stringent criteria. Others, which have a history of community-based sanctions or face greater austerity, adopt less stringent criteria.

As examples of these differences, the Texas intensive supervision program accepts sex offenders, but the New Jersey program bars them.

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jurisdictions strictly exclude drug and alcohol abusers from their programs, but in others they are prime candidates. Montgomery County, Md., for example, selects first-offender felons with alcohol, drug or mental health problems, but offenders with chronic substance abuse problems are ineligible for intensive supervision programs in Georgia and Texas (Bryne 1986 and McCarthy 1987).

Although specific criteria differ across jurisdictions, intermediate-sanction programs generally target one of four groups:

1) All felons, excluding murderers and rapists.

2) Only non-violent felons.

3) Only felons convicted of auto theft, forgery, fraud, driving under the influence (DUI), traffic, public disorder, probation or parole revocation, and court offenses.

4) Persons revoked for probation or parole violations.

Having identified the target group, programs further limit eligibility by considering the offender's criminal record, including sentence length and history of violence and drug or alcohol abuse. Less common criteria are recency of last conviction and incarceration, the offender's dependence on crime for a livelihood and history of mental illness. These further restrictions can severely reduce the number of eligible candidates regardless of the initial target group.

For example, Oregon's initial criteria for intensive-probation supervision excluded persons with any violent indications, not just those convicted for violence. With such stringent criteria, few prison-bound offenders qualified. Consequently, program managers adjusted the criteria downward until enough offenders qualified to make the program worthwhile.

To identify the range of eligibility criteria that states use, we relied on a nationwide RAND survey of intermediate sanction programs (Petersilia 1987). For our analysis of the NPS, we simulated the most common intermediate sanction criteria in use. The key variables we used in the eligibility analysis are defined in table 1.

Table 1: DEFINITION OF KEY VARIABLES

I. CURRENT COMMITMENT OFFENSE IS: The current commitment offense definitions use four increasingly restrictive criteria, based on the seriousness of the conviction offense..

TARGET GROUP #1 — ALL OFFENDERS, EXCLUDING MURDER AND RAPE
The most serious current commitment offense is one of the following:

Robbery	Drug
Assault	Driving Under Influence (DUI)
Burglary	Court Offenses
Auto Theft	Probation/Parole Revocations

TARGET GROUP #2 — NON-VIOLENT OFFENDERS
The most serious current commitment offense is one of the following:

Burglary	DUI
Auto Theft	Court Offenses
Drug	Probation/Parole Revocations

TARGET GROUP #3 — MINOR PROPERTY OFFENDERS
The most serious current commitment offense is one of the following:

Auto Theft	Court Offenses
DUI	Probation/Parole Revocations

TARGET GROUP #4 PROBATION/PAROLE REVOCATIONS:
The most serious current commitment offense is one of the following:
Probation/Parole Revocation**

II. PRIOR INCARCERATIONS: The offender has been sentenced to jail or prison before (prior incarcerations include juvenile or adult incarcerations at the local, state or federal level).

III. HISTORY OF VIOLENCE: The offender had been sentenced before (either to probation, jail or prison) for a violent offense (i.e. robbery, assault/other violent, rape, murder/manslaughter).

IV. DRUG INVOLVED: The offenders either admitted a dependence on drugs or the current conviction is for drug trafficking, possession or use.

V. ALCOHOL INVOLVED: The offender admitted having developed a dependence on alcohol

**While these persons were returned to prison without receiving a new prison sentence from the court, they may have committed a new crime. The NPS does not enable us to determine how many of these revocation cases result from a new criminal arrest versus a violation of the technical conditions of probation or parole.

few Are Chosen

Our analyses suggest that many of those admitted to prison appear to be candidates for intermediate sanctions, particularly if programs are limited to non-violent offenders. Applying the criteria used by different jurisdictions helps develop a more precise picture.

Most intermediate sanction programs define eligibility in terms of the current offense first, then apply additional restrictions such as excluding violent offenders. We began by considering how many offenders would qualify for program admission if we applied the four target offense groups defined earlier: 1) all felons, excluding murderers and rapists, 2) non-violent felons, 3) "minor property" offenders, and 4) probation and parole revocations. We then successively applied the commonly used program restrictions, (i.e., excluding those with prior incarcerations). After each additional restriction, fewer prison-bound offenders would qualify for intermediate sanctions (see figures 1-4). When all offenders except convicted murderers and rapists are considered, 87 percent of the prison-bound offenders are eligible (figure 1). With the added restriction of no prior jail or prison sentences, the percentage of "still-eligibles" drops to 33 percent (figure 1).

Making offenders with prior incarcerations ineligible for intensive programs reduces the eligible offenders drastically (figures 1-4). Once repeat offenders who served time are excluded, the percentage eligible is little affected by excluding those with prior convictions for violence.

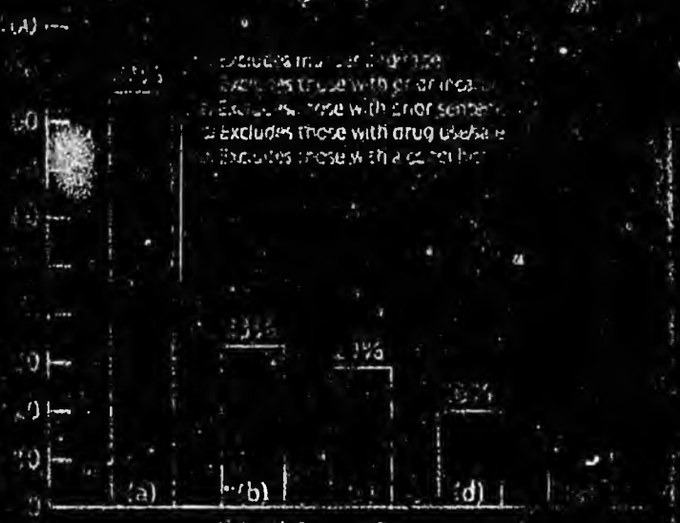
Policy Implications

The initial target group greatly affects the estimated number of prison-bound offenders eligible for intermediate sanctions (figures 1-4). Targeting non-violent felons (figure 2) and property and probation or parole violators (figure 3) could make a substantial difference — if the eligibility criteria were adjusted to reflect the political climate in a jurisdiction and the profile of offenders sentenced there. Jurisdictions might have different needs and uses for intermediate sanction programs, depending on these aspects. Deliberations on policy and programs often overlook this, although it is crucial to planning, budgeting and, most importantly, results.

At the other end of the spectrum, targeting only probation or parole revocation cases (figure 4) would render the programs less effective in reducing prison crowding. The number of probation and parole revocations is growing and many believe it does not make sense to use scarce prison space for such people, especially if their revocations resulted from technical violations. Nevertheless, our results indicate that just 4 to 14 per-

PERCENTAGE OF PRISONERS ELIGIBLE FOR INTERMEDIATE SANCTIONS AFTER APPLYING RESTRICTIONS

Figure 1



Initial Target Group:
All Offenders Except Murderers and

Figure 2

Initial Target Group:
All Non-Violent Offenders

prison-bound offenders would qualify intermediate sanctions if being a parole or ...tion violator was the sole criminal convic... considered.

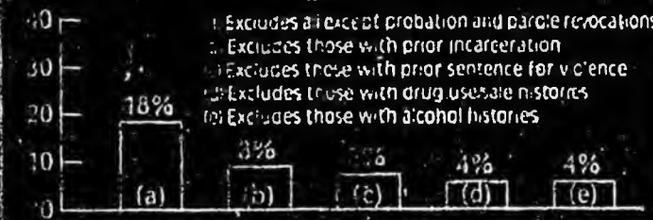
If states want to ease prison crowding thro... intermediate sanctions, they need to look at ... kinds and proportions of criminals in their ju... dictions. For example, states might decide ... roups targeted for intermediate sanctions ba... the type of crimes committed — some ... risons house more offenders convicted of ser... ...mes than others. In other analyses, we ... ...0 percent of prison admissions nationw... were convicted of non-violent offenses, who...

PERCENTAGE OF PRISONERS ELIGIBLE FOR INTERMEDIATE SANCTIONS AFTER APPLYING RESTRICTIONS

Figure 3.

Initial Target Group:
Minor Property Offenders

Figure 4



Initial Target Group:
Probation and Parole Revocation Cases Only

an estimated 35 percent of California admissions are non-violent offenders. Further, 40 percent of inmates nationwide report having no prior incarcerations, whereas fewer than 5 percent of California prison inmates fall in that category.

These findings reinforce the need for individual states and jurisdictions to learn the characteristics of their offender populations before assessing alternative sentencing strategies. In states that have a higher proportion of non-violent offenders with relatively minor records, intermediate sanctions might ease the pressure to build more cells. Jurisdictions with high proportions of violent or felony offenders, however, might consider making the eligibility criteria for non-violent offenders less stringent. Otherwise, the short- and long-term effects on prison crowding will be negligible. By putting the non-violent felons into intermediate sanctions regardless of prior incarceration for non-violent crimes or substance abuse problems, these jurisdictions could help the states reserve prison space for repeat violent offenders. Our results suggest that under those criteria as many as 22 percent of prison-bound offenders can be diverted to intermediate sanctions.

In considering the criteria, policy-makers should carefully consider the substance abuse categories. The public is concerned about drug traffic and abuse, and wants drug offenders, especially pushers, punished severely. It would be a shame, however, if this sentiment made policy-makers impose a "no substance abuse" criterion on intermediate sanctions programs. In areas where offenders with alcohol and drug problems are targeted for intermediate sanctions, the early evidence is positive. Because of the program curfews, close supervision, monitoring and urine testing, these states are having success rates with drug users. Of the first offenders admitted to Georgia's widely publicized intensive probation supervision program, for example, only 4 percent committed new crimes while under supervision. An evaluation of the program suggests that persons with drug histories benefitted most by the program (Erwin and Bennett 1987).

Our results encourage optimism about the effects intermediate sanctions might have on prison crowding. However, we believe that this optimism should be guarded. In recent years, a greater percentage of persons sentenced to prison are repeat offenders who are becoming progressively less "qualified" in judicial and public opinion for anything other than prison.

Also important in judging the potential impact of alternative programs is that estimates of eligible offenders differ when the eligibility criteria are applied to those offenders "already in prison" as opposed to "prison-bound" offenders. Compared to the general prison population, a lesser percentage of the new admissions (our prison-bound example) have been convicted of violent crimes or have long records. Once imprisoned, however, serious offenders stay longer, adding their numbers to the more serious offenders who arrived earlier. The less serious offenders are released more quickly. As a result, the prison population on any given day reflects the accumulation of these more serious offenders. If our intermediate sanction criteria were applied to the population in prison on a given day as opposed to the population being sentenced to prison, we would find fewer offenders eligible for the alternative programs.

It is also important to understand that when a sizeable number of prison-bound offenders is diverted into intermediate-sanction programs, the diversion will not have a particularly large effect on the average population on any given day. For example, using our data, if we diverted from prison 25 percent of the prison-bound offenders (those convicted of offenses such as DUI, court offenses and probation and parole revocations), the estimated reduction in the prison population would be 15 percent after one year, with no subsequent reductions in the years to follow. Alternatively, if we diverted the 25 percent mentioned above and lengthened the sentences of persons convicted of burglary

...ment area and are ruled out for those with no prior history of violence (35 percent of the prison-bound offenders), the estimated reduction in the prison population after two years would be 27 percent, with no further reductions in the years to follow. These estimates assume no other changes in the types of offenders sentenced to prison or sentence lengths.

Additional concerns relate to the potential impact of alternative sanctions on the prison population. As evaluations of alternative sanction programs are beginning to show, not all offenders classified as eligible will be placed in alternatives. Oftentimes, numerous parties (sometimes including the offender) must unanimously agree to place an offender in an alternative program. In addition, some offenders who are eligible are not identified as eligible. This can happen if the screening process does not target all sources of potential candidates for the alternative. These factors reduce the number of offenders placed in alternative sanctions.

Furthermore, prison populations are not static. Many states are increasing the length of stay for selected offenders[6], potentially diminishing our estimated impact of "front-end" changes, which are designed to impact who goes to prison in the first place. As James Austin, research director for the National Council on Crime and Delinquency said, " . . . Such reductions can be made, but only if a state adjusts both the admissions flow and, more importantly, the length of stay."

Our analyses suggest the need to examine not only the numbers of eligible prison-bound offenders, but to project the impact of these "front-end" changes on the prison population.

Conclusion

In sum, we believe intermediate sanctions could relieve the pressure for more prison cells over the long haul. The extent of the effect, however, depends greatly on understanding what types of offenders are sentenced to prison in a given state and whether the local community will accept these offenders being diverted to it. If the eligible pool becomes so reduced by overly restrictive criteria, the potential to reduce prison crowding is negated. But, the effect on prison crowding is not the surest justification for intermediate sanctions. More compelling justifications are that we could sanctions to match the range of criminal behavior, that public safety would be served better by providing an alternative for serious felony offenders now placed in traditional probation because of prison crowding, and that remaining in the community with their families might prevent some offenders from becoming more serious criminals.

Notes

[6] Our estimations apply to offenders being sentenced to prison on admission cohort, as distinguished from a sample of offenders in a prison on any given day. An admissions cohort will contain a smaller percentage of people convicted of violent crimes and of people with lengthy criminal records than those in prison on any given day.

[7] To obtain an admissions cohort, we selected offenders from the NPS survey who entered prison between Oct. 1, 1985 and Jan. 31, 1986. This gave us four months of data. If we went back further in time, too many offenders had already left prison.

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