LEGISLATIVE FINANCE-HOUSE/SENATE FINANCE COMM. FILES 8879

HB 484 cont. - HB 491 536 127

1-28-90

Railroad takes toll on moose

By BILL KELDER
Times Valley Bureau

WASILLA — More than 360 moose have been hit by Alaska Railroad trains this winter. Heavy snowfall between Willow and Hurricane Gulch could lead to record moose kills along the Railbelt, according to railroad, state and legislative officials.

Snowfall of five to eight feet in the 60-mile stretch along the rail line from Willow to Hurricane is causing more and more moose to seek lower ground and easier walking and feeding, according to Carl Grauvogel, wildlife biologist with the state Fish and Game Department's Matanuska-Susitna office.

"As of 5 a.m. (Friday), railroad officials have reported 257 to 277 moose struck by trains for the month of January," Grauvogel said. "Another 104 hits were recorded in November and December of this winter."

Grauvogel said railroad officials report moose hits to his department regularly during the winter months, and then send personnel out to confirm whether a moose was actually killed.

"I would say approximately 95 percent of the hits are confirmed," Grauvogel said, adding the 361 reported kills thus far this winter should mean a record number of moose will be killed by trains this year.

Rep. Curt Menard, co-chairman of the House Resources Committee, has called an emergency committee meeting to discuss possible solutions to the problem of moose being killed by trains. The meeting is set for 7 p.m. Tuesday in Juneau, but will be teleconferenced to communities along the Railbelt, which stretches from Seward to Fairbanks along the Parks Highway.

Menard, D-Wasilla, said Fish and Game and railroad officials will brief legislators on the situation. Public testimony also will be taken.

"A valuable wildlife resource is being destroyed at an astounding rate," Menard said in a statement issued by his office this week. He said he hopes the meeting will lay the groundwork for solutions.

Though Grauvogel feels this winter's kills will set a new record, he said the department has only been keeping accurate records of moose killed by trains since the early 1980s. Since that time, the record was set in 1984-85 when 382 moose were killed by trains.

"There were probably some heavier moose fatalities in earlier years, but no one was keeping accurate records at the time," Grauvogel said.

Railroad officials have been working with the state for five years to come up with a viable solution, according to ARR spokeswoman Vivian Hamilton.

"We do not like this situation any more than anyone else in the state. And we have tried a number of solutions over the years but, to date, none of them have worked," Hamilton said Wednesday afternoon.

She said 242 moose were killed last winter, a number already exceeded in this month's first 24 days.

Grauvogel said heavy snowfall drives the moose down from higher to lower ground in search of food

rate of kills

base," Grauvogel said. "In some areas the sn
five feet deep and up the moose's belly or sho
der. Where the snow is eight feet deep, it is up t
noses," he said.

Moose that wander onto the railroad trac
which are kept relatively clear by the daily passa
of freight trains between Anchorage, Healy a
Fairbanks, tend to stay on the tracks for the eas
traveling.

"The moose probably do not really see the tra
as trains," Grauvogel said. "To them, this is
large predator roaring down the tracks at the
shaking the ground and whistling as it comes."

He said 2 million years of moose evolution ha
taught the animals to run to avoid predators.

"In the summer, the moose will more often t
not, get off the tracks and run into the wood
Grauvogel said. "But in the winter, particula
after they have just walked through snow up
their bellies, they will prefer to run down the tra
rather than get back into the deep snow where
havior and experience have taught them they
have less chance of surviving."

The problem is that moose run 12 to 15 mph, a
trains at half-speed move at about 25 mph.

"So no matter how far the moose runs, the t
eventually catches up to it and hits it," Grauvo
said.

He said there are several thousand moose in
Parks Highway corridor that includes the rail li
according to the latest DF&G counts.

"Not all of these moose will use the Susi
River basin or wander onto the railroad tracks,
some of them will and that is when the proble
begin," Grauvogel said.

Hamilton said railroad engineers try to s
down when they see a moose in the hope the mo
will get off the track before the train reaches
But the plan does not always work.

"Five locomotives pulling 45 rail cars take ab
mile to a [illegible]
length of track," Hamilton said. "Most frequen
a train will come around a bend and suddenl
there is the moose with no time to slow down,
alone stop."

Hamilton said one railroad employee in a hi-
car — a pick-up truck fitted to run on railro
tracks — once followed a moose for 40 miles bef
the moose finally made up its mind to get off

HB 493

HOUSE COMMITTEE REPORT

File

(11)
Date Referred: February 23, 1990 FURTHER REFERRALS:

Date of Committee Action: 3/14/90

The FINANCE Committee considered: HB 493

HOUSE BILL NO. 493

HB 493 MILITIA REEMPLOYMENT RIGHTS

"An Act relating to reemployment rights for members of the state's organized militia."

RECOMMENDATIONS:
[X] be replaced with CSHB 493 (L&C) [X] the same title [ ] a new title
[ ] have attached amendment(s)
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Date/Dept)

[ ] fiscal impact_____ [ ] fiscal note(s) _____
[ ] zero fiscal note_____ (3) [X] zero fiscal note(s) 2/23/90 / Admin; 2/23/90 / Labor; 2/23/90 / Dept. Mil. Pub. Affr.
[ ] zero with analysis_____ [ ] zero fn/analysis _____

SIGNING DO PASS:

Hoffman
Carson
Swackhammer
Brown
Kodonen
Ulmer
Barnes
Phillips
Wallis

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend

Carson
Chairman's Signature
Hoffman

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 493(L&C) No.
PUBLISH DATE: HOUSE 2/23/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act relating to re-employment rights for members*
Sponsor: Kubina, Larsen, et. al.
Requestor:

Agency Affected: Department of Administratio
BRU: Division of Personnel
Components:

*of the states organized militia.

Adopted

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

THis bill will not have a fiscal impact on the Division of Personnel.

Prepared by: David K. F. Otto DKFO
Division: Personnel
Phone: 465-4430
Date: 2/15/90

Approved by Commissioner: Frank S. Baxter
Agency: Department of Administration
Date: 2/20/90

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 493(L&C) No. 2
PUBLISH DATE: HOUSE 2/23/90

FISCAL NOTE

REQUEST:

Revision Date:
Agency Affected: Labor
Title: "An Act relating to reemployment rights for members ... organized militia."
BRU: Labor Standards & Safety
Sponsor: Kubina, Larson, Finkelstein
Components: Wage & Hour
Requestor: House Labor & Commerce

Adopted

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Note: There is no fiscal impact in FY 90.

Prepared by: Tom Stuart, Director TStuart
Phone: 465-2712
Division: Labor Standards & Safety
Date: 2/14/90

Approved by Commissioner: Jim Sampson
Date: 2/14/90
Agency: Department of Labor

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

No. 3

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 493(L&C)
PUBLISH DATE: HOUSE 2/23/90

FISCAL NOTE

REQUEST:

Revision Date: February 12, 1990
Title: An Act relating to employment rights for the organized militia.
Sponsor: Rep. Kubina
Requestor:

Agency Affected: DMVA
BRU:

Components:

Adopted

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on DMVA

Prepared by: Jeff Morrison, Director — Phone: 465-4600
Division: Administrative & Support Services, DMVA — Date: 2/12/90

Approved by Commissioner: for J Morrison MG John Schaeffer — Date: 2/12/90
Agency: Department of Military & Veterans Affairs

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Offered: 2/23/90
Referred: Finance

6-2125E

Original sponsor(s): REP. KUBINA, Larson, Finkelstein, Gruenberg

IN THE HOUSE BY THE LABOR & COMMERCE COMMITTEE

CS FOR HOUSE BILL NO. 493 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to reemployment rights for members of the state's organized militia."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 26.05 is amended by adding a new section to read:

Sec. 26.05.075. REEMPLOYMENT RIGHTS OF THE ORGANIZED MILITIA. (a) An employer shall grant to an employee who is a member of the organized militia a leave of absence to perform active state service under AS 26.05.070.

(b) When an employee is released from a period of active state service under AS 26.05.070 or discharged from hospitalization that arose from active state service, the employee is entitled to return to the employee's former position, or a comparable position, at the pay, seniority, and benefit level the employee would have had if the employee had not been absent as a result of active state service. An employee, other than an employee who has been hospitalized, shall report for work at the beginning of the workday following the last calendar day necessary to travel from the site of active state service to the employee's work site. An employee who has been hospitalized shall report for work at the beginning of the workday following the last calendar day necessary to travel from the hospital or place of recuperation to the employee's work site. If the employee fails to return to work at that time, the employer may impose whatever discipline is provided by the employer's rules of conduct for unexcused absence from work.

(c) If an employee is not qualified to perform the duties of the employee's position as a result of permanent disability sustained because of the employee's active state service but is qualified to perform the duties of another position with the employer, the employer shall offer an employee who requests reemployment the available, vacant position that most closely approximates the pay and benefits of the employee's previous position and that the employee is qualified for and capable of performing. An employee loses the right to reemployment under this subsection unless the employee requests reemployment within 30 days after receiving a statement from the employee's treating physician indicating both that the employee has reached maximum recovery and that the employee is released to return to full-time work.

(d) For employees other than state employees, the Department of Labor shall enforce this section by appropriate regulations. For state employees, the division of personnel in the Department of Administration shall enforce this section. Regulations adopted under this section may provide for orders of reinstatement and back pay if appropriate. For employees other than state employees, contested cases arising under this section are to be handled under AS 44.62.330 - 44.62.630. Appeals involving state employees must be made to the personnel board under the procedure set out in the state's personnel rules for grievances.

(e) Notwithstanding (f) of this section, a person aggrieved under this section may bring an action in superior court no sooner than 30 days after giving notice to the Department of Labor, or, in the case of a state employee, to the director of the division of personnel. The action must be brought within two years after the claim arose.

(f) A collective bargaining agreement entered into in the state after the effective date of this Act may not contain provisions contrary to this subsection.

(g) This section does not affect AS 39.20.340 or 39.20.350 governing paid leave and reinstatement of state and local employees for certain military activities.

* Sec. 2. AS 23.40.075 is amended to read:

Sec. 23.40.075. ITEMS NOT SUBJECT TO BARGAINING. The parties may not negotiate terms contrary to

(1) the reemployment rights for injured state employees under AS 39.25.158; or

(2) the reemployment rights of the organized militia under AS 26.05.075.

* Sec. 3. AS 44.62.330(a) is amended by adding a new paragraph to read:

(55) Department of Labor as to functions related to employment rights of the organized militia under AS 26.05.075.

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

POSITION PAPER
HB 493

Summary of Bill: The proposed legislation would allow reemployment rights to members of the organized militia who are called to State Active Duty by the Governor. The organized militia consists of the Alaska National Guard, the Alaska Naval Militia, and the Alaska State Militia (also known as the Alaska State Defense Force). State Active Duty is used by the Governor to activate the militia for State purposes such as state-declared disasters (i.e., not declared by the President) or civil disturbances, and is authorized by A.S. 26.05.070. Reemployment rights for National Guard and Naval Militia members who are called to federal service or who are training for their military jobs are protected by federal legislation. Under provisions of the bill, the Department of Labor will enforce the reemployment rights by appropriate regulations for all but state employees. The Department of Administration will enforce the reemployment rights for state employees.

Impact of Bill on Department of Military and Veterans Affairs: There will be no administrative impact on DMVA as a result of passage of this bill. However, we expect that the members of the organized militia will be very appreciative of the fact that their civilian jobs will be secure for them in the event that they are called to state active duty.

Departmental Position on Bill: The department strongly supports this bill.

Approved: _____ Date: 2/10/90
for MG John W. Schaeffer

STEVE COWPER, GOVERNOR

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

OFFICE OF THE ADJUTANT GENERAL

FRONTIER BUILDING
SUITE 620
3601 C STREET
ANCHORAGE ALASKA 99503-5983
PHONE (907) 243-0656
AUTOVON 626-1444

Administrative & Support
Services Division
P.O. Box L
Juneau, AK 99811

March 9, 1990

The Honorable Gene Kubina
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Dear Representative Kubina,

In the discussions concerning HB493, concerning reemployment rights for members of the state militia, several questions have come up which you have requested me to address. This letter will attempt to answer those questions for you.

1. Should there be a time limit applied to the time that a person is on state active duty before they lose the reemployment rights addressed in HB493?

The department believes that the existence of a time limit would not serve a useful purpose. Militia members who are called to state active duty, and whose return to employment would be protected by this bill, are rotated in and out of their state active duty when possible to prevent their being gone from their routine employment any longer than necessary. In a few instances, the skills of certain individuals or groups of individuals (e.g. helicopter pilots) are such that such rotation is not possible or may be severly restricted. However, in all instances, the call of members to state active duty is needed to respond to an emergency situation (e.g. the Exxon Valdez), and members are only called up for as long as the emergency situation exists. In the unforseen occurrance of a situation requiring extensive periods of state active duty, we do not believe it would be in the best interest of the state and the communities that are benefitting from the militia call-up to have the members concerned about whether or not they had a job when the emergency was over. There is no limit on the call-up time for the federal reemployment rights when members of the National Guard are called up for federal emergency duty, and we believe that the state should follow suit when protecting its militia members when called up for state emergency duty.

2. What happens if a member is called up to state active duty from a seasonal job (e.g. construction), and the seasonal job is not there when his emergency service is over?

An employer would not be required to create a job that did not exist because of the seasonal nature of the employment. However, the member would be eligible to return to his job at the start of the next season as if he had not been absent for the state active duty, and would not suffer any loss of seniority for his time away from the job. This specific case would probably be addressed in the regulations to be adopted by the Department of Labor as authorized on page 2, lines 14-15 of HB 493.

3. What are the likely penalties that would be levied against employers who violate the reemployment rights to be enacted by HB493?

On page 2 of HB493, lines 17-19, the bill authorizes the Department of Labor to order reinstatement and payment of back pay if apropriate. This would not be the first action taken in the event a member was denied reemployment, and would only be used as a last resort. The first steps in regaining employment for a militia member who was denied a return to his former place of work would be: 1) the member's commanding officer and other military officers in the member's chain of command would call on the employer and attempt to convince the employer to reinstate the militia member; 2) a representative from the Employer's Support of the Guard and Reserve (ESGR) would talk to the employer; 3) a representative from the Department of Labor, Division of Labor Standards and Safety would talk to the employer. Only when all attempts to convince the employer to comply with the law have proved fruitless would the Department of Labor issue an order of reinstatement and back pay. If an employer contested the order, he would be able to appeal the action under the Administrative Adjudication section of the Administrative Procedure Act (A.S. 44.62.330-630). If an appeal were not filed in a timely manner, the Department of Labor has the authority under A.S. 44.62.590 to file in superior court, where an employer could be found in contempt of court for failure to comply with the order issued by the Department of Labor. The Department of Military and Veterans Affairs certainly hopes that these events never come to pass, but the law does have teeth to ensure the reemployment rights if needed.

I hope this information has been helpful in addressing some of the concerns raised about this bill. I will be present during the hearing in House Finance Committee on March 14 to attempt to answer any other questions that may be raised.

Sincerely,

Jeff Morrison

Jeff Morrison, Director

cc: COL Joseph Beans, Deputy Commissioner, DMVA
Tom Stuart, Director, Labor Standards and Safety, Department of Labor
Eileen Plate, Legislative Liaison, Department of Labor
Bob Evans, Deputy Chief of Staff, Office of the Governor
Kathleen Strasbaugh, Assistant Attorney General, Department of Law
David Otto, Director of Personnel, Department of Administration
Sioux Plummer, Legislative Liaison, Department of Administration

STEVE COWPER, GOVERNOR

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

OFFICE OF THE ADJUTANT GENERAL

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Sincerely,

Jeff Morrison

Jeff Morrison, Director

cc: COL Joseph Beans, Deputy Commissioner, DMVA
Tom Stuart, Director, Labor Standards and Safety, Department of Labor
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Bob Evans, Deputy Chief of Staff, Office of the Governor
Kathleen Strasbaugh, Assistant Attorney General, Department of Law
David Otto, Director of Personnel, Department of Administration
Sioux Plummer, Legislative Liaison, Department of Administration

HB 491

HOUSE COMMITTEE REPORT

File

(11)
Date Referred: March 5, 1990 FURTHER REFERRALS:

Date of Committee Action: 3/22/90

The FINANCE Committee considered: HB 491

HOUSE BILL NO. 491 ALASKA SENTENCING COMMISSION

"An Act creating a sentencing commission; and providing for an effective date."

RECOMMENDATIONS:
[X] be replaced with CS HB 491(Jud) [X] the same title [ ] a new title
[ ] have attached amendment(s)
[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[X] fiscal impact H. FIN CMTE
[ ] zero fiscal note _____
[ ] zero with analysis _____

APPROVES PREVIOUS: (Date, Dept)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____
[ ] zero fn/analysis _____

SIGNING DO PASS:

Carson
Swackhammer
Kopanen
Ulmer
Barnes
Smith
Wallis

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
Phillips		✓	
Rieger		✓	

Chairman's Signature
Carson

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 491
PUBLISH DATE: 02/07/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act creating a sentencing commission....
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Office of the Governor
BRU: Commissions & Special Offices
Components:

Adopted

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	117.5	120.5	124.7			
TRAVEL	18.5	18.5	18.5			
CONTRACTUAL	73.9	58.9	58.9			
SUPPLIES	5.0	5.0	5.0			
EQUIPMENT	16.0	0.5	0.5			
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	230.9	203.4	207.6			
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	230.9	203.4	207.6			
FEDERAL FUNDS						
OTHER						
TOTAL	230.9	203.4	207.6			

POSITIONS:

FULL-TIME	2	2	2			
PART-TIME	1	1	1			
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: House Finance Committee
Division: Co-Chairman Ron Larson
Phone: 465-3727
Date: 3/22/90

Approved by Commissioner: Co-Chairman Lyman Hoffman
Agency:
Date: 3/22/90

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

HOUSE BILL 491
SENTENCING COMMISSION
ANALYSIS

PERSONAL SERVICES: 117.5

Fiscal note assumes an Anchorage location of commission staff. "Request for New Position" forms are attached. Salaries shown are at STEP A for Fiscal Year 1991. Personal Services for subsequent years include a one-step merit increase for all positions.

TRAVEL: 18.5

Travel assumes six (6) annual commission meetings.

		$	$
Anchorage:	4 Meetings		
Travel @ $366/person x 3 people		= 1098	
Per Diem @ $80/day x 2 days x 3 people		= 480	
	Subtotal	= 1578	
4 meetings (x 4)			6312
Juneau:	1 Meeting		
Travel @ $390/person x 3 people		= 1170	
Per Diem @ $80/day x 2 days x 3 people		= 480	
Administrative Staff Travel			
Travel @ $366/person x 3 people		= 1098	
Per Diem @ $80/day x 2 days x 3 people		= 480	
	Subtotal	= 3228	
1 Meeting (x 1)			3228
Fairbanks:	1 Meeting		
Travel @ $390/person x 3 people		= 1170	
Per Diem @ $90/day x 2 days x 3 people		= 540	
Administrative Staff Travel			
Travel @ $232/person x 3 people		= 696	
Per Diem @ $90/day x 2 days x 3 people		= 540	
	Subtotal	= 2946	
1 Meeting (x 1)			2946
Additional Administrative Travel		=	6000
Includes legislative hearings and out-of-state travel to meet with sentencing experts.			
	Travel Total	=	18,486

CONTRACTUAL 73.9

Professional Services:

Services for programmer, sentencing analysts, statisticians, corrections specialists, and other related professionals		30,000

Communications:

Telephone (toll costs, base/local fixed costs, centrex network costs) $700/mo x 12 months	=	8400	
Telecopier charges $20/mo x 12 mos.	=	240	
Teleconference charges 6 @ $450	=	2700	
Postage $200/mo x 12 months	=	2400	
			13,740

Transportation:

Freight and express charges $75/mo x 12 =		600

Advertising, Printing and Binding:

Advertising $500 x 6 meetings	=	3000	
Printing $800 x 4 newsletters	=	3200	
Annual Report	=	7000	
Forms, misc.	=	750	
			13,950

Minor Repairs, Maintenance	1000

Rental for Space

Space requirement per Dept. of Administration standards. 693.5 sq' x $1.75 x 12 months	14,564
Contractual Total	

SUPPLIES AND MATERIALS 5.0

Office and Library suppl. $250/mo x 12	=	3000	
Data Processing Supplies		2000	
Total Supplies			5000

EQUIPMENT 16.0

Communication Equipment;

Phones			1800
Data Processing Equipment:			
2 PC's and 1 lazer printer			6700
Furniture/Office Equipment:			
Furniture/work stations equipment	=	5000	
(1) 5-Drawer lateral file cabinet	=	450	
Photocopier	=	2000	
			7450
Total Equipment			15,950

1.	POSITION TITLE				RANGE/STEP	BARG. UNIT	PAGE/LINE	GOV.	APPROV.	DISAPP
	Staff Attorney				22/A					
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	PPT 1/2 time									

3.	CONTINUATION LEVEL		ADDITION		

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	24,444	
6.	Benefits	7,734	
7.	Supplemental Benefits		
8.	Fixed Benefits		
9.	TOTAL PERSONAL SERVICES	01	32.2
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	32.2
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
KEY NUMBER - - - - -

JUSTIFICATION:

One half time attorney with approximately three years experience. Responsible for evaluating existing sentencing practices, reviewing policies in effect in othr states and drafting legislation and regulations.

REQUEST FOR NEW POSITION

AGENCY Office of the Governor

BRU Commissions and Special Offices

COMPONENT

FY 91

Revised Date

01-1137(7/88)-13

1.	POSITION TITLE				RANGE/STEP	BARG. UNIT	PAGE/LINE	GOV.	APPROV.	DISAPP
	Executive Secretary				12/A					
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	PFT	12								

3.	CONTINUATION LEVEL		ADDITION		
4.	TYPE OF EXPENDITURE				AMOUNT
	1			2	3
	PERSONAL SERVICES				
5.	Salary			24,864	
6.	Benefits			10,147	
7.	Supplemental Benefits				
8.	Fixed Benefits				
9.	TOTAL PERSONAL SERVICES		01		35.0
10.	Travel		02		
11.	Contractual		03		
12.	Commodities		04		
13.	Equipment		05		
14.	Other				
15.	TOTAL COST				

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	35.0
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR B&M USE ONLY
KEY NUMBER - - - - -

JUSTIFICATION:

Secretarial support to Sentencing Commission. Assist with coordination of Commission meetings, public hearings, travel arrangements, process fiscal and personnel documentation.

REQUEST FOR NEW POSITION

AGENCY Office of the Governor

BRU Commissions and Special Offices

COMPONENT

FY 91

Revised Date

01-1137(7/88)-13

1.	POSITION TITLE				RANGE/STEP	BARG. UNIT	PAGE/LINE	GOV.	APPROV.	DISAPP
	Research Analyst III				18/A					
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
	PFT	12								

3.	CONTINUATION LEVEL		ADDITION	

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	37,356	
6.	Benefits	12,914	
7.	Supplemental Benefits		
8.	Fixed Benefits		
9.	TOTAL PERSONAL SERVICES	01	50.3
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	50.3
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
KEY NUMBER - - - - -

JUSTIFICATION:

Research Analyst to conduct sentencing analyses and reports. Maintain data base, data collection and compilations.; prepare reports and analysis of sentencing patterns and effects of other sentencing factors; liaison with contractors.

REQUEST FOR
NEW POSITION

AGENCY Office of the Governor

BRU Commissions and Special Offices

COMPONENT

FY 91

Page 7 of 7

Revised Date

01-1137(7/88)-13

Offered: 3/2/90
Referred: Finance

go0340hE

Original sponsor(s): Rules/Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 491 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act creating a sentencing commission; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 44.19 is amended by adding new sections to read:

ARTICLE 16. SENTENCING COMMISSION.

Sec. 44.19.561. CREATION OF COMMISSION. The Alaska Sentencing Commission is established in the Office of the Governor.

Sec. 44.19.563. COMPOSITION. (a) The commission consists of 13 members as follows:

(1) three persons appointed by the governor, with due consideration to geographic representation and the interests of victims, local law enforcement officers, rehabilitation specialists, and other groups closely concerned with sentencing policies;

(2) the commissioner of corrections or a deputy commissioner of corrections designated by the commissioner;

(3) the commissioner of public safety or a deputy commissioner of public safety designated by the commissioner;

(4) the attorney general or the designee of the attorney general;

(5) the public defender or the designee of the public defender;

(6) the presiding officer of the Board of Parole or a member of the Board of Parole designated by the presiding officer;

(7) the chief justice of the supreme court or another

justice of the supreme court or a judge of the court of appeals designated by the chief justice;

(8) a superior court judge designated by the chief justice;

(9) a district court judge designated by the chief justice;

(10) the senate president or another senator designated by the senate president; and

(11) the speaker of the house of representatives or another member of the house designated by the speaker of the house of representatives.

(b) The commission, by majority vote of the membership, shall elect a chair and other officers it considers necessary from among its membership to serve on a yearly basis.

(c) The term of office of a member appointed under (a)(1) of this section is three years. Terms shall be staggered, and a member may not serve more than two consecutive terms. A vacancy shall be filled for the balance of the unexpired term in the same manner as original appointments.

Sec. 44.19.565. COMPENSATION. Members of the commission serve without compensation, but are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

Sec. 44.19.567. MEETINGS. A majority of the members constitutes a quorum for conducting business and exercising the powers of the commission. The commission shall meet at the call of the chair, at the request of the majority of the members, or at a regularly scheduled time as determined by a majority of the members.

Sec. 44.19.569. PURPOSE. The purpose of the commission is to evaluate the effect of crime rates and sentencing laws on the criminal justice system, and to make recommendations for improving criminal sentencing practices.

Sec. 44.19.571. METHODOLOGY. In making recommendations, the commission shall

(1) solicit and consider information and views from a variety of constituencies in order to represent the broad spectrum of diversity that exists with respect to possible approaches for sentencing criminals in the state; and

(2) base recommendations on the following factors:

(A) the seriousness of each offense in relation to other offenses;

(B) the effect of an offender's prior criminal history on sentencing;

(C) the need to rehabilitate criminal offenders;

(D) the need to confine offenders to prevent harm to the public;

(E) the extent to which criminal offenses harm victims and endanger the public safety and order;

(F) the effect of sentencing in deterring an offender or other members of society from future criminal conduct;

(G) the effect of sentencing as a community condemnation of criminal acts and as a reaffirmation of societal norms;

(H) the elimination of unjustified disparity in sentences; and

(I) the resources available to criminal justice system agencies.

Sec. 44.19.573. POWERS AND DUTIES. To accomplish its purpose, the commission may

(1) hire an executive director and additional administrative staff as may be necessary to the commission's function, or place the commission staff under the executive director of the Alaska

Judicial Council;

(2) select and retain the services of consultants whose advice is considered necessary to assist the commission in obtaining information;

(3) accumulate and compile information concerning sentencing practices; and

(4) recommend legislative and administrative action on sentencing practices.

Sec. 44.19.575. ANNUAL REPORT AND RECOMMENDATIONS. The commission shall submit to the governor and the legislature an annual report of its proceedings for the previous calendar year and shall submit recommendations for legislative and administrative action. Reports and recommendations required under this section shall be submitted no later than January 1 of each year.

Sec. 44.19.577. DEFINITION. In AS 44.19.561 - 44.19.577, "commission" means the Alaska Sentencing Commission established in AS 44.19.561.

* Sec. 2. AS 44.66.010(a) is amended by adding a new paragraph to read:

(17) Alaska Sentencing Commission (AS 44.19.561) -- June 30, 1993.

* Sec. 3. TRANSITIONAL PROVISIONS. The initial appointments to the Alaska Sentencing Commission under AS 44.19.563, as added by sec. 1 of this Act, shall be made and the first meeting of the commission shall be convened by July 1, 1990. The first report required under AS 44.19.575, as added by sec. 1 of this Act, shall be submitted no later than January 1, 1991.

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

House of Representatives

House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

MEMORANDUM

TO: Representative Lyman Hoffman, Co-Chair
Representative Ron Larson, Co-Chair
House Finance Committee

FROM: House Judiciary Committee

RE: HB 491, An Act creating a sentencing commission.

DATE: March 2, 1990

The House Judiciary Committee has heard and passed from committee HB 491, An Act creating a sentencing commission.

We would urge you to scrutinize the staffing pattern set out in the bill and the attached fiscal note.

Representative Peter Goll

Representative Max Gruenberg

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB491

February 7, 1990

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill creating a sentencing commission.

Over the past decade, the prison population in Alaska has increased every year. In the period from 1980 to 1988, Alaska had the largest percentage increase in prison population, and the fourth highest rate of incarceration, of all 50 states. Disagreement exists over both the cause of the increase and the manner in which state government should respond to the expanding prison population.

Based on research and data collected in other states, it is obvious that the increased rate of incarceration has not, and will not, solve the crime problem in Alaska. Neither will the development of intermediate and alternative sanctions, by itself, eliminate prison overcrowding. Building more prisons is one way to deal with expanding prison populations. However, with prison construction costs ranging from $50,000 to $100,000 per bed, the ultimate price of building more jails (which includes both real costs and the effect on our ability to pay for other important public needs) is formidable. A change in our sanctioning policy is the only real means of controlling ever-expanding prison populations.

This bill creates a commission composed of executive-, legislative-, and judicial-branch employees, as well as members of the public. The commission's job would be to review sentencing patterns and practices, as well as crime rates, and to make recommendations for long-term management

of Alaska's prison population. The legislation requires the commission to make annual recommendations for legislative and administrative action on sentencing laws.

I urge your favorable action on this bill.

Sincerely,

Steve Cowper
Governor

Attachment
3/21/90 HB491

BEDSPACE

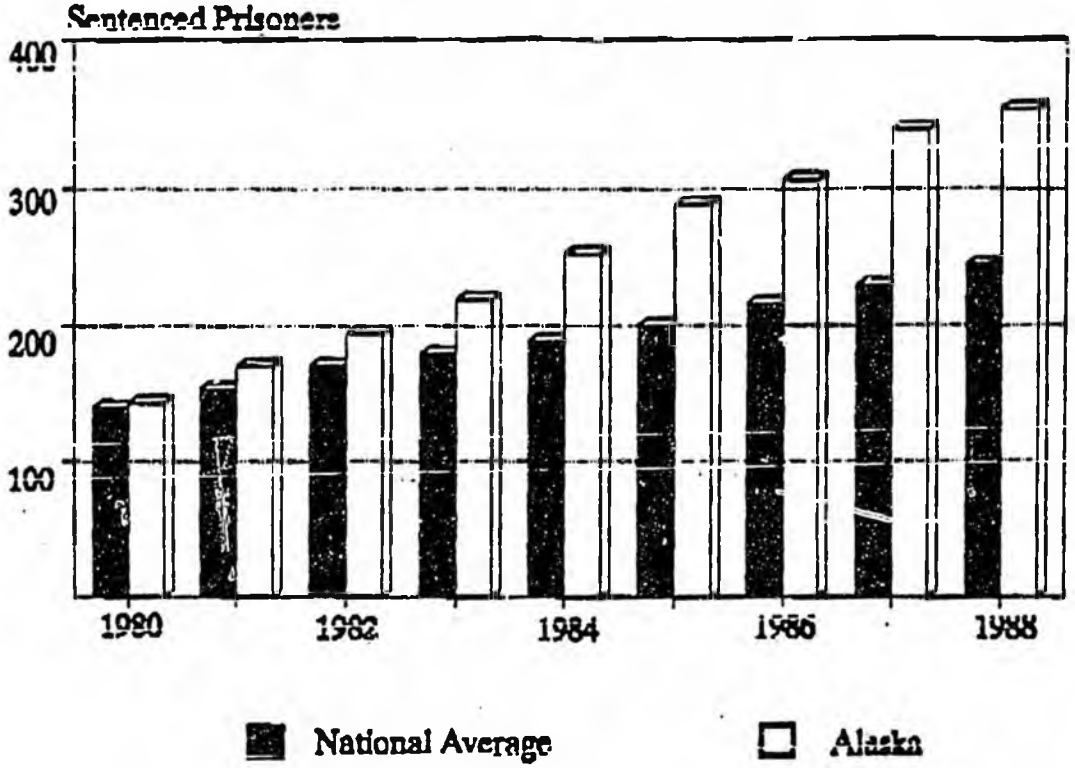
	6/89	12/89	6/90	12/90	6/91	12/91	6/92	12/92	6/93	12/93
Total Population:	2606	2844	2922	3000	3078	3156	3234	3312	3390	3468
Less FBP:	95	75	75	75	75	75	75	75	75	75
Less CRC:	200	200	200	200	250	250	250	250	250	250
Less MN:	5	5	5	5	5	5	5	5	5	5
In-State Population:	2306	2564	2642	2720	2748	2826	2904	2982	3060	3138
Available Beds In-State:	2516	2516	2516	2516	2516	2516	2516	2676	2996	2996
* Un-triple Bunk YKCC:										
* Close Small FCC Dorms:										
* Close LCCC Dorm:										
* Un-double Bunk Cells at PCC:										
New Palmer Minimum:							120			
New Unit for Long-Term Women:							40			
2nd Half of SCCC:								320		
							2676	2996		
Available Beds Less In-State Population:	+210	- 48	-126	-204	-232	-310	-228	+14	-64	-142

* Unable to close any beds due to increasing prison population

Rev. 11/14/89
Corrected Copy

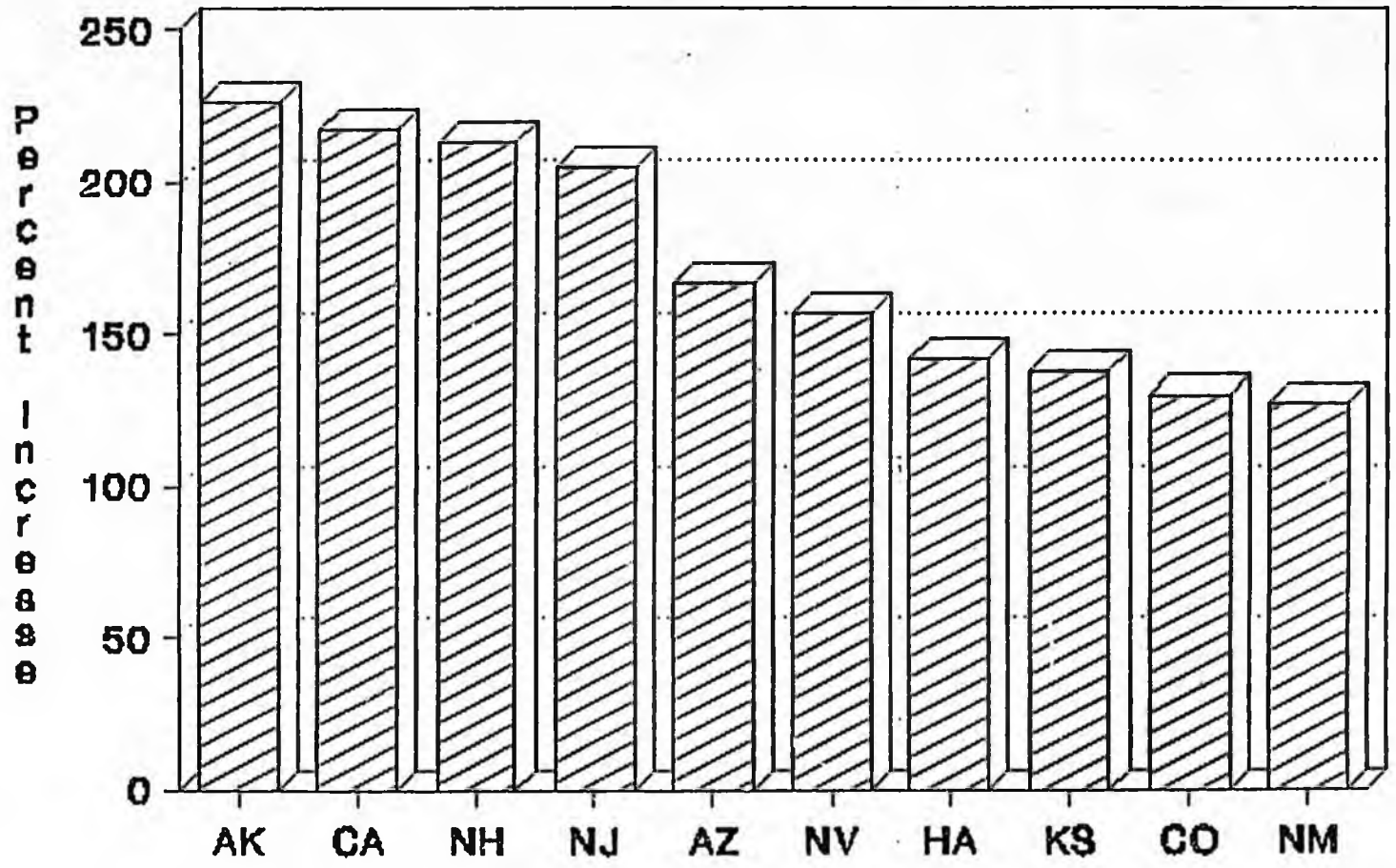
Trends in Alaska Corrections

Rates of Incarceration *
National Average vs Alaska



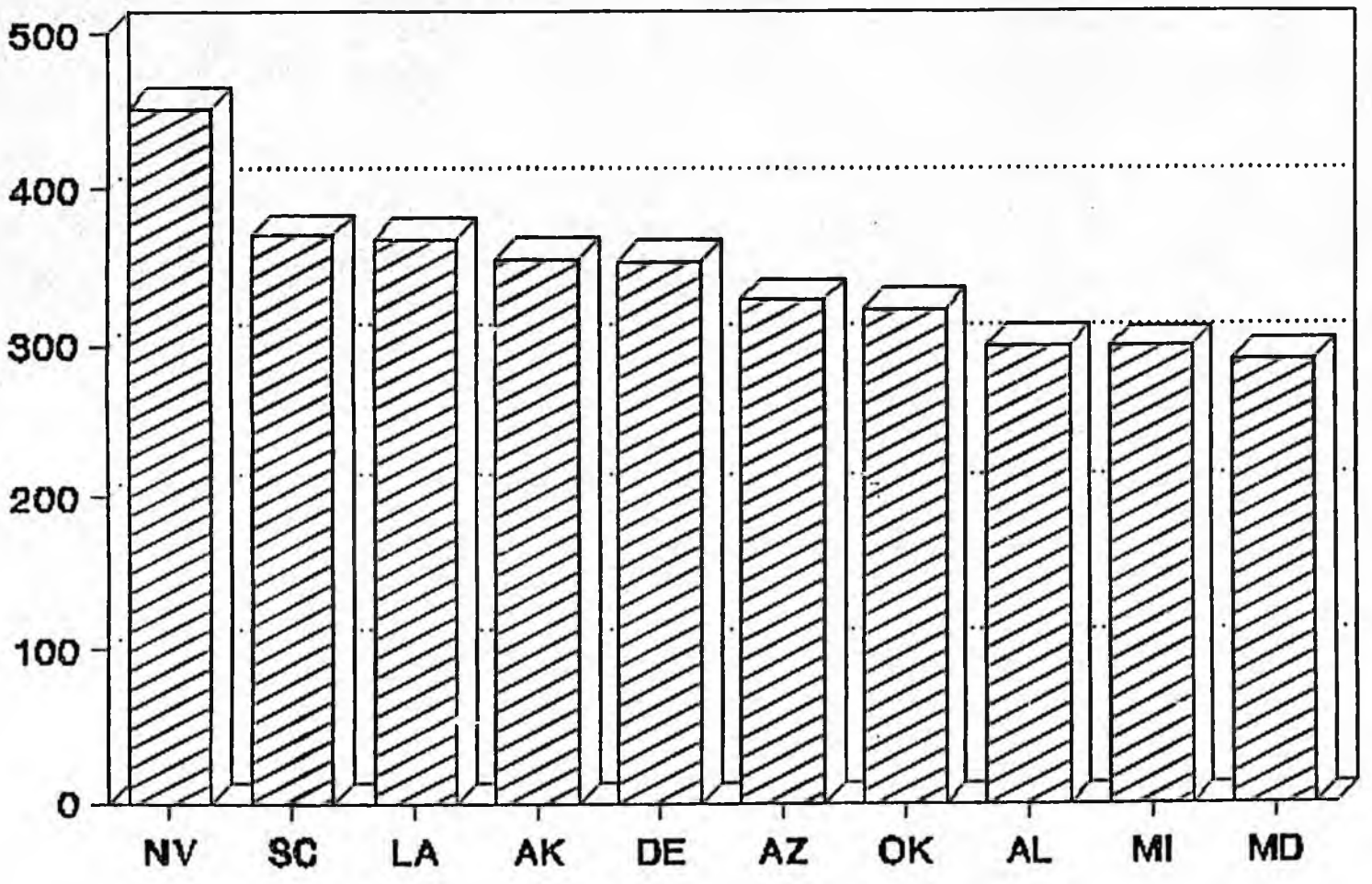
* Rate per 100,000 resident population
Figures from Bureau of Justice Statistics, U.S. Department of Justice

10 States with the largest percent increase in prison population 1980-88



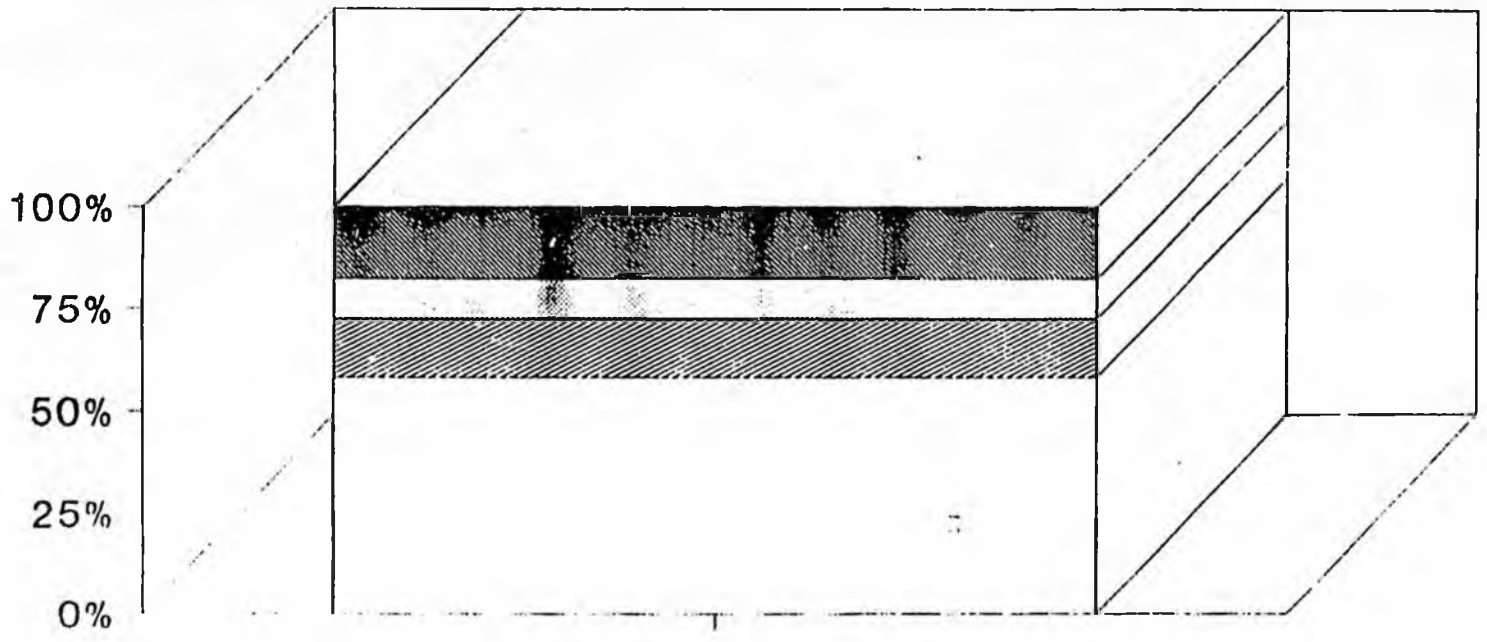
Prisioners per 100,000 residents

10 States with the highest incarceration rates in 1988

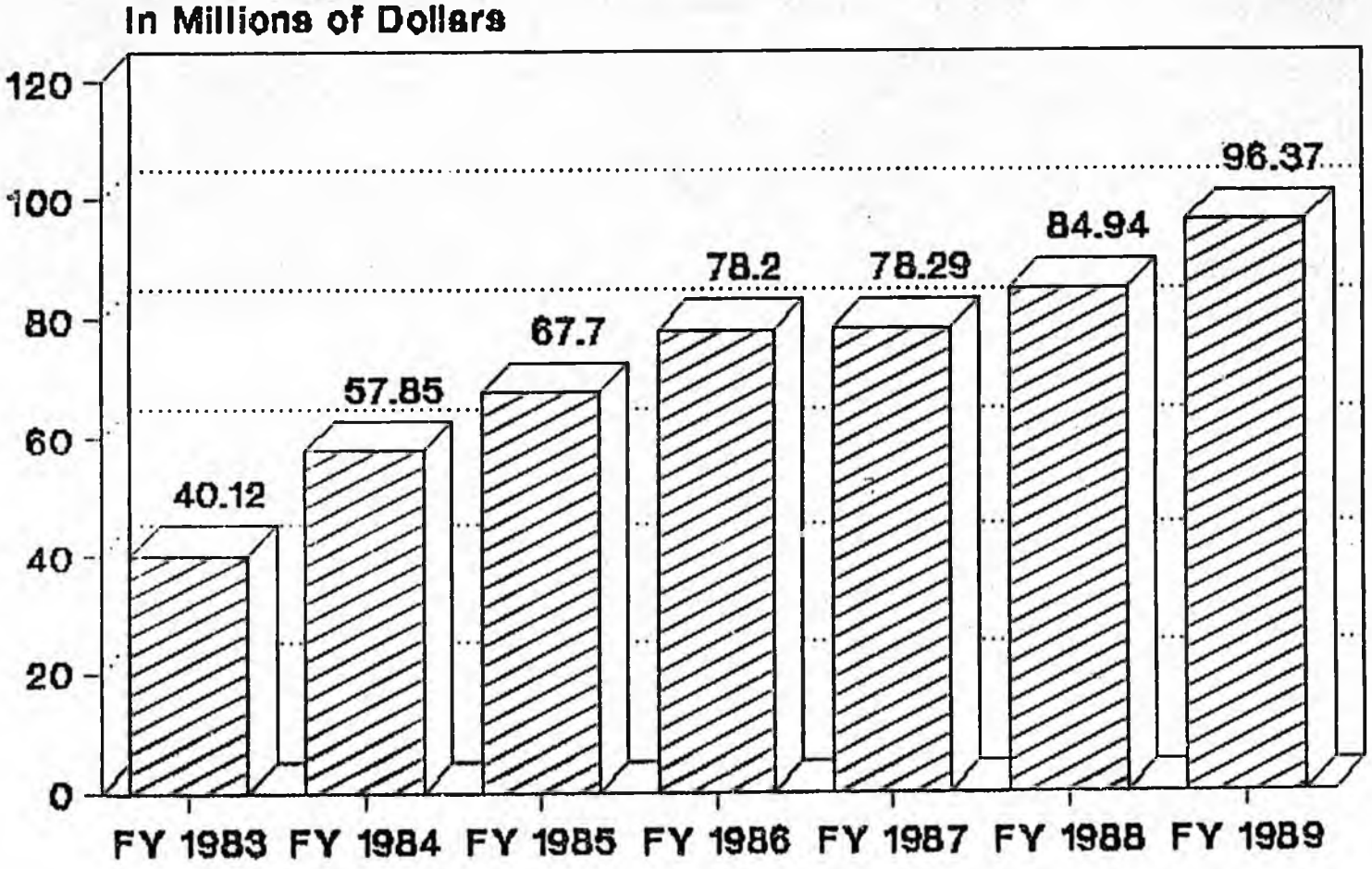


Prisioners per 100,000 residents

Inmate Offense Catagories
December 31, 1988



Department of Corrections
Operating Budget FY 1983 to FY 1989



* Fiscal Year Actuals

(RATIO OF APPROP)

N C C D

FOCUS

THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY

JULY 1988

Ranking the Nation's Most Punitive and Costly States

By James Austin, Ph.D. and Marci Brown

HIGHLIGHTS

This issue of NCCD FOCUS represents the second annual "Ranking the Nation's Most Punitive States."[1] The United States, now with more than 625,000 inmates in prison, has long been recognized as a country that imprisons a large portion of its population. Since 1980, the nation's imprisonment rate has nearly doubled.[2] Presently, over 40 states are under some form of litigation related to crowding or unconstitutional conditions of confinement.

This surge in the number of inmates has been interpreted by some as an indication of a more punitive attitude toward the crime problem that characterizes the politics of contemporary criminal justice. Punitive attitudes have traditionally been cited as the reason certain states and regions have higher imprisonment rates than the nation as a whole.

As states respond to the pressure of overcrowding, more attention is being paid to comparing states in terms of their use of other forms of control in addition to prisons. And, states are also concerned with the high costs of these systems. State and federal prison population data, the most obvious means of calculating comparative imprisonment rates, reflect only a single component of a jurisdiction's correctional system and exclude other far-reaching forms of incarceration and control, including jails, juvenile facilities, and parole and probation.

For these reasons, the domain of prison control must be evaluated in relation to, and in many cases as overlapping with, the control exercised by other correctional control systems. This has become all the more obvious in recent years, as many states, facing crisis situations in their prisons, have placed many offenders in a wide variety of non-prison correctional settings.

The major findings of this report are:

- The nation's use of prisons, jails, probation and parole continues to grow at record levels. More than one out of every 100 persons are under the control of the criminal justice system.[3]
- Washington, D.C., ranks number one in all forms of punishment and criminal justice expenditures. Despite an enormous investment in criminal justice agencies, policy makers have recently chosen the nation's capitol as the site for further investment in more incarcerative policies.
- The South continues to have the highest regional imprisonment rate and the highest total control rate. However, the West, fueled by dramatic increases in California, has the highest regional total incarceration rate (including jails and juvenile facilities, as well as prisons).
- In 1987, it cost each man, woman, and child $211 per year to fund state and local criminal justice systems. This figure compares with $95 in 1979.
- There is a strong correlation between rates of criminal justice expenditures and crime rates. States that spend the most on criminal justice have the highest crime rates. Despite a continuing increase in expenditures for criminal justice agencies and in the use of formal punishment, crime rates continue to escalate.

IMPRISONMENT VS. TOTAL INCARCERATION RATES

The most commonly used gauge of the punitive nature of a state or geographic region is the imprisonment rate. This rate typically refers to the number of persons in prison on a given day, per 100,000 state population. Southern states have historically had the highest levels of imprisonment in the country, which has been interpreted by some experts as reflecting the conservative political and social values of that region.

Table 1 shows the rates of imprisonment for the 50 states and Washington, D.C. Among the 15 states with the highest rates of imprisonment, 11 were Southern states (including Washington, D.C.). The table also shows that the Southern region had the highest imprisonment rate followed by the West, Midwest and Northeast. Among the 15 states with the lowest rates of imprisonment, seven states were in the Northeast and six were in the Midwest.

Overall, state rankings for imprisonment varied little from last year's report, which used 1986 data. However, a few states showed significant increases or decreases in their imprisonment rate between 1986 and 1987. Interestingly, Washington, D.C., which has the highest imprisonment rate in the nation, increased its imprisonment rate from 1,078.4 in 1986 to 1,197.4 per 100,000 in 1987. Alaska is second with a rate of 481.5 per 100,000 and replaces

Table 1: Imprisonment vs. Incarceration Rates

Rank	State	1987 Population*	1987 Prisoners	Imprisonment Rate***	Rank	State	1987 Persons in Jail**	Jail Rate***	1987 Juveniles in Custody	Total Incarceration Rate****
1	D.C.	622	7,448	1,197.4	1	D.C.	1,674	269.1	413	1,333.0
2	Alaska	525	2,528	481.5	2	Nevada	1,925	191.1	482	679.1
3	Delaware	644	2,931	455.1	3	Louisiana	10,300	230.8	1,028	398.8
4	Nevada	1,007	4,634	460.3	4	Alaska	0 •	0 •	178	515.4
5	South Carolina	3,425	12,664	369.8	5	California	60,802	219.7	14,712	315.1
6	Louisiana	4,461	15,375	344.7	6	Arizona	5,137	151.7	1,018	305.1
7	Arizona	3,386	10,348	305.5	7	South Carolina	3,675	107.2	715	497.9
8	Alabama	4,083	12,827	314.2	8	Florida	24,602	204.6	2,311	493.7
9	Georgia	6,222	18,575	298.5	9	Delaware	0 •	0 •	168	481.4
10	Maryland	4,535	13,467	297.0	10	Georgia	9,504	152.7	1,338	472.8
11	Oklahoma	3,272	9,639	294.6	11	Alabama	4,126	105.9	806	439.8
12	Florida	12,023	32,445	269.9	12	Maryland	4,985	109.9	1,032	429.6
13	North Carolina	6,413	17,249	269.0	13	Tennessee	10,516	216.5	1,038	393.0
14	Mississippi	2,625	6,831	260.2	14	Oklahoma	2,734	83.55	446	391.8
15	Michigan	9,200	23,879	259.6	15	Texas	25,453	139.6	2,421	385.3
16	California	27,663	66,975	242.1	16	Virginia	7,758	131.0	1,454	381.4
17	Kansas	2,476	5,881	237.5	17	New Jersey	15,107	170.8	1,997	374.9
18	Connecticut	3,221	7,511	233.9	18	New York	23,696	132.9	2,226	374.5
19	Texas	16,789	38,821	231.2	19	Michigan	8,567	92.90	1,816	372.2
20	New York	17,825	40,842	229.1	20	North Carolina	5,380	83.89	812	365.5
21	Arkansas	2,388	5,443	227.9	21	Kansas	1,914	77.10	678	362.1
22	Virginia	5,904	13,321	225.6	22	Ohio	8,729	80.94	1,126	334.7
23	Ohio	10,784	24,240	224.8	23	Arkansas	1,982	82.99	249	321.4
24	Missouri	5,103	11,357	222.6	24	Oregon	2,469	80.63	592	313.6
25	Hawaii	1,083	2,266	209.4	25	Mississippi	1,018	38.78	355	312.5
26	Oregon	2,724	5,682	201.2	26	Indiana	4,710	85.15	1,320	304.8
27	Indiana	5,531	10,827	195.8	27	New Mexico	1,428	95.2	491	304.5
28	Wyoming	460	940	191.8	28	Wyoming	377	76.93	175	304.1
29	New Jersey	7,672	13,862	178.1	29	Illinois	12,616	108.9	1,930	297.0
30	New Mexico	1,500	2,648	176.5	30	Missouri	2,854	55.92	815	294.5
31	Illinois	11,582	19,850	171.4	31	Kentucky	4,096	125.9	607	289.1
32	South Dakota	709	1,135	160.1	32	Washington	5,261	116.3	1,134	276.5
33	Tennessee	4,855	7,624	157.0	33	Colorado	3,793	115.0	503	274.2
34	Idaho	998	1,482	148.5	34	Wisconsin	5,750	119.6	686	258.7
35	Kentucky	3,727	5,471	146.8	35	Pennsylvania	13,195	110.5	1,103	256.1
36	Montana	809	1,187	146.7	36	Connecticut	0 •	0 •	227	241.0
37	Colorado	3,296	4,808	145.9	37	South Dakota	294	41.46	228	233.7
38	Rhode Island	988	1,429	144.9	38	Montana	412	50.92	220	225.8
39	Vermont	548	759	138.5	39	Idaho	630	63.12	117	223.3
40	Pennsylvania	11,936	16,267	136.3	40	Hawaii	0 •	0 •	169	223.2
41	Washington	4,538	6,151	135.1	41	Nebraska	1,176	73.65	274	221.7
42	Nebraska	1,594	2,086	130.9	42	Iowa	2,736	96.54	427	212.6
43	Wisconsin	4,807	6,001	124.8	43	Massachusetts	4,740	80.95	212	191.1
44	Utah	1,680	1,888	112.4	44	Utah	1,066	63.45	217	188.8
45	Maine	1,187	1,328	111.9	45	Maine	572	48.18	214	178.1
46	Massachusetts	5,855	6,238	106.5	46	New Hampshire	807	76.34	126	170.3
47	Iowa	2,834	2,863	101.0	47	Rhode Island	0 •	0 •	165	155.6
48	New Hampshire	1,057	867	82.0	48	Minnesota	3,106	73.15	581	146.8
49	West Virginia	1,897	1,461	77.0	49	West Virginia	1,134	60.83	161	145.3
50	North Dakota	672	430	64.0	50	Vermont	0 •	0 •	15	141.2
51	Minnesota	4,248	2,546	60.0	51	North Dakota	245	36.45	69	110.7
REGION					REGION					
SOUTH		83,885	221,592	264.2	WEST		83,320	147.6	19,995	432.7
WEST		69,699	111,719	224.8	SOUTH		117,735	140.6	13,335	422.8
MIDWEST		59,538	121,395	186.6	NORTHEAST		36,113	111.6	6,225	300.8
NORTHEAST		50,277	88,903	176.8	MIDWEST		52,695	88.5	12,948	295.1
TOTALS		263,399	533,309	219.1	TOTALS		309,845	127.3	53,503	388.6

* Total population in thousands

** Average daily jail populations for 1987 are estimates drawn from published reports and phone calls to individual state officials

*** Per 100,000 total population (1987), as reported in the 1987 UCR.

**** Number of persons in prison, jail, and juvenile facilities per 100,000 total population (1987)

• In the states of Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont, which maintain combined prison and jail systems, all inmates are accounted for in the prison figures

Nevada as the state with the highest imprisonment rate. However, Alaska's high ranking is misleading as its prison figures include persons awaiting trial or serving short sentences. In most other states these inmates are counted in jail populations.

To correct for this bias, we created a "total incarceration rate" which includes prison and jail populations and juveniles in custody.[4] When the states are ranked according to this criterion, the West replaces the South as the nation's leader with a rate of 432.7 per 100,000. Nevada reassumes its number one state ranking, and D.C. continues to have the highest rate of incarceration (four times the national average). California's dramatic increase in prison, jail and juvenile facility populations is the main reason the West has taken the lead in incarceration. Since the previous NCCD report, California added about 6,500 inmates to its prison population, more than 19,000 inmates to its jail population, and 2,100 children to its juvenile facilities.

When the total incarceration measure is compared to the imprisonment rate, significant changes occur among the states with respect to their national ranking. Tennessee, for example, moves from 33 to 13 in total incarceration, in part because the state houses many state prisoners in local jails due to a consent decree restricting prison populations. The same phenomenon also explains increases in rankings for other states including New Jersey, Texas, and Louisiana.

Connecticut, on the other hand, moves down to a rank of 36 for total incarceration compared to a rank of 18 for imprisonment. Similar declines for other states, such as Hawaii, Rhode Island and Vermont, simply reflect that they also have consolidated jail and prison systems.

but have not addressed other elements of sentencing decision making. Florida's prison sentencing guidelines are undermined by severely overcrowded prisons that have necessitated wholesale early release of large numbers of inmates.

Although no single state has structured comprehensively its sentencing policy and correctional resources, the experience of those that have tried illustrates the promise and potential of this pioneering public policy effort. This paper attempts to (1) review the goals of structuring statewide sentencing policy, (2) describe the scope and agenda that must be tackled, and (3) discuss practical and political issues involved in creating a commission.

The Goals of Structured Sentencing

The most common and most important goals of structured sentencing are to:

- Ensure uniformity in sentences and eliminate insupportable disparities based on race, gender, or socioeconomic factors;
- Increase the severity of correctional sanctions in direct proportion to the seriousness of the offense and the criminal history of the offender;
- Guide judicial decision making while providing adequate opportunities for the exercise of discretion when substantial and compelling circumstances exist;
- Reassert legislative control over sentencing policy in a coordinated and comprehensive way, as opposed to a piecemeal approach;
- Coordinate the full range of criminal sanctions from fines and probation supervision in the community to total confinement; and
- Coordinate sentencing policies with correctional policies and resources.

In a state where these goals are broadly shared by the various actors and institutions involved in sentencing, a commission represents a promising vehicle to achieve structured sentencing. What follows is a step-by-step description designed to help legislators in drafting legislation to establish a sentencing commission.

A COMMISSION ON STRUCTURED SENTENCING

A commission to structure sentencing policy is created and overseen by the legislature as a means of developing a comprehensive policy. Once a sentencing policy is established, the commission's role shifts to monitoring the effect of sentencing policy on correctional facilities and resources and to advising the legislature on changes and modifications in sentencing policy.

The commission approach offers the advantage of managing some of the rough-and-tumble politics and potential demagoguery surrounding sentencing issues. A commission also provides a vehicle through which all the necessary parties—legislators, judges, corrections officials—can participate equally and cooperatively.

The product of the commission's deliberations can take different forms, depending upon a state's tradition of separation of powers. In Washington, the sentencing commission's recommendations were submitted to the legislature and adopted by statute. In Oregon and Louisiana, the sentencing policy will be promulgated in administrative rules. In Minnesota, the initial guidelines were established by rule, but all modifications must be reviewed by the legislature before going into effect. Most sentencing experts agree that voluntary judicial guidelines are not an effective means of implementation because they are advisory in nature and lack the mandating force of legislative policy. [8, p. 98, and 1, p. 171]

Statutory enactment has the strongest legal standing and has the advantage of legislative review of both the substantive policy as well as the all-important financial implications on corrections resources. Although the administrative rules process means a more passive and limited legislative review, it may minimize the danger of piecemeal amendment or limit the politics of emotion aimed at selected parts of the sentencing policy. More important, the administrative rules process cannot deal with allocation of resources to implement a sentencing policy.

Legislators interested in establishing a commission on structured sentencing must not only draft the legislation setting forth the scope of work and operating details but also foster the necessary environment of interbranch cooperation.

Creating the Right Climate

Sentencing policy requires an interbranch effort built on appreciation for the unique role that each branch plays in sentencing. Constitutionally and practically speaking, statewide sentencing policy can be established only by the legislature. Clearly, however, judges have the most experience and direct involvement with the day-to-day application of sentencing policy to individual cases. Corrections administrators, prosecutors and defense lawyers, parole officials, and the public also have real and vital interests in sentencing and, therefore, must have a role in the commission process.

An interbranch partnership is required for several reasons. Judicial guidelines alone lack the enforcement needed to ensure compliance and cannot address questions of financial and space needs resulting from sentencing policy. Executive branch innovations at best can only

structure parole decision making or make limited changes within available criminal justice resources. Legislative action can mandate and coordinate statewide policy, but legislative initiatives pursued without judicial support and involvement will likely be stillborn in the implementation process.

Sentencing policy and procedure represent a unique area of substantive law that sharply magnifies the special relationship between the legislature and the judiciary. Oregon Attorney General David Frohnmayer, writing in a 1986 issue of *State Government*, notes that courts are not as well suited as the legislature or the executive branch to resolve major issues of public policy, yet the requirements of legal interpretation inescapably lead to creation of laws. Moreover, he argues that legislatures invite judicial activism by the prodigiousness of their lawmaking and the tendencies toward overly vague language and broad delegations of power. The tension between judicial and legislative roles has been dramatized in many substantive areas of law but is heightened in sentencing since it represents a major judicial function. The challenge for legislators interested in sentencing reform is to recognize and channel the institutional tensions creatively.

Defining the Scope of Work

The legislature defines the scope of study and work of a commission and, by so doing, can enhance or handicap the likelihood of success. If the legislature fails to mandate a comprehensive approach, then a commission cannot be faulted for recommending a piecemeal policy. If the legislature directs the commission to look only at sentencing commitments to state prisons and not the full range of correctional sanctions, then the concerns of local governments and the availability of community-based sentencing options may not be adequately considered.

The most common problems involving the scope of work stem from three primary issues. First, sentencing guidelines should consider the full range of correctional sanctions from prison incarceration to community supervision and fines. Most of the early guideline experiments focused little attention on intermediate and non-imprisonment sanctions, even though three out of four offenders are sanctioned in the community. More recent commission efforts (e.g., in Louisiana and Oregon) are attempting to build sentencing schemes that take into account the use and availability of local jails, residential treatment programs, probation, and community service. Absent specific guidelines structuring the imposition of non-imprisonment sentences, the potential for disparate and disproportionate sentences is great, and the ability to plan for and develop needed community resources is limited.

Correctional resources are not uniformly available in each community; some locales are rich in program options while others are lacking. Furthermore, since jails and many community-based correctional programs are locally funded, a comprehensive state sentencing policy must address state and local finance issues. Failure to address the full range of sentencing sanctions virtually ensures inequities, according to Kay Knapp, director of the Institute for Rational Public Policy, Inc.

Second, legislatures should give their commissions specific directives as to the extent to which they need to take into account existing constraints on correctional resources. They should also require sentencing commissions to report on the short- and long-term fiscal impacts of their proposed guidelines. For example, the recently enacted enabling legislation creating the Kansas Sentencing Commission states, "In developing its recommended sentencing guidelines, the commission shall take into substantial consideration current sentencing and release practices and correctional resources, including but not limited to the capacities of local and state correctional facilities."

Where commissions are not required to consider existing constraints on resources, they may promulgate guidelines that result in the need for a substantial increase in new prison construction. While this may be an acceptable outcome in some states, most are already struggling to deal with existing prison crowding and cannot afford to enact policies that further exacerbate the problem. Pennsylvania is an example of a state that enacted guidelines that resulted in the imprisonment of more offenders for longer periods of time. Adopted in 1982, Pennsylvania's minimum sentencing guidelines contributed to increases in the percentage of convicted offenders incarcerated and average prison sentences. [8, p. 69]

Third, sentencing reform should not be confused (and therefore not combined) with criminal code revision. Some states that have tried to accomplish code revision within the context of a sentencing commission have found their efforts stalled. Most recodification efforts are guided by the Model Penal Code, which reflected the philosophies of the 1940s and 1950s when "indeterminate" sentencing was the norm. While the model code establishes a common vocabulary and consistent logic within criminal statutes, it is wholly inadequate in the process of addressing modern sentencing reform. [4, p. 49]

One significant stumbling block of the Model Penal Code is its classification system of offenses (three felony punishment classes, two misdemeanor classes, and one violation class). States that have developed sentencing guidelines typically end up with more refined distinctions of offense seriousness. For example, Minnesota's guideline system ranks 10 offense severity levels, not including first degree murder, which carries a mandatory life sentence. Washington established a 14-tier ranking of offense seriousness. The more refined rankings weight factors such as type and extent of harm, culpability, and victim vulnerability.

The second major problem presented by the Model Penal Code is its focus on "worst case" behavior and assigning an appropriate maximum penalty. Most sentencing guidelines, as a practical matter, reflect "usual case" penalties with adequate provisions for judges to increase the sanction in light of aggravating circumstances. The "usual case" approach also allows judges to base sentencing on the offender's actual behavior in the crime rather than the offense for which he was convicted. (For a detailed discussion of these problems, see Tonry's "Sentencing Guidelines and the Model Penal Code" [9].)

Setting the Agenda of Policy Choices

The enabling legislation should spell out the major issues to be addressed by the commission. Key policy issues include:

- Ranking offenses (including attempts, solicitations, and conspiracies) by degree of seriousness;
- Determining the role of and measuring criminal history as a factor in sentencing;
- Defining a dispositional policy that determines which offenders are confined in state prisons and which are sanctioned in other ways (i.e., custodial dispositions, fines, restitution, and probation);
- Establishing the length of sentences (prison and otherwise) and the extent of other stipulated penalties of community service or fines;
- Developing policy and procedures governing when a judge may depart from the guidelines to order a more or less severe sentence; and
- Structuring policies and procedures (for example, plea bargaining agreements or parole decisions) to ensure consistency in all aspects of sentencing policy.

Within each of these six policy areas, a commission will face many diverse and complex questions. A brief discussion of some of the questions a commission will confront follows.

Ranking the Gravity of Different Offenses. A commission must develop a consensus hierarchy of criminal activity. In effect, a commission makes a collective judgment about what crimes are least serious or most serious and therefore deserving of harsher punishment. At a broad policy level, the rankings reflect judgments about harm or potential harm to the victim or community, the culpability of the offender, and physical injury to the victim. A commission may choose to make case-level differentiations as well. For example, the proposed Oregon crime ranking subdivides drug offenses using factors such as the type of substance involved, the intent to generate substantial profits, and the connection, if any, to an organized trafficking operation.

The Role of Criminal History. Commissions typically develop a scoring system to assign a numerical weight to offender characteristics including prior felony and misdemeanor convictions, juvenile record, and probation or parole status at the time of the offense. Other considerations may include: Should offenses against people and property offenses be weighted differently? Should extended periods of crime-free behavior diminish the weight given to old convictions? How should multiple convictions arising out of a single incident be counted?

The rankings of offense seriousness and offender characteristics are usually displayed on a two-dimensional grid, yielding a matrix on which sentencing policy can be based. Next the commission must deal with the two major policy issues that drive prison populations and other correctional resources: (1) the dispositional policy or, more simply put, what sentences (prison, probation, or otherwise) are most appropriate for which offenders, and (2) the durational policy or, in other words, how long or how extensive a sentence should be given for a particular offense and to the offender. In effect, the commission draws lines through the matrix to represent when an offender will be sanctioned in the community or in prison and assigns time periods to each cell within the matrix. The designated time period in each cell is usually termed the "presumptive sentence," the sentence presumed to be most appropriate. (See Figure 1.)

Dispositional Policy. A commission makes fundamental philosophical judgments about how much weight to give to offense seriousness and criminal history when choosing a sentencing option. A "just-deserts" policy emphasizes offense seriousness and mandates a sentence based on the offense with little regard to prior criminal activity. Conversely, a policy aimed at incapacitating repeat offenders would give much greater weight to criminal history.

In Minnesota, when establishing an in/out policy for the use of imprisonment, the guidelines commission initially identified those offenses for which imprisonment should always or never be recommended. Using information on past sentencing practices, the commission could project the population impact of the different weightings of offense seriousness and offender history on prison capacity—the more punishment-oriented the policy, the higher the commitments to prison. In addition, the commission weighed the political implications of different in/out policies. [7, p. 82]

As a practical matter, developing a dispositional policy will not deviate from past judicial sentencing practices in the vast majority of cases. Where new guidelines deviate from past practice, however, the debate is likely to be quite sharp and focused on fundamental philosophical issues.

Durational Policy. A commission articulates specific confinement periods and the extent or severity of other sanctions. Because structured sentencing substitutes shorter "real-time" sentences for symbolically longer indeterminate sentences, the durational policy attracts controversy even when it closely resembles actual judicial practice.

Some of the questions involved in the durational policy are: Should a single, fixed sentence be provided or a sentencing range? To what extent should prison capacity constrain the development of sentence lengths? How should sanctions other than prison be weighted and what tradeoffs allowed when a community has limited correctional alternatives? Should fines be graduated according to the offender's ability to pay, and when should fines be allowed to substitute for custodial options or community service requirements? When multiple convictions are involved, how should concurrent or consecutive sentences be calculated? How should post-imprisonment supervision be calculated?

Several states are exploring one promising approach to incorporating community corrections into dispositional and durational policy. The approach involves two elements: (1) a refinement of sentencing guidelines to include different levels of probation sentences, and (2) a system of exchanges or equivalencies among various non-imprisonment sanctions. For example, Oregon's proposed sentencing guidelines establish three probation levels for

FIGURE 1.
MINNESOTA'S SENTENCING GUIDELINES MATRIX

Severity Levels of Conviction Offense		Criminal History Score						
		0	1	2	3	4	5	6 or more
Unauthorized Use of Motor Vehicle Possession of Marijuana	I	12*	12*	12*	13	15	17	19 19-20
Theft-Related Crimes ($2,500 or less) Check Forgery ($200-$2,500)	II	12*	12*	13	15	17	19	21 20-22
Theft Crimes ($2,500 or less)	III	12*	13	15	17	19 18-20	22 21-23	25 24-26
Nonresidential Burglary Theft Crimes (over $2,500)	IV	12*	15	18	21	25 24-26	32 30-34	41 37-45
Residential Burglary Simple Robbery	V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
Criminal Sexual Conduct 2nd Degree (a) & (b)	VI	21	25	30	34 33-35	44 42-46	54 50-58	65 60-70
Aggravated Robbery	VII	24 23-25	32 30-34	41 38-44	49 45-53	65 60-70	81 75-87	97 90-104
Criminal Sexual Conduct, 1st Degree Assault, 1st Degree	VIII	43 41-45	54 50-58	65 60-70	76 71-81	95 89-101	113 106-120	132 124-140
Murder, 3rd Degree Murder, 2nd Degree (Felony Murder)	IX	105 102-108	119 116-122	127 124-130	149 143-155	176 168-184	205 195-215	230 218-242
Murder, 2nd Degree (with intent)	X	216 212-220	236 231-241	256 250-262	276 250-283	296 288-304	316 307-325	336 326-346

1st Degree Murder is excluded from the guidelines by law and continues to have a mandatory life sentence.
*One year and one day.
Second numbers, e.g., 18-20, denote range within which a judge may sentence without the sentence being deemed a departure.
Source: Minnesota Sentencing Guidelines Commission, 1988

which a maximum number of jail days can be ordered (i.e., 30, 60, or 90 days) and a maximum amount of time (measured in "custodial units") in other community programs can be required. The guidelines also establish equivalent custodial units—one day of jail confinement or residential treatment is considered equal to two days of home arrest or electronic surveillance. Eight hours of community service would be equivalent to one-third of a day of jail confinement or residential placement. Depending upon the availability of local resources and the circumstances of the offender, a judge could order any combination of jail confinement, community service, custodial treatment, work release, or restitution within the allowance of custody units specified in the guidelines. A judge is not limited in imposing additional conditions of probation that do not involve custody of the offender.

Departure. Structured sentencing plans typically provide a means for judges to deviate from the prescribed sentence and order a less or more stringent sentence due to mitigating or aggravating circumstances. In developing a departure policy, a sentencing commission deals with both substantive criteria and standards for departing from the presumptive sentences and procedural requirements that must be followed.

Examples of departure criteria include mental capacity, deliberate cruelty, extreme vulnerability of the victim, the offender's role in the crime, and cooperation with the investigation. In Minnesota, the commission also developed a list of factors, primarily demographic and socioeconomic, which should not be used as the basis for departures.

Departure procedures may require a sentencing evidentiary hearing, written justification of departure, appellate review of departures, and limitations on extent of departure.

Related Policies and Procedures. A commission may need to propose additional legislation to reallocate sentencing authority to implement a structured sentencing policy. For example, in a bill enacted this year establishing a state sentencing commission, the Kansas Legislature specifically directed the commission, in its report to the legislature, to make recommendations regarding whether there is a continued need for and what is the projected role of, if any, the Kansas parole board and whether the policy of allocating good time credits for the purpose of determining an inmate's eligibility for parole or conditional release should be continued. (Kansas Senate Bill No. 50, 1989 Session)

Statutory enactment to establish appellate review may be necessary. Washington's guidelines include standards to limit the discretion of prosecutors on charging and plea bargaining. Minnesota's guidelines (and Oregon's proposed guidelines) outline how probation revocation is to be coordinated with sentencing guidelines. In sum, the commission must ensure coordinated procedures that reinforce the goals of sentencing equity and systemwide uniformity.

Some or all of these issues may be necessary to detail in the enabling legislation to frame the scope and agenda of a sentencing commission.

Organizing a Commission

A commission acts on behalf of the legislature to develop a consensus sentencing policy that is politically salable and can be implemented, monitored, and enforced. The commission not only recommends substantive policy but also facilitates political tradeoffs and compromises. The commission in many ways has to act like a legislature; therefore, the composition, staffing, schedule, and procedures of a commission are important elements to be covered in enabling legislation.

Membership. The commission members must have the ability to work together on sentencing policy issues as well as the capacity to build support and commitment for sentencing policy among interested groups through-

out the state. Commission members may be selected because of their ability to articulate and represent the concerns and views of interest groups, but they also must be able to assume a statesman-like perspective, compromising when necessary on issues of overriding system values and goals. [7, pp. 213-218]

The size of different sentencing commissions has varied from as few as nine members (Minnesota, although later increased to 11) to as many as 21 members (Louisiana). No specific number holds any particular magic; however, a commission needs to be large enough to achieve broad-based representation from the interested institutions and groups and yet small enough to be able to function effectively as in a consensus-building process.

Because of the need for interbranch participation, the membership typically includes legislators, judges (both from trial-level courts and from the appellate or supreme court), prosecutors, defense attorneys, law enforcement officers, probation and parole officers, corrections administrators, and public members. Whether the commission has direct legislator members or other forms of legislative participation will depend upon the state tradition and specific constitutional provisions governing separation of powers. Membership may be designated by specific position, for example, the state attorney general, or by general description. Limiting the number of specifically designated positions allows the appointing authority greater latitude to select members for other desired characteristics such as availability, flexibility, and commitment to sentencing reform.

Length of term varies from two years (e.g., some Louisiana members) to six years (e.g., in Tennessee), with most commissions using staggered terms. A minimum of two years is useful to provide continuity of membership through the initial development of sentencing policy; the longer terms obviously provide more stability and continuity. Some experts argue against coterminous tenure because of the potential for substantial turnover and disruption of continuity. [7, pp. 208-209]

The method of appointment will depend in large part on political tradition and constitutional constraints in a state. In designing the appointment process, a legislator also must evaluate what method is most likely to result in members who have credibility and standing among the interested groups and can represent a point of view without being inflexible. Some states have reserved the power of appointments for the governor (e.g., Louisiana and Washington). In Minnesota, the chief justice of the supreme court makes all judicial appointments, and several states have reserved some appointments for legislative leaders (e.g., Pennsylvania, Tennessee, and New Mexico). Some states specifically allow organized constituencies, such as the trial lawyers association or the judges conference, to suggest a list of potential nominees (e.g., Minnesota).

The commission chairmanship is a position akin to that of a legislative committee chair—providing leadership within the commission, guiding decision making, forging diverse points of view into a consensus, and being accountable to the interests of the governor and the legislature. In most commissions, the chair is usually appointed by the governor. Direct appointment of a chair usually means greater accountability and can ensure that the chairman shares the same goals as key public officials. Election has the advantage of underscoring the consensus nature of commission decision making, but it may not necessarily result in the selection of the strongest or most effective chair.

Staffing and Support Resources. Given the need for extensive data analysis, sentencing commissions require an independent and professional research staff, supplemented by temporary staff during the six- to nine-month data collection stage. Policy analysis, computer, administrative, and political skills are also required of the staff to organize the commission's work, to structure the policy issues for commission resolution, to assist commission members with important conceptual and political decisions, and to act as effective liaisons with all three branches of government and with state and local actors in the criminal justice system. The number of staff will depend in part upon the time frame in which the commission must complete its work.

Data collection efforts are extensive, and sometimes easily underestimated or poorly planned. Commissions typically analyze data from 30 to 50 percent of all criminal cases in a one- or two-year period, collecting from each case up to 100 pieces of information dealing with demographic characteristics, criminal history, court decisions, charging and convicting offenses, available dispositions and correctional resources, and more. Because of its fundamental importance, data collection cannot be skipped, but it can be mishandled. For example, in developing voluntary judicial guidelines, commission staffs collected 220 variables on 5,117 cases in Florida and 132 variables on 1,864 criminal counts in Maryland. One evaluator observed that the data collection efforts in both states bogged down and led to significant delays and robbed the projects of time and resources for important activities such as support building, training, and implementation procedures. [1, p. 164]

Data analysis programs usable on personal computers have been developed to facilitate research and develop models to forecast the financial and population implications of different sentencing options in different correctional settings such as jail, community supervision, or prison. Software is available in the public domain, in other words, free of charge.

Adequate time is necessary for staff and commission members to accomplish the task of policy development. A minimum of 18 months is required, but up to 36 months may be a more desirable schedule. Most states have mandated a two-year schedule for development of sentencing policy. Louisiana is unique in having no statutorily set deadline for reporting. As a practical matter, deadlines are useful for forcing policy choices and compromise. In addition, an extended study period may result in data being outdated before they are utilized.

The cost of undertaking a structured sentencing project will vary, depending upon the size of the state. As a general rule, an annual

appropriation for a small to medium-sized state of $250,000 to $450,000 will be required, contingent upon whether the commission is developing or monitoring ongoing sentencing policy, according to Knapp. Funds are used for staff, equipment, travel, meetings, and administrative expenses. For example, the Washington sentencing commission received an appropriation of $391,000 in its first biennium (1984 to 1986) of operation and $558,000 in its second biennium. New Mexico's sentencing commission is in the process of attempting to develop structured sentencing policy with a 1988-1989 appropriation of $246,250. In addition to state appropriations, a number of states are receiving federal funds and technical assistance through the Bureau of Justice Assistance's Structured Sentencing Program.

Process Considerations. The development of a structured sentencing policy requires study of past practices but, more important, development of a new consensus about appropriate punishments for offenders. Consensus must be forged not only among the commission members but also among those in the corrections community and the general public. In some states, sentencing commissions have fallen far short of the promise of reform because of political conflict within them. Other reform efforts have failed upon implementation because of pockets of resistance in the criminal justice system. Therefore, the process used to develop the sentencing policy will contribute substantially to its credibility and political acceptance.

The decision-making style of the commission should be designed to maintain internal commitment to the process and the work product. The nature of sentencing policy—reflecting a broad range of different and legitimate perspectives—will require the incorporation of different points of view and tradeoffs among the interested parties. An inclusive, consensus-building process is essential as opposed to a simple majority-rules voting procedure.

Subcommittees have proven to be an effective, necessary tool for organizing the work of a sentencing commission on several fronts simultaneously. Typically, subcommittees are assigned the task of overseeing data collection and identifying options, while the resolution of policy questions is reserved for the full commission as a means of underscoring the need for broad consensus. Louisiana has opted not to use subcommittees, a choice that may require more time of commission members but also may preserve the greatest degree of cohesion in decision making.

External support-building activities are essential and may include public hearings with participation by interested groups, open meetings held in locations throughout the state, comments solicited on working papers, personal contact between commission members and key community leaders, ad hoc advisory groups, newsletters and interim reports to disseminate information. For example, the success of Minnesota's commission was in no small part furthered by "an aggressively open political process" including several rounds of public hearings designed to disseminate information as well as solicit public input. [6, p. 15]

Implementing and Enforcing a Sentencing Policy

The long-term effectiveness of structured sentencing policy can be summed up in four questions:

- Does the policy have enforcement power?
- Is the policy specific and clearly articulated?
- Are resources sufficient to implement the policy?
- Is there an ongoing mechanism to monitor compliance and recommend changes in policy when necessary?

Legal Enforcement. The critical enforcement mechanism is appellate review—the process of appeals court review of judicial sentences that fall outside the presumptive sentence prescribed by the policy. Appellate review gives either the state or the defendant the right to appeal sentencing decisions. Traditionally, appellate review has been limited to the legality of the sentence imposed, but with structured sentencing, appellate review provides a means to judge the appropriateness of the sentence as well as judicial compliance with sentencing policy. The enabling statutes for sentencing commissions in Minnesota, New Mexico, Tennessee, and Washington provided for appellate review.

Appellate review also provides a means for the development of case law on issues not addressed by the sentencing commission; however, case law may provide mixed results. [4, p. 18] The case law resulting from appeals in Washington and Minnesota has primarily focused on the threshold, extent, and substantive standards of departure. The experience of these two states suggests that departure issues should be scrutinized by other state sentencing commissions.

Policy Clarity. The clarity of the sentencing policy in large part will determine whether it is self-enforcing. The more specific the policy is, the easier it is for appellate courts to exercise review. If a commission defers policy issues or leaves certain criteria vague or broad, then courts must develop a body of case law to provide the necessary guidance. But court review is always limited by the circumstances of a particular appeal and, therefore, is an inadequate mechanism for policymaking.

In addition, if the sentencing policy is not comprehensive and fails to structure all dispositional choices and decisions affecting sentence length, then the goals of equity and uniformity cannot be achieved. There is evidence, for example, in Minnesota that inconsistent and inequitable punishments have resulted from the failure to structure community-based sanctions. [12 (1989), pp. 29-33]

Coordination of Resources. By definition, *structured sentencing* means coordinating correctional resources within a consistent policy. A clear, predictable sentencing policy will allow a legislature to anticipate correctional needs—from prison beds and treatment facilities to probation officers and agents for fine collection. Since sentencing commissions have no power of appropriation, they cannot mandate additional resources if they develop a sentencing policy resulting in more offenders than prisons or community-based programs can handle. Thus, an important commission task is making other

decision makers aware of the policy and fiscal tradeoffs. Failure to consider the capacity of correctional resources may produce a rational, equitable, but unenforceable policy.

Legislatures in Oregon, Tennessee, and Washington directed their sentencing commissions to address specifically the adequacy of correctional resources needed to implement the new sentencing policy effectively. In Washington and Oregon, the enabling legislation directed the commissions to develop policies that would not exceed currently available prison space or recommend a sentencing alternative that specifies increased correctional resources. In other words, the enabling legislation ensured the legislatures comprehensive data if faced with a need for additional correctional facilities to enforce longer, tougher sentences. In Tennessee, the submission of four plans to the legislature allows lawmakers to compare different sentencing philosophies with varying price tags. To address correctional resources successfully, each policy choice must be evaluated in terms of its impact on current prison population or program capacity. If left as a postscript or afterthought, resource issues can undo a commission's work.

Ongoing Monitoring. Once a sentencing policy is established, a commission's work is not done. Ongoing monitoring is necessary to adapt to changes in public opinion, crime patterns, or demographic shifts. In the states with established commissions, the enabling legislation usually anticipates a life for the commission beyond the initial development of structured sentencing guidelines. For example, the Minnesota and Washington commissions collect data and analyze trends in sentencing, review any proposed legislation affecting sentencing, conduct studies of selected issues, promulgate interim rules, and propose sentence modifications annually to the legislatures. Since the nature and demographics of the offender population change, a commission's monitoring can assist legislators in projecting future needs in corrections and developing new sanctions. Moreover, a commission can maintain the necessary interbranch cooperation needed to address sentencing policy.

CONCLUSION

Structured sentencing offers the most promising vehicle for legislators interested in achieving uniformity and equity in sentencing and coordinating the full range of correctional resources now and in the future. The pioneering experience of other states is instructive not only about what works or does not work but also about the magnitude and difficulty of the task.

The essential ingredients for success include: a commitment of interbranch cooperation that leads to a comprehensive policy and a consensus product; a carefully organized, well-run sentencing commission that has the membership and resources necessary for the task; a clear, unambiguous policy that is implemented with adequate legal authority; and an enforcement and monitoring mechanism to ensure implementation.

Strong policy leadership is critical. Within each of the three branches, there will be pockets of ignorance about and resistance to sentencing reform. Only through the cooperative efforts of key individual judges, legislators, and administrators will these hurdles be overcome.

Many of the problems that a sentencing commission may encounter can be anticipated and drafted into the enabling legislation. The other ingredients will depend upon the strength of the commission's membership, the political climate of support within a state's criminal justice community, and a sponsoring legislator's best judgment about the appropriate political timing to attempt broad-based reform.

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Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE FRAN ULMER

MEMORANDUM

TO: House Finance Committee Members DATE: March 22, 1990

FROM: Representative Fran Ulmer

Yesterday we discussed HB 491, creating a sentencing commission. Subsequently, during the committee meeting I was asked to explain the comment I made regarding judicially imposed "benchmarks" for sentences. I have attached a memo which helps to explain this phenomenon. In brief, the Alaska Court of Appeals has evolved a system of benchmarks, which reflects the court's judgement about the appropriate length of sentence for certain types of offenders. These benchmarks, which have been judicially determined without the benefit of either a public hearing or legislative review, now control the length of sentences for offenses in Alaska. Trial court judges who have the responsibility of presiding over criminal cases and sentencing defendants have no choice but to follow these benchmarks, for if they don't do so, they are reversed by the Court of Appeals or by three-judge panels that review sentences.

I would encourage you to review the attached memorandum from Larry Weeks, Chief of Criminal Prosecution, Alaska Department of Law, who responded to a question that I raised regarding the length of sentences in Alaska vis-a-vis sentences in other states. It appears that, at least upon an initial review, Alaska sentences are comparable with those of other jurisdictions. However, a sentencing commission should take a more in-depth review of sentences and analyze the benchmark system to evaluate the extent to which those benchmarks reflect legislative determination as to the severity of the offense. It should also recommend changes to the legislature if that appears to be appropriate after the review.

I encourage your support for the Sentencing Commission: it is long overdue!

FU/bvh
Attachment

District 4B — Juneau
P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947

M E M O R A N D U M

To: Honorable Fran Ulmer
House of Representatives, Alaska Legislature

From: Larry R. Weeks
Chief of Criminal Prosecutions

Re: Sentences Date: March 5, 1990

Alaska sentences are not too lenient. Judicial Council studies show that sentences imposed in this state are consistent with the average sentences received by defendants in other states.

The length of sentences in Alaska increased throughout the 1970's. After the new criminal code was enacted, the Council says that sentences began to decrease in the early 1980's. However, as presumptive sentencing was expanded to include more sex offenses and first time offenders, the trend again reversed. Legislative action on good time has now reduced the actual time spent in jail.

Most trial judges do not like presumptive sentencing but the Court of Appeals likes the consistency it promotes. As a result, a phenomenon that I call "judicial presumptive sentencing" has developed. The Court of Appeals has set out a comprehensive system of "benchmark" sentences for criminal offenses that are not specifically governed by statutory presumptive sentencing. For the most part, these benchmarks have added still more consistency to sentencing practices throughout the state.

The benchmarks have also unquestionably resulted in reduced sentences for persons convicted of multiple class A or unclassified felonies. Basically, the Court of Appeals has set a ten-year maximum sentence for persons convicted of multiple serious crimes (other than murder) where the person does not have prior convictions. In other words, persons convicted of multiple rapes, armed robberies, or acts of sexual abuse, are given less severe sentences under current sentencing practices than they were prior to enactment of the criminal code. As examples of this phenomenon, I've enclosed summaries of several sentencing cases decided by the Court of Appeals. That the sentences are less now than before the new Code doesn't necessarily mean that they are too lenient.

Alaska has a very high percentage of people in jail for violent offenses - more than most states. For example, approximately half of California's inmate population is incarcerated for non-violent offenses. In Alaska, 71% of last year's inmates were violent offenders, and another 11% of Alaska's inmates were repeat felons. Therefore it is probable that the benchmark sentences have resulted in decreased prison populations.

To answer your other question, a person in Alaska convicted of Murder I gets a minimum sentence of 20 years in jail and that defendant would be released after 13 years and four months with that sentence. The Court of Appeal Murder II "benchmark" sentence is 20-30 years (with a statutory minimum of five years) and that defendant would be eligible for parole after serving a third of the sentence.

Summaries of Ten-Year Benchmark Cases

The Court of Appeals held that a sentence of six years with two suspended is proper for first time offender convicted of Assault 2 and Sex Assault 2. The defendant was later sentenced on attempted Sex Assault 1 to 12 years with four suspended, all consecutive to first sentence. This later sentence was held to be too severe despite history of misdemeanor offenses and juvenile delinquency adjudication. Deterrence and community condemnation can normally be achieved by sentences of ten years or less. Sentences of more than 10 years for class A felonies should normally be to isolate the offender.[1] Class A and B felony sentences exceeding ten years should be for persons who have prior felony records and who have spent substantial time in prison. Holtzheimer v. State op# 892 (Alaska App. 1/6 1989)

Defendant admitted to six strong-arm, Robbery 2 offenses and was convicted of three. While out on bail on these offenses he held up a bank at gun point and was sentenced by the Federal Court to ten years. Judge Buckalew imposed 8 years with 5 suspended on the state charges, all concurrent, but consecutive to the Federal sentences. The Court of Appeals reversed, saying that the maximum was ten years under the ABA standards despite juvenile record, and that sentencing judges must take federal sentences into consideration. "Except in cases of unclassified felonies the appellate courts of Alaska have consistently followed the ABA Standards recommended ten-year benchmark." Williams v. State 759 P.2d 575 (Alaska App. 1988)

Defendant was convicted of one count of Burglary 1, two counts of Robbery 1, two counts of Assault 3, one count of Kidnapping and one count of Sexual Assault 1 and given aggregate term of nineteen years with four suspended. The Court said that only in unusual situations would it approve sentence of more than ten years unsuspended incarceration and then only when isolation is required to protect the public. Defendant was young, had only traffic offenses as a prior record and had support of family. Reduced to ten years to do. White v. State 773 P.2d 211 (Alaska App. 1989)

Defendant with 12 prior misdemeanors including 3 assaults (One on this victim) is convicted of Assault 1, fracturing skull of deaf mute spouse who has substantial heart condition. He had left her for seven hours without medical attention and she suffers permanent brain damage. The Court held that 15 years with three years suspended is too much because defendant had never had a long prison sentence. Defendant had four times gone through alcohol

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[1] Under Alaska law now, the presumptive sentence of 10 years has the defendant released with good time after 6 2/3 years. A non-presumptive sentence of 15 years would have the defendant eligible for parole after five years.

rehabilitation and once through male awareness training. Court found two aggravators - vulnerable victim and spouse was victim and trial judge found worst offender. Court of Appeals cites the ABA Standards and says fifteen with five suspended is sufficient. Wentz v. State 777 P.2d 213 (Alaska App.1989)

Fourteen years with two suspended composite sentence is too much for multiple counts of Misconduct Involving Controlled Substance 2, and 3 and Theft 2 despite finding that the defendants ran an ongoing enterprise fencing stolen property. They sold heroin and cocaine in a relatively sophisticated operation, unusually large in its scale, employing 5 - 10 people. Neither was youthful offender but the Court of Appeals held that ten years unsuspended time was maximum under "first offender" status.
Castle & Bazer v. State 767 P.2d 219 (Alaska App. 1/20 1989)

Defendant convicted of assault in the first degree of 6-week-old daughter. (Evidence was admitted that defendant's other child had died of skull fracture when 5 weeks old and alone with defendant.) Defendant sentenced to 15 years. Defendant's prior criminal history consisted of two DWI's. Court found sentence excessive and remanded for resentencing with a sentence not to exceed 10 years. Rhodes v. State, 717 P.2d 422 (Alaska App. 1986).

Court of Appeals held that ten years total for four armed robberies and one Misconduct involving Weapons 1 is guideline. Under the ABA Standards a habitual offender is one who has been convicted of at least two prior felonies committed on different occasions within five years of present offense and who has previously served at least a year. Sentence of 14 years is too much for 35 year old who had prior discharging firearm in city limits and possession of marijuana. Robberies were all planned, involved older women alone in business and gun specially modified to be concealed. Defendant lunged for his gun when arrested. Townsel v. State 763 P.2d 1353 (Alaska App. 1988)

Multiple counts of sexual abuse of a minor under former law, (B/C felonies) involving sexual contact but no penetration: court reverses composite sentence of 24 years and concludes that sentence under Andrews benchmark should not exceed 15 years with 5 years suspended. Court does this even though it finds defendant to be a serious offender (he had a prior conviction for similar crime in another state and committed one of his present offenses while on bail from previous charge). Russell v. State, 752 P.2d 1022, Alaska App. 1988).

Establishes sentencing range of 10-15 years for "aggravated" sexual assaults involving adult and child victims based on (1) multiple victims, (2) multiple assaults on single victim, or (3) serious physical injury to one or more victims. State v. Andrews, 707 P.2d 900 (Alaska App. 1985).

Four counts of Sexual Assault in the first degree and two counts of Lewd and Lascivious acts under former law: court reverses composite sentence of 40 years with 10 years suspended, holds that sentence should not exceed 15 years under Andrews, including suspended time, even though the court found Covington was a bad guy. Court says sentences in 10 - to 15-year range under Andrews identifies the defendant as a particularly serious offender. Covington v. State, 747 P.2d 550 (Alaska App. 1987).

First offender convicted of three counts of sexual assault in the first degree under former law. This case is usually cited along with Andrews. Court reverses 20-year sentence; sentence should not exceed 15 years under Andrews. History of assaultive conduct is "fairly typical" in cases involving first offenders, and does not by itself constitute sufficient basis to characterize defendant as a worst offender. Polly v. State, 706 P.2d 700 (Alaska App. 1985).

provides - and Corrections has planned for - an increase of 22 beds at the Highland Mountain/Meadow Creek facility and 40 beds at Palmer Medium. Assuming these beds all come on-line during calendar year 1987 as planned, then Corrections should close out the year with 3,059 beds (see Exhibit A #6) to house approximately 2,889 prisoners (see Exhibit A #7). While the prison population would ordinarily have increased by approximately 350 over what it was at the end of calendar year 1986, that number is offset by the approximate 176 beds "freed up" as a consequence of passage of HB 104.

LONG RANGE PLANNING

Basically, long range goals for the correctional system are already reflected in the Alaska Corrections Master Plan issued in 1979. This plan was developed after considerable expense and effort by Moyer Associates, Inc., justice system planning consultants and other advisors including the Alaska Corrections Master Plan Advisory Committee. This Master Plan should be removed from the shelf and dusted off.

A number of observations made in the Executive Summary of the Alaska Corrections Master Plan deserve repeating:

1. "Incarceration of both presentence and post-sentence offenders should be used as a last resort, and then for as short a period as possible, only for offenders who present a demonstrable risk to public safety and/or who are convicted of crimes for which society demands punishment through imprisonment." (See page 6)

2. "In many ways, community corrections services offer the brightest hope for the future of corrections. Probation and parole are indisputable less costly than incarceration, and are no less effective in reforming offenders." (See page 8)

3. "In general, expansion of the total institutional system's bedspace capacity should not outpace the Division's and the State's efforts to maximize diversion from incarceration (both pre and postsentence). The State of Alaska should not make the costly mistake of overbuilding to accommodate a temporary "bulge" in the growth rate of the inmate population." (See page 12)

4. "Since the Alaska inmate population ratio (inmates per 100,000 population) is currently very high in comparison to other states, it is most likely to fall moderately rapidly towards the national average (77:100,000). Any long term projections for Alaska's prison population should thus reflect a gradually declining inmate population ratio rather than a rising ratio due to "normalizing" of the age and sex distribution of Alaskan population." (Emphasis supplied) (See page 13)

Nationally, on January 1, 1988, 60.0 percent were on probation, 28.3 percent were in custody, and 11.6 percent were on parole. Alaska 92.4% Probation; 42.5% custody 11.6% parole. 1988 Corrections Yearbook Pub. by Criminal Justice Institute

5. "Equity in sentencing is a goal which most would agree is essential. This was a primary motivation for enactment of Alaska's new Criminal Code, which will take effect January 1, 1980, and which provides for determinate sentences (prescribed minimum incarceratory sentences) for selected classes of felons. There is some reason to believe that this new Code will result in an increased prisoner population in the long run (perhaps as much as 40 percent by the year 2000), due to increases in average lengths of stay for the affected categories of offenders. The actual

impact of the Code should therefore be carefully and continuously monitored to ascertain whether average daily population increases result from its implementation. If so, and if this is considered an undesirable side effect of equity in sentencing, the State could consider several approaches: 1) shortening the length of prescribed minimum sentences for repeat felons, 2) specifying in greater detail the weight (in months and/or years) which each aggravating or mitigating factor should be given in modifying the prescribed term, and/or, 3) appointment of a Sentencing Commission to develop a "matrix" approach to sentencing which would include consideration not only of current offense and prior record, but also of the risk-level presented by each offender....In any case, it is essential to balance concerns for equitable punishment with the realistic limits of Alaska'a correctional resources (particularly its institutions)." (Emphasis supplied) (See page 23)

Ak. Corrections Masterplan 1979

6. "Cost Considerations

A fundamental goal of recommendations of this master plan has is the provision of the most adequate corrections system for Alaska at the least possible cost. The single most effective means of accomplishing this is to avoid unnecessary incarceration of offenders, thereby avoiding the capital cost of constructing new facilities to accommodate growing inmate populations. Avoidance of unnecessary incarceration in turn requires development of a full range of community based corrections programs, including pretrial release, probation, prerelease and parole supervision. This is the basic strategy advocated throughout the plan." (See page 25)

Projections of future inmate population reflected in the Master Plan are flat wrong. It was projected for the year 2000 that inmate populations - taking into account the enactment of the revised Criminal Code with its new sentencing and parole

provisions - would total 1,569. This figure included unsentenced prisoners and the return to Alaska of all federally housed felons. The inmate population count as of February 24, 1986 reflects 2,506 prisoners, only 315 of which are housed in halfway house facilities. Obviously, the impact of the revised code, including determinate sentencing and certain other demographic factors, have had a greater impact than expected. In keeping with the prior administration's suggestion that the "actual impact of the code should...therefore be carefully and continuously monitored..." [see page 23 of the Executive Summary to the Alaska Code Master Plan (1979)], then we would suggest the following:

A) Amend AS 33.16.090(b) in pertinent part so that it reads as follows:

> " A prisoner, except one who is presumptively sentenced as a first offender, is not eligible for discretionary parole during the term of a presumptive sentence;..."

B) Revise AS 12.55.155(a)(2) by changing the percent that a presumptive term may be lowered from 50 percent to 75 percent.

C) Amend AS 12.55.155(d) by adding a new subsection which would read as follows:

(17) the defendant demonstrates good potential for rehabilitation."

D) Review inmate classification standards. It is generally felt that certain classification standards could be relaxed without significant impact on the public welfare. Hopefully more prisoners could be housed at substantial savings in "halfway house" facilities provided by the public sector under contract with the Department of Corrections.

E) Increase resources for diversion programs by the Department of Law.

With respect to the suggested changes in determinative sentencing you should be aware that there is disagreement within the administration as to whether the determinative sentencing scheme as it presently exists should be modified in any respect. It can be fairly stated that this split in opinion is representative of the controversy statewide. It is not difficult for the proponents of the respective views to narrate anecdotes cataloging perceived abuses with the current system. But the anecdotal approach is counter productive because there are few, if any, commentators who disagree on whether people who represent a significant threat to any segment of society should be incarcerated for long periods of time. Likewise there are few commentators who would disagree that substantial resources should

be expended in investigating, and identifying criminals and taking steps to protect or to provide treatment opportunities and other relief for victims. But the bottom line is this and it is reflected in the #1 goal of Alaska corrections in the master plan developed in 1979.

"Incarceration...should be used as a last resort, and then for as short a period as possible" and "only for offenders who present a demonstrable risk to public safety...."

If this is still a viable goal - and we believe it is - than more flexibility needs to be built into our sentencing scheme, especially for "first time" offenders. The proposed changes in the determinative sentencing scheme are suggested pending full review.

The implementation of recommendations A through H should accommodate prison population increases through 1987. But this is only a short-term solution. Construction of Phase II of the Spring Creek facility or, in the alternative, another medium to maximum security prison facility in the Anchorage area should be undertaken in the near future.

MEMORANDUM

State of Alaska

TO: Peter Goll
Alaska State Representative
P.O. Box V
Juneau, Alaska 99811

DATE: February 12, 1990

FILE NO:

TELEPHONE NO:

THRU

SUBJECT: HB 411 and Sentencing Commission

FROM: John B. Salemi
Public Defender

Per Hayden's request, I reviewed HB 411, Section 1 concerning EXTRAORDINARY CIRCUMSTANCES. The proposed amendment does not restrict the judge's ability to find "extraordinary circumstances" as a vehicle for increasing or decreasing the presumptive sentence. It appears that the practical effect, if any, is to require judges to enter written findings and conclusions of law as to the rationale for referral to a three-judge panel.

I listened in on the testimony concerning HB 491 (an Act creating a sentencing commission). On January 19 I submitted my comments to the Governor's office regarding this proposal. I recognize the potential utility in having such a commission. It is my opinion that the enactment in 1980 of the presumptive sentencing scheme under Title 12 has had a tremendous impact on the Alaska criminal justice system and the Department of Corrections. The utilization of mandatory sentences has created a dangerous trend in terms of the increase in prison population, especially certain minority groups (Alaska Native Peoples). I'm also concerned that certain piecemeal measures introduced by the legislature since 1980 have affected in a negative way the uniformity of the sentencing statutes and have actually created some disparity in sentencing practices.

In terms of the actual provisions of the proposed legislative bill being discussed, I question the propriety of Section 1, subparagraph 1 which conditions the appointment of one of the Governor's designees on prior consultation with the Alaska Peace Officers Association. Given the fact that the Commissioner of Public Safety is already a designated member of the commission, it appears that law enforcement has a vehicle to articulate its positions/concerns. Such a condition also invites other organized groups or other folks who have a vested interest in sentencing practices Alaska to restrict or influence gubernatorial appointments for this commission. I understand that the public has an interest in sentencing practices and is affected by same. But it is important to remember that all of the individuals who are "bureaucratic" appointees are members of the public themselves. Their insights and recommendations will not be just a result of their official position, but will also be based on their life experience as citizens.

In summary, I am in favor of the commission, but opposed to special interest groups being promoted for membership. I'm also opposed to the Alaska Peace Officers Association being given some special influence on gubernatorial appointments.

JBS:sh

MAJOR STUDIES AND REPORTS RELATING TO SENTENCING BY THE ALASKA JUDICIAL COUNCIL

1. Sentencing in Alaska. (March, 1975). Statistical analysis of felony sentences imposed in 1973.

2. Bail in Anchorage. (March, 1975). Statistical analysis of bail practices for Anchorage felony cases in 1973.

3. 1973 Sentences of Five Years or Longer. (April, 1975). Analysis of factors contributing to lengthy sentences, and the impact of appellate review of sentencing.

4. Report on Repeat Bail Recidivists in 1973. (April, 1975). Case-by-case analysis of defendants who violated bail conditions by committing more than one new crime while on bail for a felony offense.

5. Alaska Felony Sentencing Patterns: A Multivariate Statistical Analysis — 1974-1976. (April, 1977). Study requested by the legislature and used to structure presumptive sentencing provisions of the new criminal code. Also resulted in the creation of the Sentencing Guidelines Committee.

6. Interim Report on the Elimination of Plea Bargaining. (May, 1977). Summarized effects of the Attorney General's 1975 ban on plea bargaining as reported by attorneys, judges, and defendants.

7. Interim Report of the Alaska Judicial Council on Findings of Apparent Racial Disparity in Sentencing. (Oct., 1978). Summary of data accumulated on felony case dispositions and sentencing patterns from Anchorage, Fairbanks, and Juneau (1974-1976) giving evidence of racial and other disparities in sentencing for certain types of offenses. Resulted in legislation creating the Advisory Committee on Minority Judicial Sentencing Practices, and funding of Judicial Council follow-up studies of felonies and misdemeanors. See text of Tenth Report for other effects.

8. The Effect of the Official Prohibition of Plea Bargaining on the Disposition of Felony Cases in Alaska Criminal Courts. (Dec., 1978). [Reprinted by the Government Printing Office, Washington, D.C. as Alaska Bans Plea Bargaining, 1979]. Evaluates the effectiveness and consequences of the Attorney General's 1975 ban on plea bargaining, including the results of over 400 interviews with attorneys, judges, and criminal justice personnel, and 2-year felony statistical study.

9. Alaska Misdemeanor Sentences: 1974-76 Plea Bargaining. (Aug., 1979). Analysis of misdemeanor sentences to determine effect of plea bargaining ban on sentences imposed after trial or plea.

10. Alaska Misdemeanor Sentences: 1974-76 Racial Disparity. (Nov., 1979). Analysis of existence of racial disparity in misdemeanor sentences; shows significant disparity for several categories of offense.

11. Sentencing Under Revised Criminal Code. (Jan., 1980). Probation Officer training manual for the revised criminal code.

12. Alaska Felony Sentences: 1976-1979. (Nov., 1980). Follow-up study requested by the legislature on felony disparities; shows disappearance of most racial disparities. Additional analysis and findings on sentences in rural areas, effects of attorney type, and possible continuing trends from the plea bargaining ban.

13. A Preliminary Statistical Description of Fish & Game Sentences. (1981). Reviews data from Fish and Wildlife Protection data tapes; finds sufficient disparities to warrant full-scale statistical analysis.

14. Alaska Prison Population Impact Analysis. (1982). Funded by Division of Corrections. Estimates growth in sentenced felon prison populations based on potential and actual legislative changes.

15. Alaska Felony Sentences: 1980. (Dec. 2, 1982). Study requested by the legislature as a continued monitoring of sentence disparities and analysis of the effects of the revised criminal code. Shows disappearance of disparities (racial and attorney type), shortened sentence lengths.

16. Statistical Analysis of Major Fish & Game Offense Sentencing Outcomes. (Dec., 1983). Funded by the legislature in 1982 to study sentences imposed on 1980 and 1981 fish and game violators. Found widespread disparities and fluctuations in charging and sentencing patterns. Recommended complete revision of applicable statutes and codes.

17. Alaska Misdemeanor Sentences: 1981. (Dec., 1983). Funded by the legislature to analyze misdemeanor sentences imposed during 1981. Recommended alcohol treatment programs for convicted defendants and increased legislative sanctions for DWI to reduce the incidence of alcohol-related crime.

18. DWI Sentences: 1981. (March, 1984). Additional analysis of DWI (drunk driving) sentences included in the 1981 Misdemeanor Study data base. Types of sentences imposed for DWI convictions and characteristics of offenders are described.

19. Alaska Felony Sentences: 1984. (March, 1987). Describes felony sentencing patterns for 1984 cases. Analyzes the impacts of presumptive sentencing and other criminal justice system changes between 1980 and 1986.

20. Plea Bargaining Ban/Presumptive Sentencing (I/P). (December, 1990). Follow-up evaluation of Alaska's ban on plea bargaining and its interaction with presumptive sentencing. Describes the evolution of the Attorney General's policy between 1975 and 1990; analyzes statutes and case law affecting sentencing; and provides detailed statistical data about case dispositions and sentences between 1984 and 1987.

Sentencing Commission Activities & Products 2/12/90

1. Review existing Corrections population -- analyze by type of facility, level of security, type of offender, rehab & other programs offered, ^ on probation, on parole, etc. Also review recidivism rates by type of offense, level of institutional control (e.g., probation, halfway house, minimum-security), and other variables that Corrections has on computer

2. Review existing sentencing laws and practices -- what % of sentences imposed are presumptive, what provisions govern eligibility for parole, what is case law regarding rehabilitation programs (both in-patient and out-patient).

3. Review current and recent proposals for change -- what concerns the legislature? victims' groups? offenders (Cleary, etc.)? media? law enforcement? rehabilitation professionals? What programs in other states have shown promise? Commission could do a baseline survey

4. Review crime rates, demographic changes, economic predictions and state resources to determine effects of these (and related factors) on sentencing practices.

Compile additional data as needed.

5. Develop database (or alter existing databases) that can be used to model the possible effects of various proposals. Obtain or write programs for modeling. Analyze effects of proposed changes: e.g., What would be the effect on prison populations of making presumptively-sentenced offenders eligible for parole after one-half of their sentence had been served? How many offenders would be eligible for (or be likely to be assigned to) an intensive supervised probation program? How would changes in the parole guidelines translate into prison population increases or reductions?

6. Prepare reports for Commission, including analysis of existing programs and sentencing practices, proposed changes, and projected costs and effects of proposed changes.

(2)

Sent. Comm. Activities
2/13/90

7. Draft legislation, regulations, agency and ~~other~~ organizational policies, and court rules, as needed, to implement changes recommended by commission.

8. Monitor effects of commission-recommended changes and of other events affecting sentencing practices and programs. Continue to compile data, and to make recommendations as needed.

Over the years The Washington Monthly *has tried to convince liberals that they're too soft on criminals who are dangerous and conservatives that they are too hard on those who aren't. Michael Dukakis's difficulties with the Willie Horton case made it clear that we failed to get at least part of our message across, which explains last month's cover story ("When Criminal Rights Go Wrong," Paul Savoy), as well as this one, and others to come.*

Sentences That Make Sense

Making the punishment fit the crime

by James Bennet

It was very hard, last July, to figure out what the sentence handed Oliver North meant. A jury had convicted him of three crimes: aiding and abetting obstruction of Congress, destroying and falsifying official documents, and accepting an illegal gratuity (the security system). The sentence included probation, a fine, and community service. There seemed to be something in it for everyone. Where Richard Viguerie saw "vindication," *The Washington Post* found proof that "You run a rogue policy even out of the White House . . . at your peril." Mary McGrory worried that the sentence demonstrated "there is no limit to what presidents can get away with in this country," but *The Wall St. Journal* celebrated it as a triumph over "the criminalization of political differences," on a par with the abolition of the Alien and Sedition Acts.

To those not paid for their opinion, the only obvious conclusion was that Judge Gerhard Gesell had thought long and hard, trying to come up with a sentence to fit the criminal. That made sense. And as everyone knows, the jails are crowded, so putting a nonviolent felon like North on probation, with a combination of punishments, seemed sensible as well. But the chaos of conclusions drawn in the press indicated that, though Gesell had sought to punish North, the effect of his sentence was ambiguous. The man had betrayed his public office, destroyed evidence, and lied to Congress. Wouldn't a few months in jail have made the punishment clear?

Both aspects of that ambivalent response have merit, and their implications go far beyond the sentence of Oliver North. There are other convicts who should be in prison but aren't, and there are many more who are locked up but needn't be. Together they constitute a major challenge for the American justice system: It's time to start keeping the right people out of prison, and putting the right people in.

The federal system is holding 56 percent more prisoners than it was built to, the California state system, 75 percent. We pay almost $10 million a day to build prisons, and prison construction is the fastest-growing sector of many states' spending. When this boom is completed, a lot of state systems and the federal system still won't have enough beds. 'Prison overcrowding" has a mixed meaning for inmates. For them, it means that what was once a storeroom or a gym is now a cell or a dormitory, and that fewer and fewer can get vocational training or drug treatment. But for many, it also means they'll be getting out early. And for some criminals, it means they're less likely to be going in at all.

In New London, Connecticut, drug dealers sent away for 10 years have been released in fewer than four months to make room. In the District of Columbia, a planned police sweep of drug-ridden areas was canceled because there was no place to put the new prisoners. While the average prison sentence quadrupled in length between 1965 and 1985, time served remained constant, thanks to court orders capping prison populations that squeeze some inmates out early. Under the logic of release plans used to deal with these caps, a man sentenced yesterday to two years for credit card fraud would be held, while a rapist who had served seven years of an 8-to-15-year sentence would be released.

Rather than forcing corrections officers to decide whom to let out in a crisis, judges should be thinking more carefully about whom to jail in the first place. "There aren't enough beds," said Judge John Byrnes of the Eighth Circuit Court in Baltimore. "We've got to learn to discriminate." He gives the example of a man convicted of a nonviolent felony, say car theft, who has a wife, child, and regular job. Judges realize that putting the man in prison would mean putting his family on welfare, but the Department of Corrections provides no other option. One way to punish the man more inexpensively, Byrnes said, would be to let him work at his job during the day while spending his nights in the city jail.

Byrnes was describing a form of "alternative sentencing." The driving principle of this approach to corrections is that incarceration should be viewed as the toughest long-term punishment, not the only one. That's not a new idea; it's the theory behind probation, which judges have used for years to avoid sentencing criminals to prison. A criminal with a suspended sentence—like North—must obey any conditions of probation the judge sets: how often he has to check in with his probation officer, how many hours of community work he has to do. Hanging over his head is the threat that if he fails to comply, his suspended term will come to life, and he'll wind up in jail. That technique has enormous potential. By expanding the range of punishments that can accompany a suspended sentence and sharpening supervision by probation offices, judges can punish—and possibly rehabilitate—some criminals either without sending them to prison or by adding just a brief prison term to a sentence's mix of sanctions.

In a few cases, alternative sentencing involves matching the punishment to the crime, as Dante would have: forcing a man convicted of driving drunk to work in a hospital emergency room or a slumlord to live in one of his firetraps. Usually, though, the sentences aren't that symmetrical; they're just sensible. Alternative punishments include options like house arrest, fines, victim restitution, intensively supervised probation, and community service. Some programs, like a model probation system in Georgia, have cut recidivism rates among convicts below those of people jailed for similar crimes, for about one-eighth the cost of prison. Others, like a community service program in New York City, don't pretend to make angels out of the petty criminals they divert from cells: They set out only to punish, to cost less, and to save bed space for dangerous felons.

Who might be eligible for this type of sentence? Obviously not remorseless violent offenders, like the conscienceless killers of the Kansas farm family depicted in Truman Capote's *In Cold Blood*. That they should be imprisoned for a very long time is a self-evident message that our corrections systems, which keep paroling and furloughing Willie Hortons, seem to have never quite gotten. Habitual nonviolent criminals, the ones who start stealing again as soon as they return to the streets, also must be locked up for a long time. But it doesn't make sense that almost half of the nation's prison space is taken up by nonviolent criminals. They may not all be Jean Valjeans, but they aren't all Ted Bundys either.

Remorseless violent offenders should be imprisoned for a very long time. But it doesn't make sense that almost half of the nation's prison space is taken up by nonviolent criminals. They may not all be Jean Valjeans, but they aren't all Ted Bundys either.

Criminals requiring only a short prison term include white-collar felons like North, the Savings and Loan con artists, and Jim Bakker (who just got 45 years for fraud). Prison is useful in these cases not only to punish, but to deter. Jail's power as a deterrent increases with the social rank of the person contemplating a crime. After reading Tom Wolfe's *The Bonfire of the Vanities*, who could forget how just one morning in a Bronx holding tank transformed Sherman McCoy, the fallen bond trader? That was fiction, true, but based on one solid fact: The comfortable can still be scared straight—not so much by the length of the potential sentence as by the guarantee that there will be some real jail time. Hot-blooded criminals, for whom the crime was an act of passion to be forever regretted and never repeated, may also require only a short term, joined to suspended time and some alternative punishment. The prospect of hard time is the chief advantage of the suspended

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Restitution: Real Fine For Criminals

by Karen Lehrman

"Under our system of law," then-House Majority Whip Tony Coelho said last spring, "John Mack owed his debt to society, not to this young woman." But Mack, who subsequently became Jim Wright's right-hand man, had slashed the young woman's throat, not "society's." Mack had beaten the young woman over the head with a hammer and left her for dead. Pamela Small's family paid thousands of dollars to have her face and skull reconstructed. Besides sitting in jail for a few years more than the 27 months he served, shouldn't Mack have had to contribute *something* (like maybe everything he owned) to repair some of the damage he'd done?

Today, Coelho's "logic" notwithstanding, he probably would have. Federal judges and judges in 23 states are required either to order criminals to compensate their victims or to explain in writing their reasons for not doing so. And in the last few years, an almost underground system of victim restitution programs has sprung up across the country. In one of these programs, while incarcerated, Mack might have had to work off his victim's medical bills. He might have had to sit across a table from his victim and face up to what he'd done to her. He might have been moved enough to apologize, which, in Small's words, "would have helped. If only symbolically."

The concept of victim restitution, of course, is hardly new. In the Bible, Zacchaeus, a corrupt tax collector, had to pay Israelites four times what he had taken from them and then give half of what he had left to the poor. Throughout much of medieval times, restitution was the method of choice to recompense victims. But in 1116, England's Henry I, son of William the Conqueror, made himself the victim of all criminal crimes. A fortunate side effect of this move was that the state got to keep all compensation. The role of the victim gradually disappeared from the criminal justice system; to seek compensation, a victim was forced to go through arduous and often prohibitively expensive civil court proceedings.

The idea of victim restitution resurfaced in the late 1960s, propelled by a general dissatisfaction with both institutionalization and probation. Restitution could hold a crook accountable for his crime—benefitting the victim, the community, and perhaps even the offender. One of the most innovative restitution programs was started in the Quincy, Massachusetts, District Court by Judge Albert Kramer in 1975. Kramer thought there existed a better option for first-time offenders than putting them back on the streets or in jail. He put them to work.

His Earn-It program found offenders minimum-wage, part-time jobs in the community (at department stores, grocery stores, car washes, gas stations—whichever local businesses would take them). The criminals gave two-thirds of their earnings to their victims until the debt was paid, keeping the rest. For many offenders, it was their first job; for others, it was the first time they had borne responsibility.

The program was so successful—approximately 80 percent fulfilled their restitution obligations—that even offenders convicted of violent crimes were included. Now there is no longer an Earn-It program per se at Quincy court; there's a probation department that does creative restitution and community service sentencing. The department hands out about 1,000 restitution orders a year, at an average of $400 each. In 1988, $350,000 passed from criminals to victims.

More than 500 jurisdictions now offer some type of victim restitution program, whether set up on the Quincy employment-focused model, on a work center model (for those who need incarceration), or on a more victim-oriented model (where paying off the victim is more important than finding the offender a job). In general, the victim's role in these programs has been growing, often out of sheer practicality. Rather than just leave the restitution up to the judge, many jurisdictions have adopted the "arbitration" method, which protects the offender against exaggerated claims and offers the victim a chance for real input. Essentially, the two parties haggle, through a probation officer, over the appropriate restitution.

Some programs, like one run by the sheriff's department in Genesse County, New York, eliminate the middleman and have the criminal and victim negotiate face to face—even in cases involving violent crimes. According to Burt Galloway, a professor of social work at the University of Minnesota, who has run several mediation programs, when the criminal meets his victim face-to-face he often apologizes—and he's more likely to pay back in full. Besides the financial benefits, restitution is thought to bring psychological comfort to victims by restoring their sense of fairness and control over their lives. Victim-offender meetings also bring a feeling of closure.

Given these benefits of restitution, judges should have to require it in all cases involving damages. And there should be some mechanism so that the improverished criminal who comes into money later doesn't get off scot-free. Mack was making just over $5,000 a year when he attacked Small, but by the time the story broke last year he was earning roughly $89,500.

Not only would a system like this better sensitize judges to the needs of victims, it would force them to use restitiution in white-collar cases. The complexity and large amount of money involved in these cases currently discourage the use of restitiution. Many savings and loan executives, for example, could never in their lifetimes pay back all the people they robbed. These guys usually wind up getting fined and serving some time. But just because they can't pay their victims back doesn't mean we shouldn't make them try. Should Charles Keating get convicted, would you rather see him sitting around in the prison camp in Danbury, Connecticut, or, after putting in a little time, working off his debt in a downtown car wash? ■

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sentence: if a man beats up a close friend after a drunken argument, chances are a judge can safely punish him without separating him from the community; but if he goes back and does it again, the judge can invoke the suspended term and put the thug away.

Maybe because only grisly crimes make for good news stories and movie plots, it's a bit surprising to look at what types of criminals are actually stuffing our cells. Some 81 percent of the prisoners in the federal system are in for nonviolent crimes like embezzling and evading taxes, and 34 percent of state prisoners have no record of violence. For 18 months, Brandeis University's National Institute for Sentencing Alternatives has been studying the criminal histories of the 17,000 state prisoners in North Carolina, where the costs of corrections have more than doubled in the past 10 years. The institute's director, Mark Corrigan, said his staff found that 20 to 30 percent of North Carolina's prisoners might be safely punished outside prisons. That figure is consistent with studies the institute has done for Maine, Arkansas, and Alabama.

The institute is recommending several options to the North Carolina legislature. For example, car thieves might be placed in a residential program, in which they would be required to hold a full-time job. Of their earnings, some would go to pay back their victims, some would go to pay for their program, and some would go to their own savings—and some, of course, would go to pay taxes. Right now, North Carolina's only option is to pay between $11,000 and $23,000 a year to jail them.

Robojudge

At the same time that alternative sentences are making more sense than ever, Congress and state legislatures are passing laws that prevent judges from using them. Congress enacted bills revising sentencing practices four times in the 1980s: 1982, 1984, 1986, and 1988. Every year was an election year, and every law was a little more "tough on crime."

Perhaps the most radical change—with the most dire implications for crowding in the federal system—came in 1984, when Congress created the U.S. Sentencing Commission. It directed the group to overhaul the old "indeterminate" system of sentencing, which allowed judges great discretion, often producing wide disparities in sentences for the same crime. The Sentencing Commission mapped out guidelines with which judges must calculate all sentences by determining a crime's "offense level," achieving what one judge called "sentencing by computer." Thanks to a bias of the commission toward longer sentences, more criminals are going to jail for longer periods.

The guidelines kicked in for crimes committed after November 1, 1987. Combined with the mandatory minimum sentences Congress enacted for drug of-

fenses, the new rules are sending some prison terms through the roof. "I had a young man who was a senior [in college] and a varsity athlete," said a district court judge in Washington, D.C. The man had started dealing drugs on campus—a crime the new laws punish severely. "The long and the short of it was that he's been sent to jail for 12 years. I would have sent him to jail, but not for 12 years. His life is ruined. He's going to come out of jail a middle-aged hoodlum."

For some prisoners, a little time behind bars can go a long way. Witness the recent photo of Ivan Boesky—hunched over, with scraggly hair and beard, in sneakers and sagging sweatpants.

In the first six months of 1989, after all these new laws had begun to operate, the combined state and federal prison population grew more than twice as fast as it had ever grown. And we haven't seen anything yet. Expanded definitions of felonies are mostly responsible for swelling the population now. In Delaware, for example, possession of more than five grams—about the weight of a nickel—of any controlled substance, including marijuana, is classified as a "violent crime." The criminal automatically goes to jail. But the sentence also carries a mandatory term: three years without parole or time off for good behavior. The guidelines and mandatory minimums mean that a couple of years down the road, today's prisoners—like the college drug dealer—won't be getting out when their predecessors used to. Despite projected prison construction (much of which was planned without considering the effects of these new rules) inmates will begin to stack up like never before, ratcheting up the pressure on our hit-or-miss early release systems.

Stars and bars

Luckily for him, Oliver North committed his crimes before the guidelines came into effect. The commissioners were particularly tough on white-collar criminals. An expert in applying the new rules said North would probably have landed at level 19: 30 to 37 months in prison, followed by two to three years on supervised release. Well, justice is finally blind. Unfortunately, she's also more clumsy than ever. Certainly a man whose crime was abuse of power should lose his liberty for a while. There could be no more effective punishment for him and no better example for potential White House felons. But three years of prison for crimes like North's amount to revenge, not punishment.

The new rules have made uniform what the system's lack of alternatives has encouraged for years. Jean Harris, then the 58-year-old headmistress of the Madeira School for girls in McLean, Virginia, murdered her lover in a jealous rage in 1981. She got 15 years to life. She's served eight years at a New York State prison, where she's written two books and had two heart attacks. In *They Always Call Us Ladies*, Harris wrote that before going to jail, she imagined arriving would be "like landing on the moon." It's safe to say she's now better informed; she's been humiliated by guards, tortured by the screams of insane women, and very lonely. She surely learned long ago the lessons that prison can teach.

In a 1987 *Mademoiselle* column on Harris, Barbara Grizzuti Harrison wrote, "Where there is crime there must be punishment." Right on—but that doesn't mean, as Harrison concludes, that justice can be served only if Harris stays behind bars. *The New York Times* made a similar lapse in reasoning in a 1988 editorial arguing that justice will be served only if Harris gets clemency. Judges shouldn't have to mete out punishment the way the rest of us switch on a lamp. If Harris doesn't deserve complete liberty, but further prison time is too harsh, she could now be punished more mildly with some sort of service. If she needs tougher punishment than that, a judge could stick her in a residential facility, fine her into penury, and divide her days between teaching kids and scrubbing pots and toilets. But why are we still paying so much money to keep this harmless old woman in jail?

Enter Zsa Zsa Gabor. Gabor slapped a police officer last June and went on to make a media circus out of her trial. All in all, said Beverly Hills Municipal Judge Charles J. Rubin in sentencing her, "she demonstrated an attitude of continual contempt for the legal system." He gave her a "split sentence": not just fines and community service but also three days in the county jail. Gabor's husband has said that the "rich and famous" shouldn't have to go to jail; the beauty of the sentence is that it's exactly that attitude that put Gabor there.

Gabor is now trying to turn her sentence into a celebrity charade, like her trial. But the television cameras won't be able to follow her inside. The former Miss Hungary will probably find that the petty indignities—getting finger-printed and patted down, wearing the plain blue jail suit—and real frustrations of her three days will make her regret her behavior. Ask any careless driver how it felt to spend a few hours pacing the cement floor and eyeing his cellmates in a sheriff's lockup, waiting for a sleepy friend to arrive with the money: for some prisoners, a little time behind bars can go a long way. There could be no more striking image of incarceration's quick and lasting effects than *The New York Post*'s recent shot of Ivan Boesky—onetime insider-trader and current inmate—hunched over, with scraggly hair and beard, in sneakers and sagging sweatpants, a pair of shoes clutched in his left hand and a duffle bag in his right. The man will undoubtedly wear a suit again one day. But he, and we, will know where he's been.

North by North's desk

The dash of jail time for Gabor was crucial to Judge Rubin's creative mix of sanctions. Somehow, it made the sentence seem appropriate in a way that Oliver North's and Jim Bakker's were not. The day after North's sentencing, *The Washington Post* editorial board sounded worried—as though, after a long night of head-scratching, it was still trying to convince itself that Judge Gerhard Gesell had done the right thing. At bottom, the *Post* decided, North's sentence was "fair enough": "He won't have to go to prison, but he's hardly gone unpunished."

Make that "nearly gone unpunished." Gesell fined North $150,000. It should take him exactly six speeches to come up with it. Then there's that $23,000 Marine pension (almost the price of a whole speech), automatically canceled by the conviction for shredding documents. *The Wall Street Journal* called this "North's biggest punishment." This fall, it occurred to Congress that it was time to revisit the shredding law. It exempted from the statute any "retired regular officer of the Armed Forces of the United States." "Mr. Pres'dent," drawled Jesse Helms from the Senate floor, "I will just say to Ollie North: this one is for you."

The community service requirement seemed the most satisfying provision for all commentators. It's what North's lawyer, Brendan Sullivan, asked for, invoking the curious logic of high-priced defenders that their clients' willingness to perform a community service sentence should be regarded as cause for awarding one. Even Mary McGrory, otherwise displeased with the sentence, conceded that the service would mean "frustration for a hotshot." The *Post* editorial board, still unhappily chewing it all over, found a strange way to stretch the service out: North was "required to give 1,200 hours of community service *(atop the time already given to his defense)*. . . ." [emphasis added]

Robert McFarlane's lawyer said he was "working with quadriplegics." The word that people familiar with McFarlane's volunteer service kept using to describe it was "lobbying."

Gesell said he hoped the service would remind North of values he overlooked in the "elite isolation of the White House." But North seems just to have traded one form of elite isolation for another. He's working with Save America's Future (SAFe), a new group based in Washington that hopes to prevent drug use among children and teenagers. Everyone seems to think he's a great guy, but it's hard to get a handle on exactly what he does. He doesn't help set policy, and he doesn't help put it into action in the field. He works in an "administrative capacity" to help "coordinate activities." This fall, in a story about his service for *Fairfax* magazine (no, he never described what he does), North wrote, "If I can, in some small way, help to save a goodly number of the young people of Washington from the evil of drugs then I will have fulfilled some small part of my obligation as a Christian."

According to Wilbur Atwell, the director of SAFe, North has worked outside of the office *once* since he started his service in August. During his first month (coincidentally, before the interest of the press waned) he put in close to 150 hours. Atwell called that "extraordinary." But since then, North's been doing between 12 and 15 hours per week, somewhat less than the 16 he was scheduled to perform. He's not even there at set times—Atwell described his schedule as "flexible." Last July, McGrory announced that North had been awarded "a commission in the drug war." But when it comes to battling drugs, the heavily decorated Lt. Colonel has turned out to be just another spare-time desk jockey.

After the sentencing last spring, Sullivan, North's lawyer, requested a stay of payment of the fines pending an appeal, scheduled for February. But he added that "Lt. Colonel North does *not* seek a stay of the sentence of probation conditioned on community service." In a perverse way, the *Post* turned out to be right: North's 1,200 hours of community work are a continuation of "the hours already given to his defense." North "would like to begin promptly the important community service program ordered by the Court," wrote Sullivan. In other words: We'll skip the punishment, thanks, but we'll take the moral credential.

Abuse by 'Best Use'

Much careful work goes into producing an alternative sentence like North's. Once guilt is determined in a high-profile case, the defense and the prosecution work up "sentencing memos" presenting their vision of the ideal sentence. They tend to disagree. A probation officer puts together a third, supposedly unbiased memo. In less glamorous cases, the judge often gets no report at all. In the jurisdictions where probation officers do assemble reports, the officers are frequently so overwhelmed that they can manage to make only a call or two before plugging the convict into a familiar sentencing formula. A larger investment in our probation offices would go a long way toward dealing with overcrowding, not just by boosting supervision but by producing hardnosed appraisals of all criminals' eligibility for alternatives. Barring that investment, alternatives to incarceration are likely to remain too rare for the broke criminal.

In the meantime, lawyers at tonier firms have turned the sentencing memo into an art form. In his operatic 17-page memo, Sullivan switches so quickly from trumpeting the independent counsel's malice ("The IC's memorandum shows it will stop at nothing in its effort to crush Oliver North . . . . the blows it strikes . . . are as foul as any we have seen.") to softly stroking a violin through tales of North's heroism in war and suffering under press scrutiny, that by the end, when Sullivan suddenly changes tactics and appeals to reason ("There is no need to incapacitate or rehabilitate Lt. Colonel North."), the reader can only, limply, agree. Where Michael Deaver's memo, running 49 pages (including table of contents), graphically treats him as a pathetic character ("Mr. Deaver was feverish, confused, disoriented, lethargic, and was experiencing both auditory and visual hallu-

from the government to assist the disabled in living outside hospitals. Among other tasks, he's been helping her file for tax-exempt status. The word that people familiar with McFarlane's volunteer service kept using to describe it was "lobbying." McNew wouldn't talk about her work with McFarlane. "How the hell did you find out about that?" she asked.

McNew's project is unquestionably worthwhile. In fact, it's so worthwhile that you'd expect a man like McFarlane to contribute his skills and talents to

Beefing up probation offices is not expensive, particularly in comparison to prison costs. Georgia's Intensive Supervision in Probation program costs about $1,700 per year per offender. Prison in Georgia costs $13,500.

it during his free time. Instead, he gets to contribute them during what is quite literally his unfree time, his substitute jail time. How did he wind up with this toothless service? "He has a vast experience, you know, he has managerial skills and understanding of the legislative process," said his judge, Aubrey Robinson.

It doesn't take much of an imagination to come up with the sorts of absurdly nonpunitive sentences Best Use would justify: an insider trader could be ordered to lecture business school classes on ethics; or an actor who sexually exploited a 16-year-old could be ordered to give a handful of antidrug talks to high-school students; or—now stretching the imagination a bit—an upscale clothier guilty of tax evasion could be required to put on a fashion show to raise money for the city budget; or a rock-band manager who assisted in smuggling 19.5 tons of marijuana into the U.S. could be sentenced to produce, oh, three antidrug concerts and to cut an album. . . . Wait a minute. Those are all actual sentences. And by the way: Wilkes Bashford *lost* money for the city of San Francisco with his fashion show. And Harold "Doc" McGhee, the manager of "Bon Jovi," is now a defendant in the Louisiana trial of what may turn out to be the largest drug ring in U.S. history.

There's just no punishment in making Robert McFarlane lobby in "elite isolation" during his free time. It can be punitive—or at least educative and possibly rehabilitative—for white-collar criminals to work in worlds they would otherwise have no contact with, and for all criminals to work at duties they would otherwise never perform. McFarlane might learn something from working in a soup kitchen; drug dealers might benefit from being stripped of their jewelry and warm-up suits and sent to scrub and paint the walls of the housing projects they've abused.

It's worth noting that Judge Jackson did not assign Deaver to use his skills as a lobbyist and PR czar (as his sentencing memo had suggested, listing a few programs seeking help with fundraising and public awareness campaigns). Part of the sentence Jackson gave Deaver, who lied to both Congress and a federal grand jury, oozes Best Use: Deaver has to spend 500 hours educating medical students at Georgetown University on alcoholism. But he also has to spend a thousand hours working at a shelter for addicts and alcoholics in inner-city Washington. Deaver says he feels like he's contributing to the shelter, where, among other projects, he has started diction classes for residents whose English he thought would prevent them from ever holding a job. "I have a lot more time," he said, "and a lot more to learn."

But Deaver hasn't been complying with all the requirements of his sentence. He hasn't been spending nights and weekends at the shelter, as Judge Jackson stipulated he should "as circumstances permit and warrant." Not that anyone's likely to call him on the infraction. It's so piddling, the system reasons, and probation officers are so busy. And that's the final, sad scam of white-collar alternative sentencing. The soft sentence gets softer over time.

That's why, just as prison is essential for people like Gabor, who feel they live above the law, it's necessary for criminals who abuse the public trust. The screams Jean Harris still hears in the night would affect North or McFarlane or Deaver just as deeply and send an unmistakable signal to others who might consider committing crimes like theirs. Had North been given some prison time, he might have ended up in the Petersburg prison camp 25 miles south of Richmond. It's a minimum-security prison, with no fence. But it's not exactly summer camp. The cells are tiny and shared by two. The grounds are spotless, but only because the inmates spend their days pick-

ing up cigarette butts and shining floors. One afternoon in December, a group of prisoners was hard at work, painting a spotless white wall white.

But real jail will always be the best deterrent. In the intermediate-level prison across the driveway from the camp, life is more regimented. Contrary to popular fears and fantasies, *Midnight Express* could not have been filmed in most American prisons. But that doesn't mean that scenes from it won't occasionally flicker through your head. At Petersburg, you work eight hours a day in an electronics factory, and (once you get a pass) you can use the library and the gym. But the obvious features—the fences covered with barbed wire that always surround you—and the more subtle ones—the lack of doors on the bathroom stalls—quickly wipe away any illusion of elite isolation. You don't have to experience much of this to know real punishment. Brendan Sullivan would never have told Judge Gesell: "Lt. Colonel North would like to begin promptly the important incarceration period ordered by the court."

Cool and unusual punishment

Before jurisdictions start diverting more convicts into community programs, they'll have to beef up their probation offices. In Baltimore's alternative sentencing program, a total of 10 "managers" supervise 2,000 criminals. That far exceeds a reasonable number. A load of about 25 convicts is about right for one officer; with so few clients, he would have more time to keep an eye on each and to provide the sorts of services, like job counseling, that used to be considered part of the job. With bigger probation offices, every sentencing report could become a thing, if not of beauty, at least of use. (An increase in supervision is not expensive, particularly in comparison to prison costs. Georgia's Intensive Supervision in Probation program, in which two to four probation officers supervise between 25 and 55 criminals, costs about $1,700 per year per offender; prison in Georgia costs $13,500.) Besides better probation, tightly supervised residential drug programs are a must, given the high percentage of drug-addicted criminals. Strict residential treatment tends to cut recidivism more than prison does. It not only removes the criminal from the population (as prison does), it decreases drug dependence and shrinks the chances that a criminal will steal again to feed his habit (as prison doesn't).

Georgia "recognized sooner than most states the relationship between prisons and money," says Corrigan of the National Institute for Sentencing Alternatives. The result, in 1982, was the ISP program, probably the most impressive—and most straightforward—alternative sentencing scheme. ISP has spread, with variations, to jurisdictions around the country. In Georgia, a probation officer provides job counseling while a surveillance officer keeps tabs on the criminals, each of whom must check in, face-to-face, five times a week during the 6 to 12 months they're in the program. Each participant has to put in 132 hours of community service and hold a full time job or pursue educational or vocational training. Generally, the judge imposes alcohol and drug testing, a curfew, and fines or victim restitution. Fees paid by probationers support the program. When Georgia launched this fancy form of probation, some criminals regarded it as too tough. Offered ISP, they elected to go to prison instead.

Georgia's 1986 evaluation of ISP came up with a "success rate"—with success defined as no new crimes or technical violations during the 18 months after graduation—of 80 percent. That's a lower recidivism rate than was found among regular probationers or among people incarcerated for similar original crimes. And less than 1 percent of all ISP graduates had gone on to be convicted of violent crimes.

A more high-tech alternative, which excites corrections experts and features writers around the country, is electronically monitored house arrest: You wear an electronic tagging device—such as an anklet that sends a radio signal to a receiver in your telephone—or you perform regularly for a two-way video monitor, and you stay home. Other gadgets permit probation officers to test their clients for alcohol without stirring from the office. Like an ISP program, this is a flexible punishment. The convict can keep working, or perform community service, while remaining at home during set hours.

The alternative most popular with the tough-on-crime crowd is the so-called "boot camp" for young male offenders. William Bennett has boosted boot camps as a cheap alternative to prison that scares young people straight. For a few months, young men are subjected to military-style discipline, complete with men in uniform calling them "maggots" and making them do push-ups in the wee hours. Georgia led the way on this alternative as well; there are now some 15 camps in 11 states, with many more under construction or on the drawing board.

Preliminary studies have cast some doubt on the value of boot camps as they're generally run. For one thing, they are turning out to be costlier than prison; for another, they don't seem to cut down recidivism. Sometimes the discipline has gone too far, with inmates winding up badly beaten. Run more wisely, however, the camps might work. In New York state, boot camp lasts for six months, twice as long as most. And officials supervise and assist the inmates for a year after they graduate. But without that kind of intensive, long-term effort, the camps seem likely to take tough, aggressive young men and make them tougher, more aggressive, and prouder of their muscles. "I look at this as a fitness program," Robert Bennett, a 19-year-old thief, told the *Los Angeles Times*.

VERA smart

The VERA Institute in New York City runs a community service program for petty criminals, most of whom would otherwise be serving two to three months in prison. VERA sets the offenders to work for 70 hours. According to Susan Powers, who supervises the project, 50 to 60 percent of participants complete their service; those who don't are referred back to the courts for resentencing. Possibly because it got burned in the mid-seventies for being particularly soft on crime (see Tom Bethell, "Criminals Belong in Jail," *The Washington Monthly*, January 1976), VERA emphasizes that the service is punitive. To an extent it is, though clearly it's no match for prison. "It's obviously not incapacitative and it's not rehabilitative—our recidivism stats are about the same as a population with a short jail term," said Powers. The program doesn't work miracles. But it does tell the offenders that society disapproves; it costs $800 to $1,000 per convict, much less than jail; it keeps some beds free in New York's strained facilities; and it gets vacant lots cleaned up, scarred walls painted, and ravaged park areas tended.

Programs like VERA's show that it's possible to experiment with alternatives and remain realistic about crime. Instead of imprisoning judges within strict sentencing ranges, state and federal guidelines should start encouraging them to explore sensible punishments besides incarceration. The real lesson of Oliver North's sentence is not that abusers of the public trust deserve some jail time, or even that alternative sentencing, as applied to celebrity defendants, is a joke. It's more simple than either of those: Our corrections system can be flexible.

We tried soft on crime, and that didn't work. Now we've tried tough on crime, and the results have been just as unimpressive. Maybe we should try smart on crime. As state and federal lock-ups approach gridlock, the challenge to our criminal justice system is to take the elegant, custom-tailored sentence and start marketing it retail. ❑

The Complex Case of Costly Corrections

By Julie Lays

One out of every 420 Americans is behind bars today—at a staggering price. Can we afford to be tough on crime?

Julie Lays is an assistant editor of State Legislatures.

After Oklahoma state Senator John McCune, a 20-year legislative veteran, advocated early release of some non-violent inmates to ease the costly prison overcrowding problem in Oklahoma, he was defeated in the next election.

McCune, once the Senate's expert on prisons, acknowledged that support for alternatives to incarceration is viewed by many as being "soft on crime." "It cost me my seat," he said.

Yet the increasingly high costs of corrections are causing prudent lawmakers to realize how "getting tough on crime" is tough on the state budget. More stringent law enforcement, higher conviction rates and longer sentences are making already crowded prisons and jails even worse. The expense of building new prisons, as well as such operating costs as health care, salaries, food, clothing and security devices, continues to increase.

"The cost of operating the nation's prisons and jails has tripled during the past decade," says James Austin, director of research for the National Council on Crime and Delinquency. "Many states are now seeing that escalating prison budgets threaten to curtail vital services for health, education and transportation. Unless there is a significant reversal in these trends, prisons will continue to be the growth industry for most states. We are simply punishing beyond our means."

By permission of Johnny Hart and NAS Inc.

Nationwide, the prison and jail population has doubled in the past decade. There are about 600,000 prisoners in state facilities today—that is one of every 420 Americans—the highest rate in the Western world. State spending for corrections continues to grow at a faster rate than total state spending.

According to the Criminal Justice Institute, 68.4 percent of American prisons are operating above capacity, 36.7 percent are operating above 125 percent capacity, 21.7 percent above 150 percent, and 1.7 percent above 200 percent. In fact, at least 37 states are now under court orders to reduce prison overcrowding. This leads many lawmakers to assume the solution lies in building new prisons. But it is an expensive solution.

A new 500-bed prison typically costs between $15 million and $60 million. According to the *Corrections Compen-*

dium, depending on the type (low, medium or maximum security) and the location of the prison, new prison beds can cost between $3,500 and $116,000 to construct. The average cost is about $42,000 per bed.

In North Carolina, the largest prison construction program in the state's history is under way—the construction of 2,554 beds and facilities at a cost of $29.3 million. In Michigan they're building 19 new prisons. "There's no bigger growth industry in the last two years in Michigan than the corrections department," said Senator Jack Welborn. Alabama has spent $90 million in the last five years for prison construction; that translates into almost $1,000 per Alabama family per year. "Texas needs to build 25,000 beds immediately," says the mission statement of the Texas Department of Corrections, "and then one prison every eight months to infinity" to keep up with the incarceration rates. And California estimates it will take up to $6 billion worth of construction to solve its prison and jail crowding crises.

"This is craziness," said Senator Sue Wagner, referring to her state of Nevada, which has the highest incarceration rate in the country. "I can't believe the citizens of my state want to build a new prison every time we legislators get together in Carson City."

While building prisons is costly, keeping them going is even more expensive. Prisons are complete, miniature communities that provide health care, vandal-proof shelter, food, water and sewer, recreation and employment all in a secure environment. "Construction costs are only a fraction of the operating costs of prisons," said Tennessee Senator Bill Richardson. Keeping an inmate in prison usually r between $10,000 and $39,000 a ye In some states costs are far higher

And if you think more liberal use the death penalty would save mon think again. According to Jonath Gradess, executive director of the N York State Defenders Association, cost of life imprisonment for 40 ye is around $602,000 while the expe of a model New York capital c across the first three levels of revie the trial and penalty phase, the app and the review in the U.S. Supre Court—is about $1.8 million. agrees with Justice Thurgood M shall's statement of 15 years a "When all is said and done, there be no doubt that it costs more execute a man than to keep him

Ways to Cut Costs Are Already in Motion

• *Intensive Probation.*

Georgia's intensive probation program, a model for projects in several other states, began in 1982. Costs are controlled by keeping certain non-violent offenders out of state prisons, sentencing them instead to intense probation that requires five face-to-face contacts per week with a surveillance officer, 132 total hours of mandatory community service work, mandatory employment, a weekly check of arrest records, and routine and unannounced alcohol and drug testing. Offenders spend six to 12 months in the program followed by a year on regular probation. Most have committed property or drug-related offenses. The program costs an average of $1,600 per offender per year compared to $9,000 to incarcerate one inmate.

• *House Arrest.*

Florida has led the way in this area, but many states are beginning to see the benefits of such programs. The North Carolina General Assembly appropriated $253,000 last year to expand the electronic house arrest program, whose first-year funding was $65,000.

Wyoming is experimenting with a house arrest program at a start-up cost of only $30,000. It's Surveillance and Tracking of Offenders Program (STOP) places non-violent property offenders under house arrest monitored by special electronic devices, allowing them to leave home only to go to work or to preapproved appointments. Governor Mike Sullivan said the cost of STOP is $14 a day compared with $35 a day in the state prison.

• *Sentencing Guidelines.*

Chase Riveland, director of the Washington Department of Corrections, estimates that sentencing guidelines have saved his state the cost of three new prisons. Some $30 million has also been returned to the general fund. In fact, the guidelines have been so successful in reducing prison populations that Washington can rent cells to other states, housing their inmates for $60 per day, per cell. The program is expected to bring the state $20 million between 1987 and 1989.

• *Prison Industries.*

In California the Prison Industry Authority, which employs more than 5,000 inmates, says it saves taxpayers $17 million annually in housing and program costs. By 1991 this savings is projected to increase to $55 million.

In Minnesota, between 5 percent and 10 percent is deducted from inmates' wages if they earn mor than $50 every two weeks, allow ing the corrections department tc transfer up to $100,000 each year tc the Public Safety Department's Crime Victims Reparations Board The funds are used to pay such victims' costs as medical bills, counseling expenses, funeral expenses support for dependents and loss of wages.

In Illinois, prisoners have been trained in the removal of asbestos and have begun to remove the material from correctional facilities Correctional Industries Superintendent Robert Orr projects the cost of using the inmates for one building at $150,000, compared to an estimate of $300,000 to $500,000 if a private contractor did the work.

Best Western International, a non-profit association of hotel and motel owners, installed and paid for a computerized telephone reservation system in a minimum-security facility near Phoenix, Ariz. The company trains inmates and pays them the same wages as other agents. Prisoners get to keep a third of their pay, a third goes to the state to offset the cost of incarceration and a third goes to a trust fund set up for inmates being released.

—Julie La

Annual Cost of Sentencing Options

(Exclusive of Construction Costs)

Option	Annual Cost
Routine probation	$ 300- 2,000
Intensive probation	$1,500- 7,000
House arrest	
Without electronics	$1,350- 7,000
With telephone call-back system	$2,500- 5,000
With passive electronic monitoring	$2,500- 6,500
With active electronic monitoring	$4,500- 8,500
Local jail	$8,000-12,000
Local detention center	$5,000-15,000
State prison	$9,000-20,000

Source: Joan Petersilia in Expanding Options for Criminal Sentencing, *Santa Monica, Calif.: The RAND Corporation, November 1987.*

prison for life."

Prisons are assailing state revenues. In Ohio, the corrections budget increased 16.5 percent last year while the general budget grew only 4 percent. Texas' general budget grew by 6.8 percent, its corrections budget by 33.8 percent. California's operating budget for the department of corrections reached $1.2 billion in 1985 and is expected to hit $3 billion by 1990 According to Greg Schmidt, chief consultant to the California Senate Judiciary Committee, the department of corrections has become "California's version of the Defense Department."

In 1987, according to the Census Bureau, the 50 states spent more than $11.7 billion on corrections, including $9.3 billion for current operations and $1.4 billion for construction.

One reason corrections costs are taking up a bigger portion of the general state budget is that state aid for local corrections programs is now the fastest growing category of state aid to local government. Total state spending for corrections was $11.7 billion in 1987; local aid is 8 percent of all state corrections expenditures. In fiscal 1987, states provided $932.5 million in aid to local governments. This represents nearly four times as much corrections aid as was provided in 1980.

Of course, state corrections aid to local governments varies tremendously from state to state. In five states—Connecticut, Delaware, Hawaii, Rhode Island and Vermont—all corrections expenditures are made by the state government. Nineteen states did not offer local aid in 1987. In the remaining states there are wide differences in how specific responsibilities are allocated. For example, some states house state prisoners in local jails but in other states they must be housed in state prisons. In fact, many states use local jails to house state prisoners without fully reimbursing the local governments.

"We need to look more strongly at alternatives instead of building more prisons," says Parker Evatt, a member of the South Carolina House of Representatives for 13 years and now the commissioner of the South Carolina Department of Corrections. "Our prison system is growing by about 800 people per year. That's a new prison every year. Let's look at more home arrest, intensive probation, restitution centers, halfway houses and parole and probation. Let's really use electronic monitoring instead of playing with it."

Are these alternative programs cheap? No. Are they cheaper than incarceration? Usually. For example, Georgia has a number of alternative programs—from basic probation to intensive probation and home confinement to "boot camp" for young convicts—that range in daily costs from 75 cents to $36.50 per person. The cost of keeping an inmate in a Georgia prison is estimated at $36.85 per day.

Intensive probation supervision is one alternative being tried in 40 states. Most programs require community service, periodic checks of local arrest records, curfews or house arrest, random drug and alcohol testing, restitution to victims, employment and payment of a probation fee.

Home arrest, often using electronic monitoring devices, is another strategy being used in at least 50 different locations. Home arrest allows non-violent criminals to be incarcerated in their homes rather than in premium prison cells. If they leave home without permission, the electronic anklets or bracelets will report that to the police.

Sentencing guidelines have been used successfully in a couple of states not only to standardize penalties but also to reduce costs. The guidelines are based on a grid that coordinates a specific offense with the criminal's record. The systems ensure that costly prison space is reserved for truly dangerous criminals, while the non-violent offenders are subject to a variety of alternative punishments.

Can states save money through inmates' labor? Most states operate prison industries, which can take at least three different forms: production of such things as desks and license plates, for use directly by government; use of prisoner labor for prison maintenance; and private sector jobs within prison walls.

Forty-eight states and the federal prison system have more than 56,000 prisoners working in prison industries producing more than $860 million in annual sales, mainly to federal, state and local governments and non-profit organizations. About 10 percent of all inmates work in prison industries.

A major benefit of prison industries is that they are usually self-supporting, or even if they are not, they are less expensive than alternative inmate services such as vocational training and basic education. In some states, inmate wages, which averaged about $3 per day in 1986, have deductions made to reimburse the corrections department for a portion of the cost of the inmate's incarceration, to contribute to the financial support of their families, and to pay into victims' compensation funds. In addition, 16 states have experimented to a lesser degree with private-sector prison industries in which inmates work for a private firm operating within the prison. Inmates may earn the minimum wage and contribute relatively large amounts of the costs of their incarceration.

With new prisons needed every year to keep up with the "lock 'em up" philosophy prevalent today, something is going to have to give. Until the public accepts alternatives to incarceration as legitimate punishment, legislators will be faced with tough decisions.

GOVERNING

The States and Localities

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Politicians and the Press

Sentencing Reform, Round Two

Risking Pension Funds

Secrets of a Fiscal Spin Doctor

MAKING THE PUNISHMENT FIT THE CRIME ...AND THE PRISON BUDGET

It's the second phase in a revolution in sentencing policy that has swept the country.

By Fred Strasser

As research director for the Louisiana Commission on Law Enforcement, Carle L. Jackson does something about crime many public officials can't afford to do. He thinks about the criminal justice system as a whole -- all the way from crime to punishment.

And from his Baton Rouge office wallpapered with computer-generated statistics, Jackson, a political scientist, watched in recent years as the system he monitors began to collapse under its own weight.

In Louisiana, as in many states, the public's demand for an ever-more-aggressive war on crime collided head-on with the fiscal burdens imposed by a swelling prison population. Something had to give. And since controlling crime is an elusive goal at best, Louisiana's legislature decided in 1987 to try controlling punishment instead. Now Jackson wears a second hat, as director of the newly created Louisiana Sentencing Commission, a 22-member panel representing each fiefdom in the criminal justice system.

The commission's job is to draft comprehensive guidelines for judges to follow in sentencing convicted criminals. In other words, this team of prosecutors, defense attorneys, judges, legislators and corrections officials will try to decide systematically which types of Louisiana convicts should be in prison for how long and, for the first time, to make those decisions with an eye on available prison resources.

Plenty of states have failed at this mission, but if Jackson's commission succeeds, Louisiana will have moved into the second phase of a revolution in sentencing policy that has swept the country in the past 15 years.

The first phase began in the mid-1970s when states began moving away from the American tradition of "indeterminate" sentencing -- allowing judges vast leeway in setting sentences while leaving it to parole boards to decide when an inmate should be sent back into the world. The states moved toward a system of "determinate" sentences in which judges set fixed sentences that can be reduced solely as an award for good behavior.

The changes made in the name of consistency in sentencing and length of imprisonment have taken many forms. A determinate sentence, for example, is Massachusetts' carry-a-gun-and-go-to-jail-for-a-year rule. It is Maine's policy of giving judges total discretion for sentences of, allowing no parole. It is California's system of three broad ranges of no-parole sentences depending on the nature of the crime and, to some extent, the criminal. And it is the finely tuned, comprehensive sentencing guidelines of Minnesota and Washington state, which are pegged to correctional resources, and those of Florida, which are not. In most states where they are used, guidelines require judges to sentence within a particular range for each crime and they provide specific criteria that can be taken into account, such as the defendant's criminal record and any aggravated aspect of the crime.

"There is no longer an American system of sentencing," says Michael Tonry, a lawyer and scholar who traced research on sentencing reform for the U.S. Justice Depart-

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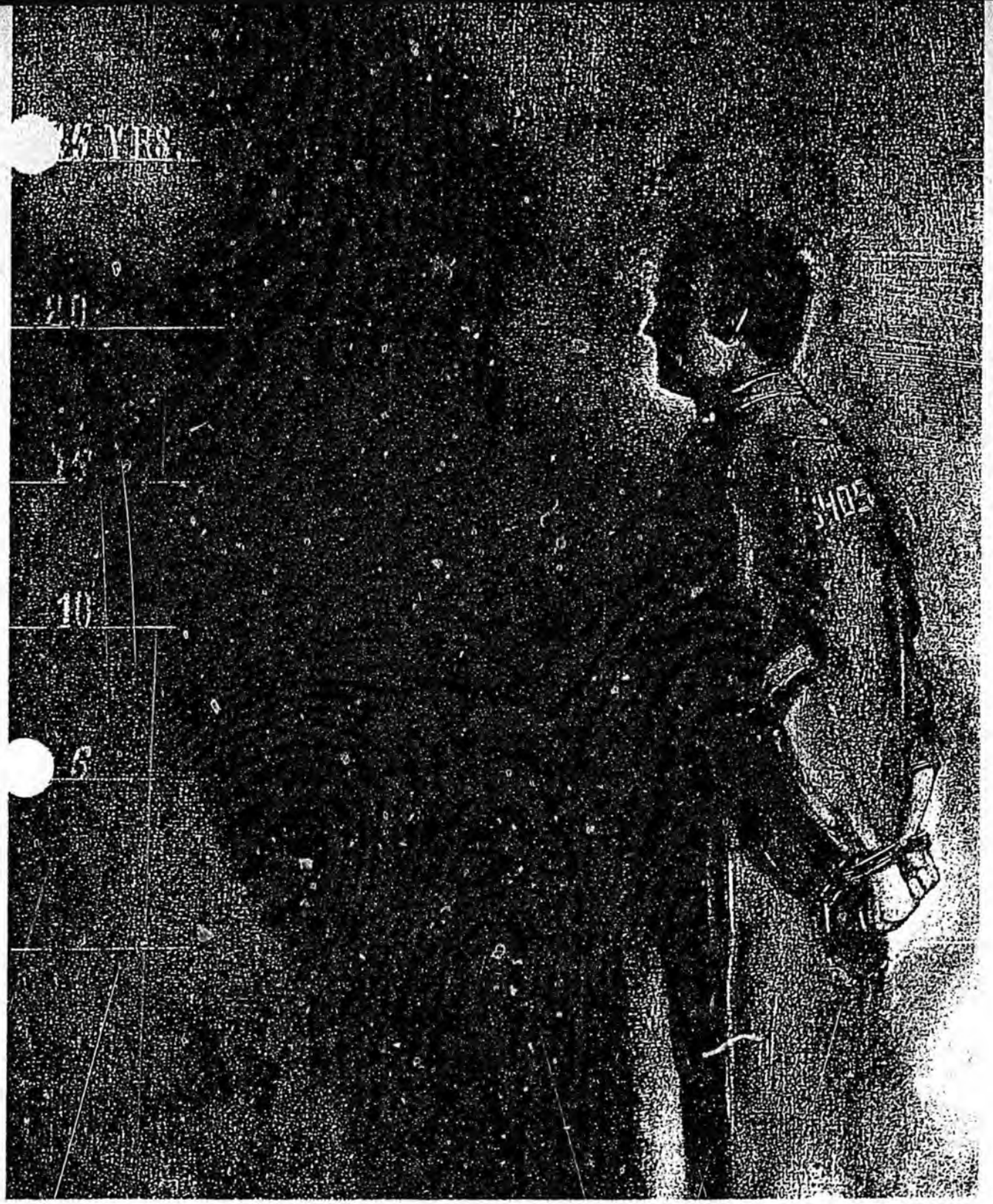

ment's National Institute of Justice. "We've got diverse systems now. But there is a wide agreement that traditional sentencing was not desirable."

As state after state is discovering, however, changes t to be painfully tough on crime can also foster tions systems so expensive that many are considering sort of sentencing approach that Louisiana, which has long had determinate sentencing in the form of mandatory prison terms for certain crimes, is now looking into.

Until recently, the idea of linking sentencing policy to prison space -- or even considering that factor -- was widely viewed as an unacceptably liberal approach. The only states that adopted such sentencing plans were traditionally progressive Washington and Minnesota.

But cold fiscal realities in other states are fast eroding that kind of ideological bias. Between 1960 and 1985, the

Debra White illustration

latest year for which detailed figures are available, state and local governments increased their per capita spending on law enforcement by 73 percent while corrections budgets leaped 215 percent, according to the U.S. Bureau of Justice Statistics. Increasingly these days, prison beds are viewed as a scarce resource that policy makers must allocate carefully to achieve clearly understood goals. "Tough times bring progress," Jackson says wryly. "Louisiana can't afford its correctional system. That's something some very tough, very practical guys in our statehouse have reluctantly come to understand."

In Louisiana, he notes, the corrections budget shot up an astonishing 690 percent between 1975 and 1985 for two reasons. First, lawmakers enacted ever-heavier penalties without considering the price tag on their gut-level sense of justice. Even more important, they moved to reduce sharply the number of inmates eligible for parole.

So have most states. As recently as 1975, every state in the country imposed exclusively indeterminate sentences. Ten years later, all but four had enacted at least some kind of determinate sentencing.

California's corrections spending is cutting into money that should be going to social programs, says Senator Robert B. Presley.

Getting tough on selected offenders and crimes was not the only objective of these reforms. They also generally promised that a reduced role for parole boards would promote "truth in sentencing." What you saw happen in the courtroom was supposedly what you got. No longer would a well-publicized sentence of 25 years be tacitly understood by everyone but the public to mean eight — the fact in most states.

As a 1984 call for reform by the National District Attorneys Association put it, indeterminate sentencing was simply "misleading."

"In our office we called it 'sucker shock' when we first went public with the recommended [determinate] sentences," says Robert Lasnik, chief of staff for metropolitan Seattle Prosecuting Attorney Norman Maleng. "People were used to hearing great numbers," he says, like car buyers who have seen only advertised prices. "We showed them the price offenders were really paying."

Other factors, too, lay behind the switch toward determinate sentencing. Liberals bothered by equal-justice questions, were influenced by studies suggesting that similar defendants convicted of similar crimes were serving widely disparate sentences based on geography, race and the viewpoint of the prosecutor, judge, parole board and anyone else who had a role in deciding prison terms.

Conservatives were more influenced by another series of studies, appearing in the 1960s, which concluded that rehabilitation seldom occurred in prison. The studies also found that parole boards, which were to release inmates when they demonstrated improved behavior, had no particular ability to predict whether prisoners would return to crime. As a result, the 19th-century reformers' concept of punishment built on a medical model — inmates were "patients," and parole boards assessed the "cure" — collapsed. The law drifted back toward the style of sentencing that prevailed before the first American parole board was established in Massachusetts in 1884.

Not coincidentally, the drift began as the largest youth population in the nation's history — the postwar baby boomers — reached their most crime-prone years. In 1975, the year the crime wave crested, one out of every three American households was victimized by a serious felony, according to U.S. Justice Department figures. The public clamored for action, and lawmakers delivered a host of new measures, many including determinate sentencing.

But as Tonry points out, ending release-by-parole didn't require any sharply defined new goals. Rehabilitation, one of the four purposes criminologists assign to sentencing, had clearly been abandoned as unrealistic. What remained were the possibilities of simply doing justice, of keeping the most dangerous criminals off the street, and of trying to deter others from committing crimes.

Criminal justice scholars often describe the steps in arrest, prosecution, adjudication and punishment as

Drake Stutes photograph

working like a closed hydraulic
m: Apply pressure on one
t, and the force will be
accommodated elsewhere. Tell
prosecutors they can't plea bargain over length of sentence
and they will bargain over
what charges to bring, eliminate parole and watch governors grant "emergency release"
to meet court orders on overcrowding; let police see that a simple gun arrest leads to
endless hours of wrangling in court over a mandatory
sentence, and they will reduce the number of such arrests
Apply too much pressure, and the system will bulge to
distortion or break

That, according to criminal justice experts, is what has happened in state prisons. Since 1974, the number of prisoners in the United States has grown by more than two and a half times, climbing to 555,666 in 1988. Today the number of Americans who are incarcerated, as a percentage of the population, is twice the previous high reached in the 1930s. In 38 states, all or part of the prison system has been ruled unconstitutionally overcrowded. And yet, no natural end is in sight. Even as most crime rates, except for those related to drugs, start to decline with an aging population in most regions, the prison population continues its explosion, driven largely by the longer sentences that
erged in the 1970s

nus, states today face only two choices. One is to build
institutions. That is what California's voters have done, approving nearly $3 billion in bonds for construction of prisons and jails between 1982 and 1988. In Colorado, new state lottery proceeds are earmarked for building corrections facilities.

Many other states are going the second route: reevaluating sentencing policy to take into account prison resources. That option is becoming more attractive as corrections budgets — operations as well as construction — become so large that they drain resources from education, health and other governmental services. It is the current choice not only of Louisiana but also of Oregon, Tennessee, New Mexico and the District of Columbia, where commissions are engaged in the daunting task of drafting new sentencing policies.

In New Mexico in 1987, "there were 89 people serving time in state prisons for shoplifting. We can't afford that kind of thing," says Representative Ray Vargas, a Democrat who is chairman of the legislative committee that has primary jurisdiction over the criminal justice system. What is needed, says Vargas, "is to be tough on predators we don't know what to do with, and to get others back in their communities where they can pay taxes and support their families."

The concept sounds easy enough. But tailoring penalties to prison capacity is an issue that has bitterly divided
ds and conservatives. A bill instructing New Mexico's
ncing commission to do this was vetoed by Republican
vernor Garrey Carruthers in 1987; the law that was enacted in early 1988, sponsored by Vargas, merely instructed the commission to "consider and make recommendations to the legislature concerning the totality of resources."

It sounds easy enough. But tailoring penalties to prison capacity is an issue that has bitterly divided liberals and conservatives.

"There was some objection to its being a distinction without a difference," Vargas notes, "but either way it simply restates what actually is."

Since 33 people died in the 1980 riot at New Mexico's state prison, Vargas says the state has invested about $1 billion in corrections. Meanwhile, the legislature's decision in 1979 to abolish parole and triple many felony sentences has left the system continuously overcrowded and under court supervision.

In trend-setting California several years ago, Republican Governor George Deukmejian vetoed a proposal to establish a commission that would devise sentencing policies while taking prison resources into account. Deukmejian argued that the current system worked well enough. "The governor has been adamant," says Democratic Senator Robert B. Presley, chairman of the Joint Committee on Prison Construction and Operations. "He wants to keep throwing people in prisons."

But with operation of the 70,000-inmate system costing nearly $2 billion a year now and 100,000 prisoners expected when funded construction is completed, the mood is changing, he says. "Some legislators, particularly the more liberal ones, are taking the view that corrections is cutting into money that should be going to health, education, welfare," says Presley, whose career includes 24 years with the Riverside County sheriff's department. "Frankly, it's true."

Analysts attribute California's predicament to several inseparable causes: more people, more drugs, better police work, tougher attitudes. But the legislature's decision in 1976 to employ what is known as "presumptive" sentencing, a form of determinate sentencing, also had an effect.

One of the first of its kind in the country, the California law abolished parole and set three broad "presumed" ranges for sentences, based on the crime of conviction and the criminal history. The law also listed a few other factors for consideration in deciding whether to sentence at the high or low end of the ranges.

The ranges were initially based on the average time inmates had been serving before parole, but that created a political storm. "People were shocked sentences were so short," says Presley.

In 1978, lawmakers increased sentences across the board for 43 major felonies. Later came "enhancements" for prior convictions and crimes involving violence. Mandatory sentences, such as for use of a gun, were added. A major impact came from requiring prison time for some burglaries that historically had brought only probation. As a result, 50 percent of the inmates in California prisons today are serving time for non-violent offenses, compared with a national average of about 10 percent.

"It became very normal to introduce such measures and difficult to veto or vote against them regardless of merit," Bob Holmes, a corrections consultant to the legislature, says.

As often happens, a few sensational cases framed the issue starkly. One was the grotesque, notorious case of Lawrence Singleton, a merchant seaman who raped and then hacked the arms off a 15-year-old girl he picked up hitchhiking in 1978. Under the state's determinate sentencing law passed two years earlier, Singleton received the maximum term of 14 years after a jury found he had not used a "deadly weapon" in the assault. Then, as a model prisoner, Singleton earned the maximum in good time credit. He was released after serving only eight years — to the outrage of the state's citizens. So, partly in response to the case, the legislature passed a bill imposing longer sentences for some violent sex crimes.

"Louisiana can't afford its correctional system," says the director of the state's sentencing commission, Carle L. Jackson.

In 1987, a commission on prison overcrowding was established. "We know what the commission is going to say," concludes Presley, suggesting that it will be shorter sentences for fewer offenders. "But we need them as a buffer." The commission's report is expected in the fall.

California-style determinate sentencing is a blunt instrument poorly suited to controlling prison populations. No state has passed a similar law since 1981. "In most states that have it, like North Carolina, California and Illinois, there are repeated efforts to replace it with guidelines" that take corrections resources into account, Tonry says. Guidelines are the preferred vehicle because of their comprehensive nature, compared with the piecemeal nature of most other forms of determinate sentencing.

The first state to undertake such an approach was Minnesota. A decade ago, the legislature set up a sentencing commission with the ambiguous instruction to take correctional resources into "substantial consideration."

The panel took the words as a mandate. It made conscious trade-offs in establishing sentences. Increasing time for one type of offender meant a shorter sentence or no incarceration at all for others. The Minnesota sentencing guidelines, from which judges may depart only with a written explanation of their "substantial and compelling" reasons, contained other fundamental decisions:

• Prison is primarily for the violent, even first offenders. Previously, property offenses often led to prison, while a first-time conviction for a violent crime did not.

• Disparity was to be attacked by creating narrow sentencing ranges.

• The purpose of imprisonment, the commission said, was simply and only to mete out a deserved punishment.

• Personal factors such as employment, marital status or education, which might discriminate against minorities, were not to be considered.

The structure of the guidelines themselves was fairly simple, about like a road atlas chart showing the mileage between points. Down one side ran the crime of conviction; along the bottom the defendant's criminal record, which was the only factor allowed in determining offender history. The guidelines also included a list of factors for judges to consider in deciding whether to make a sentence more or less harsh, such as the degree of force used or role played by the defendant in a group crime.

There were some loopholes. The biggest by far was the lack of controls on plea bargaining — the way prosecutors get most convictions. The opposing lawyers can agree on a sentence, then find the appropriate charge.

Commission studies show that judges' compliance rates with the guidelines, which initially were very high, have slipped in recent years, with judges departing upward about as often as they depart downward. But Norman Carlson, formerly head of the federal Bureau of Prisons and now a lecturer in sociology at the University of Minnesota, says that despite some "grumbling . . . law enforcement people accept the guidelines as working and necessary." And he notes, the prison population has remained manageable while the state adds cells for the growing number of inmates.

A sentencing system driven largely by prison capacity may seem radical in the moral-laden arena of crime and punishment, and it may well be less than ideal. But it is like any other mechanism — a balanced budget requirement, for example — that governments use to impose self-discipline and to depoliticize tough and controversial decisions.

"Inherently, sentencing guidelines aren't harsh or lenient," notes Mary Fairchild, the former project manager for criminal justice at the National Conference of State Legislatures. "I think that's misunderstood by a lot of policy makers."

Jackson Hill/Southern Lights photograph

As the experience of several shows, the fate of a cline system — whether or not it takes prison resources into account — hangs on deli cate political and technical factors, and most of all on the attitude of judges

"The power here is in the trial-level judiciary," says David A Jones, a former member of the Pennsylvania commission and a professor of law and justice at the University of Pittsburgh "What I say don't want won't happen The judges who sat on the commission predicted that, and they were right" Guideline drafters wanted to increase penalties and reduce disparity between rural and urban sentences Today, the disparity is recurring and departures are common — two-thirds of them below the guidelines

In Florida, where crime is at the top of the political agenda, the opposite has occurred Elected judges, ignoring the guidelines, are departing upward, and the appeals courts are flooded. But the reality is that Florida's overcrowded prisons have court-imposed population caps, as do 39 of the state's 67 county jails Inmates are currently released under the rubric of "administrative gain time" — across-the-board reductions in sentences authorized by the governor to reduce overcrowding — after serving an erage of about 37 percent of their entences. When guidelines took effect in 1983, they were serving 54 cent.

"The guidelines here have never been correctly sold," complains Leonard Holton, director of the commission that established them Although some judges served on the commission, they were not in the majority and members of the trial-level judiciary felt the guidelines "were rammed down their throats," says Holton "[State] Supreme Court rulings led people to view them a too rigid There is no underlying consensus We've got some tough political decisions to make in this state

Lawmakers in some states are trying other ways to put rational controls on sentencing while insulating themselves from political reprisals for doing so For example, in 1985 Tennessee's legislature — which later established a sentencing guidelines commission — began requiring a prison impact statement with any proposed change in sentencing and requiring appropriations for the change during that session If lawmakers don't find the money, the law is automatically voided Indiana requires an impact assessment from the governor

As a Colorado Republican legislator Jefferson County's present district attorney, Don E. Mielke, was the spark plug for 1985 legislation that doubled the maximum sentence for most felonies Assessing the results, he says that "the good news is that the sentencing [is putting more people in prison. I think that is one of reasons crime is going down"

Mielke is not alone in that judgment but he is certainly in a small minority. To most criminal justice analysts, it is not clear that fear of prison deters most criminals. Nor is it clear that enough criminals — especially the most prolific — can be put away for long enough for their absence to have much impact on crime.

So for the moment, the dominant theory of sentencing has retreated from both rehabilitation and deterrence and come to rest on "just deserts," meaning simply that people caught and convicted of crimes should be punished because they deserve to be punished

In a sense, combining a just-deserts theory of punishment with a sentencing approach that takes prison resources into account makes for very unexciting policy. It promises little — not to stop crime, not to throw away the key, not to salvage a lost human soul "It's just a rational tool for dealing with the prison crowding issue, and secondly, it's justice pure and simple to get the same punishment for the same offense," says James C. Swain of the U S Justice Department's Bureau of Justice Assistance

To promote that premise in the past two years the bureau has given a total of $1 million to the non-profit Washington, D.C.-based Institute for Rational Public Policy, which can use the money to help states develop sentencing plans tied to the prison overcrowding problem

The director of the institute, Kay Knapp, ran the Minnesota guidelines commission for seven years Although she says the system has worked well in Minnesota and Washington state, she believes it is time for a third phase in sentencing policy "Almost all the focus has been on incarceration and very little on alternatives" she says "We've got to look beyond imprisonment to things like fines, community control, residential treatment and home confinement, and think about how to fit these programs into a coordinated policy That's the big challenge right now"

The irony is that these alternatives born in the early 1970s in hopes of limiting the brutalizing effects of prison died of toughening attitudes toward crime later in the decade Now they are being resurrected with new hard-edged labels to limit the fiscal impact of toughening attitudes.

The real challenge of course lies far beyond the criminal justice system

"We're the sump" laments Louisiana's Carle Jackson "I get the drug abusers and the child abusers' children I get the mentally ill and illiterate, all the rejects and retreads no one else knew what to do with

The harsh reality is that until the overlapping pathologies of drugs, family breakdown, despair and isolation are addressed effectively, there is no reason to believe that our security will improve

In the meantime, though, the sentencing reform movement appears to be grinding forward, trying to mesh the resources of corrections with some elemental notions of justice. □

> Kay Knapp, who ran the Minnesota sentencing commission for seven years, believes it's time for a third phase in sentencing policy.

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FELONY CASE DISPOSITIONS: 1984 - 1987

* Trial Rates
* Conviction Rates
* Average Sentences

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The data in this report were prepared under a grant to the Judicial Council from the State Justice Institute. The Department of Law provided the basic database of all felony cases referred to state prosecutors between 1984 and 1987. The Department of Public Safety and Department of Corrections supplemented the data with information from their files. Dr. Jack Kruse of the Institute for Social and Economic Research at UAA analyzed the data. The Judicial Council plans to issue a final report on plea bargaining and presumptive sentencing in December, 1990.

FELONY CASE DISPOSITIONS: 1984 - 1987

The number of felony cases referred to the Department of Law declined by 14.8% between 1984 and 1987, but conviction rates for cases filed in court rose by 17.2% during the same period. The number of cases in which a plea of guilty or nolo was associated with reduced or dismissed charges increased by 56%, from 16% of all filed cases to 25%. Trial rates dropped by 20%, from 10% in 1984 to 8% in 1987. The number of offenders sentenced to serve some jail time also dropped, from 71% to 67%. Mean sentence length did not appear to change significantly for any offenses during this period.

The attached tables are taken from tables prepared for the Judicial Council's study of the plea bargaining ban and presumptive sentencing. Nine frequently occurring offenses and five locations (Anchorage, Fairbanks, Southeast, Bush and Southcentral) are used to illustrate the range of case disposition patterns throughout the state. For example, Fairbanks has a far lower rate of pleas associated with reduced or dismissed charges than other cities, and a slightly higher trial rate. Property cases constitute a larger percentage of its caseload, and the percentage of offenders receiving an active jail sentence is lower there than in other parts of the state. Similar analyses are possible for each area of the state. The following pages describe briefly the most important changes and findings for each table.

Findings

1. Between 1984 and 1987, the number of felonies referred to prosecutors each year declined steadily, from 3,730 in 1984 to 3,177 in 1987 (Table 35). To place this finding in context, the state's population peaked in 1986 at 542,000 (Public Safety Annual Report, 1986) and had dropped to about 531,000 by 1989. The population drop was about 2.0%; the drop in felony cases referred was about 14.8%. The decline in felony referrals preceded the population drop by nearly two years and the population decline in 1987 did not seem to affect the rate at which referrals were declining (about 5% per year).

2. By community, the percent decline in felony cases referred to the prosecutor varied from a low of 8.0% fewer cases referred in Southcentral (Kenai, Kodiak, Palmer and Valdez, together with the rest of the Third Judicial District) to a high of 30.0% fewer cases in Fairbanks.

Anchorage, Southeast and the Bush ranged between a 10.2% dropoff (Bush) to a 13.6% decline (Anchorage).

3. The number of felony cases referred to prosecutors varied considerably by type of offense. Two offenses (Sex Abuse of a Minor I and Misconduct Involving a Controlled Substance (MICS) III and IV) increased slightly in numbers between 1984 and 1987. However, the referrals for two other sex offenses dropped noticeably. Sex Assault I referrals were down by 45.8% and Sex Abuse II referrals were down by 14.6%. Robbery I was down 40.7%, Theft II was down 31.5% and Burglary II was down 20.5%.

Public Safety data for 1987 shows that reported violent crimes decreased by 21% from the 1986 level, and property crimes decreased by 15.6%. The decline in referrals may be related to the decline in the numbers of reported offenses. However, the number of offenses cleared by arrest overall increased between 1986 and 1987. The changes included increases in the numbers of forcible rapes, burglaries, and assaults cleared by arrest, and a decline in the numbers of larcenies and auto thefts cleared by arrest. It is not clear why offenses cleared by arrest would increase at the same time that reported crime and referrals to the prosecutor were decreasing.

4. Fairbanks has a high number of property cases and a relatively low drug and sexual offense caseload. The Bush has a high sexual and violent offense caseload but fewer drug and property cases. Southeast has a relatively large percentage of drug cases, with fewer violent offenses. Anchorage has a slightly above average number of violent offenses.

5. Conviction rates for cases filed in court (Table 25) rose noticeably between 1984 and 1987. By individual offense, the picture was somewhat different. Conviction rates were slightly lower for Robbery I and Sexual Assault I. For all other offenses shown, the conviction rates were higher in 1987 than in 1984. The biggest increases came in Theft II and the drug offenses. Assault II and III and Burglary I cases were also convicted at higher rates. Over two-thirds of most offenses resulted in conviction. Sex Assault I and drug cases were the least likely of the common offense types to be convicted.

6. The incidence of pleas (guilty or nolo) that were associated with reduced or dismissed charges rose between 1984 and 1987 (Table 32). The increases were especially

noticeable for drug and assault cases. Fairbanks had by far the lowest rate of reduced-charge pleas, between 7% and 8%, and showed the least amount of change. Anchorage started the period with the highest rate (24%), but by 1987 was matched by Southeast. Both areas had 30% of their guilty or nolo pleas associated with reduced or dismissed charges. Southeast showed the largest change, going from 10% in 1984 to 30% in 1987.

7. Trial rates overall remained fairly stable between 1984 and 1987 (Table 26), dropping by 20% from 10% of all cases filed in court to 8%. Trials were least frequent in Southeast and Southcentral (between 5% and 8%) and highest in Fairbanks (between 11% and 15%). The largest change however, occurred in the Bush communities, where the trial rates dropped by 57%, from 14% down to 6%.

8. By combining the data on these tables with the trial conviction rate (table not shown, averages from 67% to 86% for most of these offenses), the percentage of pleas to the original charge can be calculated. The two sex offenses shown that have presumptive sentences for first offenders (Sex Assault I, and Sex Abuse I) have the lowest rates of pleas to the original charge(s): 9% and 26%, respectively. They also have the highest trial rates, 26% for Sex Assault I and 15% for Sex Abuse I, and a relatively high number of cases dismissed after filing (36% of Sex Assault I and 32% of Sex Abuse I).

Assault II and III combined have a rate of 27% pleas to the original charge. The difference between these offenses and those with a presumptive sentence for first offenders, however, is that instead of a high trial rate there is a very high rate of pleas associated with reduced or dismissed charges -- 40%. Drug cases and robbery cases each have a 34% rate of pleas to the original charge, but their patterns of disposition are somewhat different in other respects (more drug cases--37%--are dismissed after filing; more robbery cases--11%, compared to 6% of drug cases--go to trial).

The property offenses have the highest rates of pleas to the original charges, ranging between 47% for Theft II and 56% for Burglary II. They are also similar in other respects, with low trial rates (4% to 6%) and relatively few cases dismissed after filing (25% to 29%). Sex Abuse II is more similar in its pattern to the property offenses (45% of the offenders plead to the original charges; trial rate is 8%), than it is to other sexual offenses.

9. The percentage of offenders receiving a sentence that included time to serve appeared to decline between 1984 and 1987, for all offenses statewide (Table 28). More violent offenders were sent to jail (from 73% in 1984 up to 80% in 1987), but noticeably fewer drug offenders (68% down to 54%). Fairbanks had the lowest rates of incarceration of any location in the state, about 10 or more percentage points below the statewide averages. The Bush had higher rates of incarceration than average.

10. Mean sentences were highest for Sex Assault I offenders and lowest for Theft II. The variation in sentence lengths from year to year can probably be accounted for primarily by the fact that this table does not distinguish between offenders wtih prior felony records and those without. The sentences for Class B offenders were longer than those for Class C offenders. However, they were not twice as long (as might be expected from reviewing the case law and statutes) but only averaged from 40% to 70% longer.

11. Sexual Assault I offenses were the most serious of the offenses studied. Although Sex Abuse I offenses are treated the same as Sexual Assault I offenses in the statutes, in practice there are several differences. Sexual Assault I offenses are tried (overall) about twice as often as Sexual Abuse I offenses. Very few Sexual Assault I offenders plead guilty to the original charge(s). In general, the mean sentence of Sexual Assault I offenders is higher than that for Sexual Abuse I offenders. The two offenses are similar in the percentages of cases dismissed after filing and in the percentages of guilty or nolo pleas associated with reduced or dismissed charges.