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Even prior to the 1976 statutory time limitation on MDSO hospitalization, the average time of incarceration spent at the hospital by an offender was much less than that spent by his imprisoned counterpart. Professor George Dix of the University of Texas, who completed an in-depth study of Atascadero State Hospital in 1976, found "no extremely long-term detention" of MDSOs at Atascadero and concluded that hospitalized offenders "tended to spend significantly less time institutionalized than did similar offenders sentenced to imprisonment."[33] Dix's study revealed that approximately one-half of the Atascadero MDSOs were released within twelve months and none stayed as long as two years.[34]

Despite the fact that, in practice, hospitalization had already generally become the shortest route to freedom for convicted molesters who could not (as the vast majority did, receive probation, the Legislature had guaranteed this result in 1976.[35] Moreover, in 1977, the Legislature went even further by enacting an out-patient program whereby hospitalized sex offenders could be released into the community after three months in the hospital.[36]

Within approximately two years after California drastically modified its sex offender laws to preclude hospital confinement beyond the maximum allowable prison term and to allow out-patient release long before that time, several brutal murders committed by sex offenders who had been treated as MDSOs and released by hospitals served to focus attention on the issue of whether or not these laws provided adequate protection to society.[37] The most notorious of these, the case of

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ed trial by jury (if requested), the MDSO was proven beyond a reasonable doubt, to be dangerous he could be returned at the hospital for one more year. This process could be repeated yearly. In 1980, the Legislature allowed such extensions for two years at a time. David Guthman, the Los Angeles County Deputy District Attorney in charge of the section handling all MDSO extensions, reports that his office only handled one such extension during 1981. (A majority of all California sex crimes prosecutions usually occur in Los Angeles County.)

33. Dix, *supra* note 15 at 233.

34. *Id.* After 1976, the average length of incarceration at Atascadero increased to eighteen months by 1978 and to approximately two years by 1980.

35. Approximately two-thirds of all offenders convicted of felony child molestation were granted probation from 1977-1979. An even greater percentage of offenders convicted of misdemeanor child molestation were granted probation during this time frame.

36. CAL. WELF. & INST. CODE § 6316, 6325.1 and 6325.3 (West 1970).

37. A sample of only some of the Southern California murder convictions involving previously hospitalized MDSO's during this period of time: William Bonin (the "freeway killer") accused of killing 21 boys; Robert McFarland, who killed a six-year old boy; Richard Thomas, who killed a 14 year old girl; Rodney Alcala, who killed a 12 year old girl; Joseph Poggi, who killed a woman; and Theodore Frank (see text). Each of these 26 murders involved brutal sexual assaults and most involved extremely sadistic acts. These sample cases were obtained by a random review of some Los Angeles Times reports of

Theodore Frank, not only involved the gruesome death of a two-year old girl but also sparked the public movement to abolish the MDSO system.

## II. THE *FRANK* CASE

Theodore Frank came to California from Missouri in 1973, bringing with him a lengthy record of sex crimes against children. He had, after approximately fifteen arrests and seven convictions, been imprisoned twice and hospitalized twice. When he left Missouri, he was a fugitive from Illinois charges of crimes involving abducting children and then combining forcible sex acts with acts of extreme brutality on his victims.[38]

After the abduction and sexual attack (forced oral copulation) of a six-year old Bakersfield girl, Frank entered a guilty plea, pursuant to a plea bargain, to a charge of child molestation and was sent to Atascadero State Hospital in November, 1974, as a mentally disordered sex offender. At the hospital, he candidly discussed his exploits with the staff, relating, according to hospital records, that he had molested "probably 100 to 150 children. . .employ[ing] methods such as bondage. . .physically striking his victims and inserting various items in his female victims' vaginas . . .".[39] He also provided a detailed account of some of his crimes, including the insertion of a knife into an abducted four-year old girl's vagina. Discussing his previous hospitalizations, he "admitt[ed] that he manipulated both times to gain release."[40]

By 1977, the hospital staff considered Frank a model patient who had responded very well to various types of treatment. Consequently, the staff decided that he was no longer dangerous and should be granted early release under the newly-enacted out-patient program. After the hospital director wrote a letter to the Illinois authorities attesting to Frank's reformation, which prompted dismissal of all pending charges against him, he was released in January, 1978. Shortly thereafter, Frank was invited to visit the Atascadero institution as a guest speaker and excellent example of the efficacy of extensive therapy.

Southern California murders; more murders by previously hospitalized MDSOs almost certainly occurred during this time span. No effort was made to compile a list of the even more numerous non-fatal sexual assaults by MDSOs released from state hospitals.

38. The author, who prosecuted the *Frank* case in Orange County (after a motion for change of venue was granted), obtained information relating to this case in the course of the investigation and prosecution of Frank. Most of this information is contained in the court record of the case. People v. Frank, (Orange County Superior Court No. C-42956) (1980).

39. *Id.*

40. *Id.*



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Six weeks after Frank's release from the hospital, the nude body of a two-year old girl who had been abducted from the yard of her aunt's home in Camarillo was found next to a road in the Topanga Canyon area near Los Angeles. Forensic experts would later establish that she had been raped, sodomized, cut with a knife, mutilated by the removal of her nipples with a pair of locking pliers, (vise grips) while she was still alive, and had finally died of asphyxiation.

Frank was arrested four months later, after abducting, seriously molesting and brutalizing an eight-year old girl. He became a suspect in the murder of the two-year old girl and, after evidence was obtained linking him to the murder, he was convicted and sentenced to death in February, 1980.[41]

## III. The Citizen Reaction

Approximately one week after Frank's death sentence, citizens of the area where his murder victim had lived met and decided to form S.L.A.M. After substantial investigation, the group concluded that the MDSO system was ineffective in attempting to change the criminal behavior of molesters and in preventing the release of those molesters who were dangerous. S.L.A.M. also discovered that the vast majority of convicted molesters were placed on probation and that during 1977, 1978 and 1979 only approximately ten percent of convicted molesters were imprisoned (the average length of imprisonment was approximately three years in California).[42] A convicted rapist was four times more likely to receive a prison sentence than a convicted child molester.[43]

During 1980 and 1981, S.L.A.M. organized widespread support for the repeal of MDSO statutes and the enactment of laws which would prohibit probation in child molestation cases where either the seriousness of the offense[44] or the likelihood of repetition would justify lengthy imprisonment. Thus, S.L.A.M. proposed that prison (for a

41. Frank's appeal was argued before the California Supreme Court on June 2, 1982.

42. Information received from the California Department of Justice, Bureau of Criminal Statistics and Special Services. The Bureau reported that only 57 molesters were imprisoned in 1979, and even fewer were imprisoned in 1977 and 1978. While approximately fifteen percent of those persons convicted of felony child molestation were imprisoned, many (probably most) of the molesters who were convicted (almost always after a plea bargain) of misdemeanors were involved in precisely the same type of crime as the felons but could not be sent to prison.

43. *Id.*

44. *Id.* Imprisonment for forcible rape and violent child molestation had been mandatory in California since 1979. Cal. Penal Code § 1203.065 (Deering 1982).

three, six, or eight-year term)[45] would be mandatory in felony cases where the convicted molester either:

- -had been previously convicted of any sex offense (felony or misdemeanor); or
- -had engaged in "substantial sexual contact" (penile or object penetration of the vagina or rectum, oral copulation, masturbation) with a victim less than eleven years old; or
- -was a stranger who befriended or kidnapped the victim for the purpose of child molestation; or
- -occupied a position of "special trust" (e.g., coaches, youth activities personnel, teachers, counselors, doctors, religious leaders, foster parents) in relation to the victim; or
- -molested more than one victim; or
- -molested the same victim on numerous occasions; or
- -utilized undue influence, intimidation or coercion to accomplish his aims (making irrelevant, in these cases, the issue of "consent" where the victim's compliance was equivocal);[46] or
- -caused any physical or substantial psychological injury to the victim; or
- -used a weapon; or
- -used the victim in pornography or prostitution; or
- -made the victim available to engage in sexual activity or urged the child to engage in this activity.

S.L.A.M.'s proposed legislation also included provisions mandating a life term (without possibility of parole for twenty years) where the molester suffered a felony conviction and had two previous convictions or had one prior conviction and was previously convicted either of one of

45. The potential penalties were 3, 5 or 7 years when modified, effective January 1, 1982. *See*, CAL. PENAL CODE § 288 (Deering 1982).

46. Force or violence necessary to overcome an adult's will obviously is not necessary to secure a child's obedience to adult sexual demands. "Children are small and compliant . . . The authority and power of persuasion held by an adult are usually adequate to establish the sexual contact." D. FINKELHOR, SOCIAL FORCES AND FORMULATION OF THE PROBLEM OF SEXUAL ABUSE (1978). One expert has pointed out that

> The child has no power to say 'no' and has no information on which to base a decision. Since the long-term psychological effects are so uncertain and since the adult has such a vested interest in minimizing those risks, no modern concept of ethics, liability, or consumer protection could ever endorse such a lopsided contract. The child is just as powerless within the intimidating or ingratiating relationship as the adult rape victim would be at the point of a knife.

R. Summit, *Recognition and Treatment of Child Sexual Abuse*, to be published in 1982 in textbook PEDIATRIC CONSULTATION-LIASON PSYCHIATRY, (Hollingworth ed., Spectrum Publishers N.Y.).

Although the issue of consent does not pertain to a child for purposes of criminal culpability of the offender, entirely eliminating the issue in constructing mandatory imprisonment categories would make prison mandatory for all sexually motivated contact with a child. Many citizens would support legislation effecting this result. Considering the broad range of activity within the California definition of child molestation (*see*, note 5 *supra*), however, it seems clear that requiring imprisonment without any consideration of the circumstances would sometimes result in unnecessarily harsh sentences.

the mandatory prison molestation offenses or the present offense involved this conduct.[47]

Within one year after its formation, S.L.A.M. became an effective statewide coalition of concerned citizens of diverse political leanings. By utilizing the force of critical conclusions reached by noted psychiatrists and psychologists, the assistance of legal advisors, the publicity value of effective spokespeople from the entertainment field,[48] the advantage of sympathetic media exposure and, most importantly, the power of thousands of ordinary citizens, S.L.A.M. prompted the Legislature to action. After several legislative hearings, most of S.L.A.M. proposals were enacted into law. The MDSO program was abolished. Imprisonment of serious offenders and recidivists was mandated, but because treatment of fathers and step-fathers was regarded by many mental health professionals as potentially very successful, exemptions from some of the mandatory prison categories were allowed in cases where rehabilitation appeared feasible in family treatment programs.[49]

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47. The mandatory sentencing legislation ultimately enacted is described in note 49 *infra*. S.L.A.M. also originated or provided the primary support for legislation which allowed inspection of criminal records of applicants for positions of "special trust" (Cal. S.B. 277); extending the Statute of Limitations in molestation cases from three to six years (Cal. S.B. 276); and granting funds to police and prosecutors for specialized training and to counselling centers to assist victims (Cal. S.B. 588). All of these bills were enacted into law, effective January 1, 1982.

48. Noted actor Robert Vaughn and wife, Linda, became particularly active advocates of S.L.A.M.'s legislative efforts.

49. Imprisonment is now mandatory upon conviction where the molester

"(1) [Used] force, violence, duress, menace or threat of bodily harm.
(2) . . . caused bodily injury on the child victim . . .
(3) . . . was a stranger to the child victim or made friends with the child victim for the purpose of committing child molestation . . . unless the defendant honestly and reasonably believed the victim was 14 years old or older.
(4) . . . used a weapon during the commission of [the crime].
(5) . . . had a prior conviction of . . . [rape, rape by object, incest, child molestation, sodomy or oral copulation by force, assault with intent to commit these crimes or a conviction for prostitution offenses] . . .
(6) . . . kidnapped the victim for the purpose of committing (child molestation.
(7) . . . is convicted of molesting more than one victim at the same time or in the same time or in the same course of conduct.
(8) . . . has substantial sexual conduct with a victim under the age of 11 years.
(9) [is] A person who occupies a position of special trust and commits an act of substantial sexual conduct. 'Position of special trust' means that position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the victim. Position of authority includes, but is not limited to, the position occupied by . . . [an] adult youth leader, recreational director who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, or employer.
. . . 'Substantial sexual conduct' means penetration of the vagina or rectum by the penis of the offender or by any foreign object, oral copulation or masturbation of either the victim or the offender.

[Ca]l. PENAL CODE § 1203.066(a) and (b) (Deering 1982). Prison is also mandatory where the defendant "gives, transports, provides or makes available" a child to be molested or

## IV. MDSO-Sexual Psychopath Approach—An Analysis Of Its Failure

At first glance, California's large scale involvement in the sexual psychopath experiment might have seemed to be a balanced combination of attempts to rehabilitate while providing adequate protection to society. This conclusion, however, not only presupposes that certain sexual offenders are highly likely to continue their illegal behavior and should be kept away from potential victims for the duration of their dangerousness, but also necessarily assumes that these offenders:

(1) commonly share a definable well understood mental illness which causes this behavior;
(2) are "curable" to the extent that once treated, they will no longer engage in the conduct caused by illness;
(3) can be determined, with substantial accuracy, to be rehabilitated and no longer dangerous to others; and
(4) will be treated by those mental health professionals who best understand the illness, the cure and the means for determining that the offender is no longer dangerous.

By enacting sexual psychopath legislation implicitly based, at least in part, on these latter four assumptions, the Legislature necessarily presumed professional knowledge and expertise on the part of the mental health profession which simply did not exist.

Psychiatric criminology, whatever its merit, has no practical efficacy unless its premises—the correct definition of specific mental illnesses causing crime and mental treatment which effectively prevents recurrence of criminal behavior—are established. Many leading mental health experts now conclude that the child molester is somewhat of an enigma and that the psychiatric solution to this perplexing problem is not currently available. Although the solution was not available, the MDSO concept assumed the opposite. Lacking concrete solutions, the administrators of the program were compelled to settle for the search for these solutions as an adequate response to the problem. Speculative theory was substituted for practical knowledge and the distinction between experiment and proof was often overlooked.

Although much has been written about child molesters, the literature in this area usually suggests, but does not establish, the validity of various hypotheses—an inevitable result of limited research and, sometimes, faulty assumptions by analysts. A sexual psychopath program based on scant knowledge arguably might be tolerable only if its inade-

"causes, induces or persuades" a child to engage in sexual acts with another person in violation of § 288 or who uses a child in prostitution activities, in making pornographic materials or in performing sex acts in public. CAL. PENAL CODE § 1203.065 (Deering 1982). *See also*, §§ 266h, 266i, 266j, 311.4(c).

quacies did not exacerbate the exceptionally serious problem which child molestation presents for society.

### *A. The Child Molester*

The stereotype of the molester as a mysterious stranger who engages in fleeting, non-harmful, touching of children generally is not accurate. Although minimal reporting of child molestation makes accurate classification somewhat uncertain, it appears that almost one-third of molesters are strangers to the victims,[50] more than one-third are non-family members known to victims (neighbors, friends, coaches, youth workers, teachers, doctors, etc.)[51] and almost one-third are family members (step-fathers, natural fathers, "live-in" boyfriends of the victim's mother, other relatives).[52]

Although broad legal definitions of child molestation sometimes may encompass other offenders, many molesters are "pedophiles"[53] whose sexual orientation cannot be realigned by any known method of treatment. Most pedophiles will engage in their preferred sexual activity throughout their lifetimes. The results are often devastating. Victims who have been subjected to substantial sexual contact frequently suffer long-term psychological harm and may become molesters or other types of criminals. These facts should be of paramount significance in assessing whether or not long-term segregation of molesters

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50. A retrospective study of 795 college students revealed that in cases where the females had been sexually victimized during their childhood, the offender was a total stranger in 25 percent of the cases. (a higher percentage for boys). Finkelhor, *Risk Factors in the Sexual Victimization of Children* in SEXUALLY VICTIMIZED CHILDREN. A study of more than 2,000 molested children in Philadelphia revealed that the molester was unknown to the victim in 22% of the cases. Peters, *Children Who Are Victims of Sexual Assault and the Psychology of Offenders* 30 AMER. J. PSYCHOTHERAPY 398, 416 (1976). Twenty-nine percent of 148 convicted molesters in a Massachusetts study were complete strangers to the victim. Groth *et al. A Study of the Child Molester: Myths and Realities*, 41 LAW J. OF THE AM. CRIM. J. ASSOC. 17 (Spring 1978). A British study of convicted molesters, however, revealed that a majority were strangers to the victim and the vast majority of male victims were molested by strangers. McGeorge, *Sexual Assault on Children*, MEDICINE, SCIENCE AND LAW 250, 252 (1964).

51. One extensive study revealed that 59 percent of more than 2,000 victims were molested by a man who was known but not related to the child. Peters, *supra*, note 50 at 416.

52. *See e.g.* McGeorge, *supra* note 50 at 252. Finkelhor reported that 22% of the female college students who had been molested as children were victimized within the nuclear family. Finkelhor, *supra* note 50. Only 14 percent of convicted molesters in a 1978 Massachusetts study were members of the victim's immediate family. Groth, *supra* note 50 at 18. It can be argued that molestation within the family is more likely to be "hushed up" than other types of molestation. On the other hand, since molestation within the family commonly involves repetitive victimization over a long period of time, it is conceivable that the child's need to escape recurring molestation might make this type of victim more likely than other victims to report molestation

53. *See infra*, page 66

who engage in serious sexual contact with children or who repeat their crimes, and extensive treatment for their victims present preferable alternatives to ineffective hospitalization and early release of molesters.

### *B. The Frequency Of Child Molestation*

It appears that no more than six percent of child molestations are reported to law enforcement.[54] Moreover, even this "tip of the iceberg" is virtually impossible to quantify since neither the Federal Bureau of Investigation nor many of the State agencies which compile criminal statistics report this offense in a separate category. Nevertheless, retrospective studies of groups of adults who are asked to confidentially report whether or not they were sexually victimized as children indicate that "between ¼ to ⅓ of our entire population has been sexually exploited while growing up."[55] It is probable that more than one-half of the victims are under the age of ten.[56] Although molestation of boys is much less frequently reported than that of girls, there is evidence that boys are in fact molested nearly as often as are girls.[57] If only the most substantial molestations (e.g., assault, intercourse, sodomy, oral copulation) are considered, some studies support the conclusion that boys actually may be seriously victimized more often than girls.[58]

It is quite possible that molesters almost exclusively come from the ranks of boys who were themselves molested. Many molesters eventu-

54. Summit and Kryso, *Sexual Abuse of Children: A Clinical Spectrum*, 48 AMER. J. ORTHOPSHCHIATRY, 238 (1978).

55. Swift, *Research Into Violent Behavior: Overview or Sexual Assaults, Hearings Before House Subcommittee on Domestic and International, Scientific Planning, Analysis and Cooperation*, 95th Cong. 2d Sess. 352 (1978). It has been estimated that perhaps twenty-eight million of our male and female population will experience a sexual encounter with an adult during childhood. F. RUSH, THE BEST SECRET: SEXUAL ABUSE OF CHILDREN (1980). Kinsey found after interviewing 4,000 women that 25 percent of them had been sexually victimized by an adult before age thirteen. A. KINSEY, SEXUAL BEHAVIOR OF THE HUMAN FEMALE, 121 (1953).
One analyst concluded that one-half million children were molested each year. Chanales, *Child Victims of Sexual Offenses*, 31 FED. PROB. 52 (1967). Another study concluded that, in 1965, 2 million American families concealed the crime of incest alone. AMIR, THE ROLE OF THE VICTIM IN SEX OFFENSES IN SEXUAL BEHAVIOURS: SOCIAL, CLINICAL AND LEGAL ASPECTS, 135 (1972). *See generally* R. GEISER, HIDDEN VICTIMS: THE SEXUAL ABUSE OF CHILDREN 75 (1979); Landis, *Experiences of 500 Children with Adult Sexual Deviation*, PSYCHIATRIC QUARTERLY SUPPLEMENT 30, 91-109 (1956).

56. Almost one-half of the reported cases involve victims less than eleven years old. Geiser *supra* note 55. Since young children are relatively unlikely to understand that they have been victimized or, in the case of infants, to even communicate this fact, these cases are rarely reported. It is, therefore, likely that there are far more victims under the age of ten than are apparent from the statistics relating to reported cases.

57. Swift, *supra* note 55; Geiser, *supra* note 55.

58. Swift, *The Prevention of Sexual Child Abuse: Focus on the Perpetrator*, J. OF CLINICAL CHILD PSYCHOLOGY, 134-135 (1979).

ally victimize a large number of children. Thus, the number of molesters and molested children most likely increases geometrically each year so that the previous estimates soon become obsolete.

### C. *The Serious Effects Of Child Molestation*

It is now generally accepted that an adult rape victim is often severely traumatized by the event and that it is not uncommon for the resulting psychological scars to seriously affect the victim throughout her life. Molestation which involves sodomy, oral copulation, intercourse and/or masturbation, particularly where very young children or repeated incidents are involved, is often the functional equivalent of rape. The children who are victimized in these types of cases are more likely than women to be at a state of psycho-sexual development where trauma from substantial sexual contact might have severe and long-lasting effects. Our laws, sentencing practices and even methods of gathering crime statistics often do not adequately reflect this view of the relative seriousness of child molestation. Most states provide for significantly more lenient punishment for child molesters than for rapists. The vast majority of states and the Federal Bureau of Investigation do not list child molestation in their indexes of "serious" crimes. Statistical bureaus in many states virtually ignore this serious crime by not even considering child molestation as a separate crime category.

Child molestation is similar to rape in the nature of the activity involved, the motivations of the offender and the serious effects on victims. One distinguishing factor, however, is that unlike rape, child molestation frequently involves victimization by a parent or step-parent.[59] Molestation by a parent or step-parent is often more traumatic to the child than many of the cases involving non-family molesters. In the latter case, sexual contact may consist of a single event; in the former it often involves repeated instances of sexual abuse for a child who is being harmed by the person whom he or she loves, trusts and has learned to regard as protector.[60] Nor is molestation by a parent or step-

59 *See*, Swift, *Sexual Victimization of Children: An Urban Mental Health Center Survey*, VICTIMOLOGY: AN INTERNATIONAL JOURNAL, 322-27 (1977); DeFrancis, *Protecting Child Victim of Sex Crimes Committed by Adults*, 35 FED. PROB. 17 (1971).

60. "Sexual relations with a parent are regarded as potentially more traumatic than sexual relations with a stranger. . . . [An] ongoing sexual relationship with a victim involving repeated contacts over a period of time is seen as potentially more traumatic than a single instance of sexual contact." Groth, *Guidelines for the Assessment and Management of the Offender* in SEXUAL ASSAULT OF CHILDREN AND ADOLESCENTS, 28 (1978). *See also*, Peters, *supra* note 50; Geiser, *supra* note 55 at 30, 46-47. The typical incest case involves approximately two years of constant sexual activity and the psychological effects on the child are "usually devastating." Id. at 46-47.

parent an act of love or tenderness. Parental sexual abuse, like rape, is often motivated, at least in part, by desire to control sexually, to dominate, humiliate, and degrade.[61]

It should not be surprising that molested children often become "psychological time bombs," suffering from: "self-hate, self destructive, anti-social behaviors, substance abuse, runaway tendencies, prostitution, somatic complaints, sexual dysfunctions, hysterical seizures, dissociative disorders including multiple personality states and homicidal frenzies, affective disorders and schizophrenia."[62]

The conclusion that most victims of child molestation are affected more severely by the crime than are the victims of most crimes is supported by distressing statistics relating to these victims. Studies have revealed that a majority of prostitutes were molested as children.[63] Female molestation victims often become drug abusers: studies have indicated that anywhere from forty-four to eighty percent of these drug abusers were molested during their youth.[64] Not surprisingly, a large proportion of female patients in mental hospitals were molested as children.[65] One researcher has estimated that "upwards of 80 percent of the kids at Juvenile Hall had been sexually molested regardless of the reason that placed them there."[66] Some opponents of lengthy incarceration of molesters who imply that this activity is generally not very harmful to children are apparently overlooking the evidence of the human devastation wrought by the molester on his victim.

Although victims of serious child molestation are often harmed more severely than victims of almost any other crime, perhaps the most frightening consequences of this behavior are found in the potential for harm to persons other than the immediate victims. The most shocking statistic of all is the probability that the overwhelming majority (75% according to one study)[67] of child molesters (and most rapists) reported that they were molested during their childhood.[68] If the statistics documenting prior molestation of men who become molesters are accurate,

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61. *See, e.g.*, Summit & Kryso, *supra* note 54 at 240-241; Summit, testimony at hearings before the California Assembly Committee on Criminal Justice at 83 (1980).

62. R. Summit, *Recognition and Treatment of Child Sexual Abuse*, *supra* Note 46.

63. S. FORWARD AND C. BACH, BETRAYAL OF INNOCENCE, 23 (1978). *See also*, Rush, *supra* note 55.

64. *See, e.g.*, Forward and Bach, *supra* note 63; *see also* Benward & Gerber, *Incest as a Causative Factor in Antisocial Behavior: An Explanatory Study*, 4 CONTEMP. DRUG PROB. 323-340 (1975).

65. Summit & Kryso, *supra* note 54 at 248.

66. Remarks of Dr. Pasco, Professor of Pediatrics at the University of California, reported by Rush, *supra* note 55 at 5.

67. Serrill, *Treating Sex Offenders in New Jersey*, 1 CORRECTIONS 13-24 (1974).

68. *See, e.g.*, Swift, *supra* note 57 at 113-135; Geiser *supra*, note, 55 at 32, 89-91, 160.

the release of molesters to again molest *might actually guarantee an incessant increase, of geometric proportion, in the number of child molesters.* Any program designed to reduce the apparently increasing frequency of child molestation must confront and deal with this frightening phenomenon.

Female victims also may later victimize children. Some studies have strongly indicated a potential correlation between child molestation of females and physical child abuse by these victims in later life. One study, for instance, revealed that ninety percent of the female abusers analyzed were molested as children.[69]

### D. *The Mental Condition of the Child Molester*

Since no mental characteristics are uniform among child molesters, the designation of this type of offender as a "sexual psychopath" is essentially mythical. After an exhaustive study of sexual psychopath programs, 300 prominent psychiatrists, the Group for the Advancement of Psychiatry, concluded that

> [t]he notion is naive and confusing that a hybrid amalgam of law and psychiatry can validly label a person as a "sex psychopath" or "sex offender" and then treat him in a manner consistent with a guarantee of community safety. The mere assumption that such a heterogeneous legal classification could define treatability and make people amenable to treatment is not only fallacious; it is startling. It is analagous to approaches that would create special categories of "burglary offender" statutes or "white collar" offender statutes and then provide for special commitments, much as to burglary psychopath hospitals.[70]

It is far from surprising to learn that people who are repelled by the idea of sexual relations with children easily assume that child molesters are "sexual psychopaths" who are obviously mentally ill. To assume otherwise might tend to lessen our high regard for the essential goodness of mankind. Psychiatrists, however, now recognize that "few sexual offenders against children are demonstrably psychotic in any apparent way."[71] Child molestation probably does not even stem from any mental abnormality in the medical sense. One commentator has noted

> The view that sexual crime is usually the expression of mental abnormality is often incorrect—although the intensity of the sexual urge is sometimes sufficient to cause the sexual offender to defy the

69. Summit & Kryso, *supra* note 54 at 248.

70. Group for the Advancement of Psychiatry, *Psychiatry and Sex Psychopath Legislation: The 30's to the 80's*, 935 (MENTAL HEALTH MATERIALS CENTER, N.Y. 1977).

71. Groth, *supra* note 60 at 30. *See also*, Henn *et al*, *Forensic Psychiatry: Profiles of Two Types of Sex Offenders*, AMER. J. OF PSYCHIATRY 694 (1976).

> penalty he may incur, the same choice is made by many thieves and fraudulent persons and by many aggressive offenders who are rightly held to be responsible. It is unfortunate that academic theorists whose knowledge is culled from books and not from experience are not aware of these simple facts.[72]

In 1976, Professor Dix's study of hospitalized molesters at Atascadero State Hospital led him to conclude that "very few of the traditional clinical symptoms associated with serious mental illness were apparent"[73] in these cases. A similar conclusion was reached by the director of Wisconsin's sexual psychopath program, the program more extensively utilized than programs of any other state except California.[74]

Many child molesters are labelled as "pedophiles," a designation which is probably not much more precise or meaningful than "mentally disordered sex offender." The American Psychiatric Association has described pedophilia in a rather circular manner as ". . . a sexual deviation involving the use of children for sexual purposes"[75] and more recently as ". . . the act or fantasy of engaging in sexual activity with prepubertal children as a repeatedly preferred or exclusive method of achieving sexual excitement."[76] While classifying pedophilia as a personality disorder, the Association notes that it is characterized by behavorial patterns "perceptively different in quality from psychotic and neurotic symptoms."[77]

The causes of pedophilia are not known. As one expert concludes, "theories of etiology remain diverse and controversial."[78] Some commentators theorize that something initially causes many pedophiles to develop an intense fear of rejection and humiliation, in turn causing them to focus attention on children as a safe means of meeting sexual needs.[79] To the extent that this theory seems to emphasize choice in selecting sexual objects according to their seeming availability rather than on compulsion stemming from a sexual orientation and desire to

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72. McGeorge, *supra* note 50 at 250 (quoting Norwood East).

73. Dix, *supra* note 15 at 236.

74. *See, Comment, Repeal of the Wisconsin Sex Crimes Act*, 1980 WIS. L. REV. 941, 970 (1980). Wisconsin abolished its sexual psychopath laws for reasons somewhat similar to those which motivated the California Legislature's action.

75. AMERICAN PSYCHIATRIC ASSOCIATION, A PSYCHIATRIC GLOSSARY 90 (1969).

76. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, 271-72 (1980).

77. American Psychiatric Association. Diagnostic and Statistical Manual of Mental Disorders, 41, 44 (1968).

78. Summit, *supra* note 46; *See also*, Rosenfeld, *Sexual Abuse of children*, J. OF THE AMER. MED. ASS'N. 43 (1978).

79. *See, e.g.*, Peters, *supra* note 50. *See also*, DIAGNOSTIC AND STATISTICAL MANUAL, *supra* note 76 at 271.

dominate, it might not be entirely realistic. It is difficult to perceive that these offenders basically have a strong desire for sexual relations with adults, as do "normal" men, but reluctantly turn to otherwise abhorrent sexual contact with children because of their lack of courage to satisfy their real preference for adult relationships. Similarly it may be somewhat simplistic to conclude, as some analysts apparently have, that since molesters, like rapists, often are men who have a great need, due to impaired masculinity, to dominate, humiliate and degrade others, this desire is the cause of pedophilia. This view of pedophilia does not satisfactorily explain how subjecting children to sexual victimization restores a sense of masculinity nor why acts which normally appear to be repugnant are selected as an outlet for frustration.

The fact that the vast majority of molesters apparently were themselves molested most likely provides a substantial clue as to a cause of pedophilia, but nobody fully understands why this traumatic event might lead the victim to become an offender.

Searching for causes of pedophilia assumes that "something went wrong" which brought about this mental state. Yet, although it is somewhat frightening to consider, perhaps we should confront the possibility that, like heterosexuality and homosexuality, pedophilia is neither a disease nor a mental abnormality; it may simply be a permanent sexual orientation. This orientation may have developed, in part, as a consequence of the early victimization of the offender, but, once established, it may not be any more subject to realignment than heterosexuality, homosexuality or any other sexual orientation.

### E. *"Curing" Molesters*

Since nobody has established with any substantial degree of certainty what it is that causes a person to molest children, it would not appear likely that a cure for that which is unknown can itself be known. So little is now known about pedophilia that it is far from certain that a demonstrably effective cure will ever be developed. If pedophilia is a basic sexual orientation, "curing" pedophilia might be as improbable as "curing" heterosexuality.

Psychiatrists now widely agree that early claims that treatment of pedophilia was effective were unfounded. The Group for the Advancement of Psychiatry concluded that ". . . [a]t one time, pedophilia was thought to be highly treatable; in retrospect, this optimism appears to have confused social policy needs with actual therapeutic effectiveness."[80]

80. Group for the Advancement of Psychiatry, *supra* note 70 at 871.

Few knowledgeable psychiatrists now claim that they can "cure" sexual offenders. Despite widespread early optimism in the profession, some psychiatrists took a more cautious approach. One warned that

> [t]he difficulty is that we have no way of successfully treating the sexual psychopath. Cures, if any, must be extremely rare. The demand, therefore, that these offenders be "treated" is a sterile one. Why do we want jurisdiction in these cases transferred from the courts to the psychiatrists? It looks as if we have talked ourselves into the privilege of holding the bear by the tail.[81]

Unfortunately, not all psychiatrists subscribe to such modest views. Many, while abandoning claims that cures are available, contend that to concede that sexual preference cannot be realigned does not mean that treatment cannot deter the offender from giving in to his fundamental and strong compulsion for sexual relations with children. Perhaps overlooking the inescapable conclusion that it must be eminently less difficult to talk a burglar, robber or check forger out of his way of life than to convince a man to forego action impelled, at least in part, by one of the strongest impulses known—the instinctual urge for sexual relations—these psychiatrists provide the primary support for statutorily sanctioned treatment for pedophiles in lieu of incarceration.

Some mental health professionals prefer distinguishing the "fixated" (generally unamenable to treatment) from the "regressed" (sometimes amenable to treatment) pedophile, the former designated as a life-long pedophile, the latter, a person not uncommonly a father or step-father[82] with a "normal" sexual orientation who turns to children usually somewhat late in life, due to stress, a feeling of powerlessness or other factors.[83] It would appear that there are problems in attempting to sort out these two categories—do we take the pedophile's word that he never did it before?[84] Although the assumption that many "normal" men would turn to pedophilia under stressful conditions may be questionable, this categorization has many prominent adherents. Not all of these professionals agree, however, on the extent to which even supposedly "regressed" pedophiles are amenable to treatment, and it is important to recognize that whatever degree of unanimity exists among those

81. H. Davidson, quoted in LAW OF CRIMINAL CORRECTION 479 (1973).

82. "Incest" offenders may be "fixated" or "regressed." Separate categorization of them as simply "regressed" offenders, in general, might sometimes reflect undue optimism by family therapists. *Cf.*, Summit & Kryso, *supra* note 54 at 241-47 (listing ten different behavioral categories relating to these offenders).

83. *See*, N. GROTH, PATTERNS OF SEXUAL ASSAULT AGAINST CHILDREN IN SEXUAL ASSAULT OF CHILDREN AND ADOLESCENTS *supra* note 60 at 6-11.

84. "[The] clinical specialist has no power to penetrate a man's deliberate lie, no power to diagnose behavior that a man chooses to conceal." Summit, *supra*, hearings, note 61 at 80.

who argue the treatability of any sex offender, little unanimity exists in regard to the appropriate method of treatment.

Methods of treating sex offenders, like the theories on which they are based, are diverse, often controversial and sometimes seemingly bizzare. Hospitals and other treatment centers commonly utilize therapy by discussion, in a group and/or in an individual setting. Depending on the assessment of the offender (and, usually, the beliefs of the therapist as to which type of therapy he or she favors) various other treatment approaches may be utilized. Behavioral modification may be attempted by involving the molester in "role-playing" (attempting to teach appropriate behavioral responses),[85] "assertiveness training" (attempting to teach purposeful assertive social responses) and/or "aversion therapy" (electric shocks or noxious odors viewing child pornography). "Rehabilitation therapy" (which in the California hospital system usually entailed playing softball, dancing and weight lifting), vocational therapy and hypnosis are also utilized in the attempt to change sexual preference. Various combinations of these methods were employed in rendering treatment to California's MDSOs.[86] After more than forty years of experimentation, the MDSO system failed to produce substantial evidence that these treatment methods were successful. In fact, the available evidence strongly indicates that no known method of therapy has any significant effect on the sexual preferences of child molesters.[87]

The treatment methods utilized are not analogous to medical prescriptions. Even their practitioners shy away from claiming that their favorite methods are known to effect cures. These methods are com-

85. This type of therapy encompassed "outings" arranged by staff members of Patton State Hospital (where some of California's MDSOs were housed), during which unsuspecting women and children were contacted by sex offenders. After newspaper accounts of convicted rapists dancing with women and engaging in other social contacts with them and after numerous escapes during these outings, this type of "role-playing" therapy was discontinued in late 1981.

86. Theodore Frank was involved in almost all of these programs while hospitalized and the staff considered this treatment to be very successful in his case. After Frank's release, his out-patient therapist added a new type of therapy by suggesting that he should get interested in "swinging" activities. In a letter to the sentencing judge after Frank's mid-1978 abduction of an eight-year-old girl, Frank's wife bitterly complained about this suggestion.

87. Although "incest offenders" do not fall into one homogenous behavioral category (*see supra* note 82) and despite the fact that many of these offenders are involved in frequent repetitive victimization of children over a period of years (Geiser *supra* note 55), they are now regarded by many therapists as unlikely to repeat their conduct after treatment. *See* Giaretto & Sarot, *Coordinated Community Treatment of Incest* in SEXUAL ASSAULT OF CHILDREN AND ADOLESCENTS, 231, 233 (1976); Giaretto, *Humanistic Treatment of Father-Daughter Incest* in CHILD ABUSE AND NEGLECT, (1976). This contention, however, has yet to be proven.

monly used not because they are generally known to be highly effective, but in order to discover if they *might* be effective (and perhaps because giving no treatment at all might represent to some psychiatrists an admission of failure).[88]

The lack of a specific effective treatment method for sex offenders and the diversity of the highly theoretical methods utilized belie the contentions that these offenders share a common mental illness and that any method has been proven to be effective in most cases. The argument is sometimes presented that the treatment of sex offenders is analogous in a sense to treatment of cancer patients which, although it often fails to cure, is better than nothing. This argument ignores the distinction that while non-successful cancer treatment cannot increase harm to society, treatment which replaces or lessens the sex offenders separation from his victims does just that. Innocent carriers of serious contagious diseases are not free to mingle with those they may harm after experimental treatment which is not guaranteed to succeed. Why should those sex offenders who present a substantial risk of significant harm to particular vulnerable potential victims be singled out for this largesse? Nobody has presented a convincing argument that allowing the freedom of sex offenders because of treatment which has not been demonstrably proven to be successful is consistent with society's paramount need to protect children.

Even if a cure were available, its effectiveness would probably be limited to a pedophile who requested and desired it. Pedophiles, however, do not voluntarily request treatment.[89] They are not motivated to change their behavior by pangs of conscience. "Genuine remorse or shame is uncharacteristic"[90] of the pedophile. Almost all pedophiles who have been given treatment have been offenders who never sought psychiatric help but accepted treatment in order to avoid incarcera-

88. "Most, if not all, of the treatments offered for sex offenders can be considered 'experimental'." Group for the Advancement of Psychiatry, *supra*, note 59 at 870.

The recently stated position of the California Psychiatric Association reflects the frustration of many psychiatrists in dealing with sexual offenders:

> [We] . . . don't know of a specific treatment for a sexual psychopath. If the person is mentally disordered because of schizophrenia, we can treat that with medication. If he's mentally disordered because of a manic depressive illness, we can treat that with specific medication. If he's depressed we can treat that. But if his propensity to offend children is based on some personality quirk or disturbance, we don't have a specific treatment.

Testimony of Dr. Captane Thompson, Director of Mental H[illegible], Yolo County, representing the California Psychiatric Association at hearings, *supra* note 61.

89. Groth reports that "[i]t is significant that in over twelve years of work in this field, we have yet to encounter a single case of self-referral on the part of a child molester." Groth, *supra* note 60 at 32. *See also*, McGeorge *supra* note 50.

90. Groth, *supra* note 60 at 23.

tion.[91] The cathartic effect of complete confession and a genuine desire to change, usually considered as essential prerequisites for effective treatment, are absent in most cases involving pedophilia.

Even those who do not perceive that treatment is generally ineffective in changing the sex offender into a law-abiding citizen, should recognize that the treatment they have in mind usually is not available either in or out of an institution. Although treatment in lieu of incarceration is frequently ordered by courts, relatively few psychiatrists specialize in this area. The meager facilities that exist are almost always understaffed and underfunded.[92] If a psychiatrist or psychologist wishes to work at a state hospital, he will make much less money than elsewhere, will discover that these hospitals are often located in undesirable or remote areas and that his work load does not allow for adequate opportunity to render more than superficial treatment.

In 1978, only three psychiatrists and two psychologists were on the Atascadero staff to treat 1,000 patients.[93] At Patton State Hospital, 200 MDSOs convicted in California were treated by one psychologist who later observed. . ."I don't know how you call that treatment."[94] At these hospitals, social workers and "psychiatric technicians" (who often did not have a college degree) either made or significantly affected all of the important decisions: who was treatable, what type of treatment should be utilized and whether or not offenders would be released as no longer dangerous. This system did not come cheaply; by 1980, the average yearly cost per MDSO patient was $30,000 (now more than $35,000), while the yearly cost for imprisonment at the psychiatric facility in Vacaville was $16,000.[95] Similar disparity existed elsewhere. In Maryland, for example, hospital commitment for offenders cost five times as much as imprisonment in 1970.[96]

Those adherents of treatment who contend that the problems of

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91. "In most cases, the offender is not someone who is complaining about his own behavior. He may be upset about some of its consequences, but the behavior is sufficiently rewarding so that it is perpetuated or resorted to when he is under stress . . . [t]here has often not been an acceptance within himself that something really does need changing with respect to his sexual proclivities. . . ." Group for the Advancement of Psychiatry, *supra* note 70 at 884-885.

92. "Successful treatment is beyond the capability of most public welfare agencies or others to whom sexual abuse is reported." D. WALTERS, PHYSICAL AND SEXUAL ABUSE OF CHILDREN: CAUSES AND TREATMENT, 111 (1975).

93. Emmons, *Sex Offenders: A Problem in Search of a Solution*, Los Angeles Times, (Orange County ed.) 2-5 (August 27, 1978).

94. Testimony of Dr. Steven Morgan (see Hearings, *supra* note 51 at 13[illegible].

95. Harrigan, *State's Program to treat Sex Offenders Faces Scrutiny of Courts and Legislators*, Los Angeles Times 30 (April 3, 1980).

96. *See*, Tippit v. State, 436 F.2d 1153, 1157 (1971).

the system should be solved by devoting more enormous sums of money to training and treatment while the treatment has yet to be specified and has not been shown to be highly successful should reconsider their position in light of current and foreseeable financial realities. An honest appraisal of the alternatives should lead to the conclusion that, in light of the potential negative consequences to society, long term segregation of sex offenders who are likely to repeat their crimes is far better than granting them freedom.

### *F. Recidivism*

The question of whether or not a criminal has repeated his crime cannot be answered in the negative unless there is an effective way to determine the fact of repetition. Since more than ninety percent of all child molestations apparently go unreported and those that are reported sometimes do not involve an arrest and often do not lead to a criminal conviction, any reliance on statistical evidence of recidivism confined to criminal convictions or even arrest records is certainly erroneous.[97] Nevertheless, advocates of treatment for molesters sometimes rely on this method of reporting to justify claims that treatment reduces recidivism.

In addition to the guaranteed gross inaccuracy of the "conviction" or "arrest" method of measuring recidivism, most studies which are based on this method are flawed by limiting the time span for recidivism to a very few years. It is also frequently overlooked that, once convicted and placed in an environment with other molesters, the offender may learn sufficient caution to decrease the risk of further apprehension.[98]

There are many common threads in criminal investigations and prosecutions of child molesters which affect the statistics relating to this crime. The molester escapes arrest because the child either does not report the crime, or the child and parents, wanting to forget the horror of the event, refuse to cooperate in the investigation or prosecution. Reporting failure may also result from the severely traumatized condition of the child, the age disqualification of the victim (few children under age six are allowed to testify[99]), the apparently inconsistent story

97. Determining the incidence of those types of criminal acts which are seldom reported by counting arrests or convictions is irrational. No one claims that the amount of drunk driving, tax evasion or drug possession convictions, for instance, meaningfully reflects the number of times that these criminal acts actually occur.

98. *See*, Summit, hearings *supra* note 61.

99. A child may be deemed incompetent to testify unless a judge, usually after a hearing, determines that the child understands the meaning of an oath and has sufficient capacity

of the frightened victim (although children very seldom fabricate this type of story[100]), or, intimidation by the molester (particularly in cases where the offender is a family member[101]). The molester who has been arrested, assuming he is then represented by a competent attorney, will not infrequently succeed in obtaining a plea bargain involving a guilty plea to a non-sexual crime (e.g., false imprisonment, assault, battery, contributing to the delinquency of a minor, or even disorderly conduct) in order to avoid notoriety, registration as a sex offender, or incarceration. Consequently, this conviction will not be realistically appraised in recidivism studies which are based on criminal records. The few child molesters who must stand trial almost invariably accuse the victims of lying and, through their attorneys, subject the confused, frightened child to searching cross-examination, and thus may avoid conviction, although guilty. Because these factors lead to results which may incorrectly reflect the truth about a molester's activities, they tend to skew even those scanty statistics relating to the fewer than ten percent of incidents reported.[102]

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to perceive, recollect and communicate. *See generally*, PARKER'S EVIDENCE CODE OF CALIFORNIA, LAW REVISION COMMISSION COMMENT, § 701.

100. "[I]t is exceedingly rare for a child to falsify a sex report." F. INBAU & J. REID, CRIMINAL INTERROGATIONS AND CONFESSIONS 111 (1976). "[C]hildren cannot and do not make up stories outside the realm of actual experience." Rush, *supra* note 55, at 156.

101. Since they necessarily are based primarily on either the molester's volunteered confession or on reporting by a child fully aware that previous disclosure led to the offender's return to the family to molest again, statistics relating to the recidivism rate of incest offenders should be viewed even more warily than those relating to other offenders.

102. Although it is inconceivable that low re-arrest rates for convicted and treated "incest offenders" provide significant evidence that treatment of these offenders is effective, it is conceivable that *some* types of incest offenders actually do have a low recidivism rate, at least during and shortly after treatment. Whether or not this is due to treatment or to other factors is debatable. Some, perhaps many, incest offenders either do not dare or do not desire sexual contact with children outside their home. If this type of molester is apprehended and fears reporting by the child (who may be periodically questioned by probation, police or mental health officials), rejection by his wife and/or imprisonment for his second conviction, he may be subjected to greater restraining influence than other types of molesters who correctly consider the risk of apprehension and imprisonment to be minimal. Treatment programs for incest offenders, however, are now viewed by many with great optimism, in large part because the administrators of these programs claim that the relatively small amount of reported cases of incest offenders who repeat their crimes during or shortly after treatment indicates that the programs are successful. These "family treatment" programs are relatively new, and thorough objective investigation of their long-term effectiveness apparently is non-existent.

"Incest offenders" is not a separate homogeneous behavioral classification. Even if, however, it logically could be regarded as a somewhat homogeneous group, it remains to be seen if this group actually has the low recidivism rate claimed and, if so, whether this is due to the long-term effects of treatment or to a combination of the (often temporary) practical unavailability to the molester of alternative victims and the deterrent effect of his perception of the increased probability of apprehension and incarceration upon reoffense.

The conclusion that pedophiles often engage in their illicit activity without detection is not based on mere speculation. For instance, Professor Dix's Atascadero study revealed that almost eighty-five percent of the hospitalized child molesters admitted to prior separate undetected molestations. Nonetheless, two-thirds of these molesters were officially considered to be first-time offenders.[103] Not surprisingly, Dix concluded that the lack of criminal convictions for child molestation "is a poor indicator" of incidents of this crime.[104]

The actuality of recidivism almost certainly dwarfs statistical reports in this area. Since pedophilia is a self-reinforcing lifestyle producing satisfaction to the pedophile, repetition increases the probability of repetition.[105] Pedophilia is probably as potent a compulsive force as other sexual orientations. Thus, some pedophiles admit to molesting hundreds, even thousands of children. Estimates, by experts on the subject, concluding that recidivism among child molesters is at least five times greater than is reflected in official criminal records may indeed be conservative.[106]

Even the most recent statistical study of post-treatment criminality conducted by Atascadero State Hospital tends to confirm an exceptionally high rate of recidivism among pedophiles. This study revealed, in the words of one commentator, that "an astonishing 55% of MDSOs released were subsequently *convicted* of a new crime against the person"[107] during less than five years after treatment and release. This percentage becomes even more "astonishing" when considered in conjunction with the previously cited estimates that less than 10 percent of molestations are reported and even fewer lead to convictions. Considering the factors which make it virtually certain that conviction statistics reflect only a small portion of actual recidivism and also considering the relatively short time that the offenders were at liberty, it is not unthinkable that 55% may translate into almost 100% actual recidivism during these offenders' lifetimes.

An interesting but inconclusive method of judging recidivism from statistics involves comparing detected recidivism of previously hospitalized molesters with that of previously imprisoned molesters. One study

103. Dix, *supra* note 15 at 236-37.

104. *Id.* at 236.

105. Groth, *supra* note 60 at 26.

106. A. GROTH & B. LONGO, UNDETECTED RECIDIVISM AMOUNG RAPISTS AND CHILD MOLESTERS 23 (1980).

107. Guthman, *MDSO Law: The Assumption Challenged* 4 CRIM. JUST. J. 1 (1980). *See* Sturgeon & Taylor, *Report of a 5-year Follow-up Study of Mentally Disordered Sex Offenders*, released from Atascadero State Hospital in 1973; *Id.* at 31; *Cf.* Geiser, *supra* note 55 at 37. (The sex offender recidivism rate is approximately 60%.)

of molesters released from Atascadero State Hospital which endeavored to make this comparison revealed that about one-third of those released from the hospital after treatment were detected engaging in the same conduct within five years of release while approximately the same proportion of detected recidivism was reported among molesters who had been imprisoned and released (and who had received no treatment) within the same time frame.[108] Imprisoned molesters usually have committed more serious crimes and have lengthier criminal records than the average hospitalized molester.[109] Thus the prisoners ordinarily would be expected to be more likely to reoffend than the hospitalized offenders, even if the latter group received no treatment.[110] Equal rates of recidivism between the two groups after the MDSOs received treatment strongly indicate the relative ineffectiveness of this treatment in preventing recidivism.

### *G. Predicting Non-Dangerousness*

The pedophile is motivated by a particularly demanding compulsion, perhaps a biological need, to repeat his criminal behavior. Since pedophilia is currently incurable, most pedophiles are consistently dangerous in the sense that their conduct is almost inevitably repetitious upon the recurrence of its easily met prerequisites: the pedophile's strong urge to have sexual relations with a child, availability of a potential victim, lack of self-restraint and minimal risk of apprehension and incarceration.[111]

Some criminals may be motivated to cease their dangerous behavior by remorse, a desire to change their life style, fear of probable apprehension and severe punishment or, simply, the effects of aging. Pedophiles, however, unlike most other criminals, remain dangerous partly because they are rarely remorseful or desirous of changing their behavior, knowing that apprehension and severe punishment are high-

108. Emmons, *supra* note 93 at ..

109. The small number of convicted molesters imprisoned in California (*see, supra* note 42), supports the understanding by experienced officials within the criminal justice system that it is rare for a molester to be imprisoned upon his first felony conviction. The author's review of 1976-1979 felony child molestation cases in Ventura County failed to reveal a single case of first conviction imprisonment.

110. Researchers have concluded that sexual offenders who have one or more previous convictions are about three times more likely to commit another offense than first offenders. Gray & Mohr, *Follow-up of Male Sexual Offenders* in SEXUAL BEHAVIOR AND THE LAW 742-56 (1965).

111. Of course it is probable that some pedophiles can resist the recurring urge to satisfy their strong desires. Celibacy is not impossible and it is conceivable that a few pedophiles with great will power, combined with fear of lengthy incarceration, actually succeed in abstinence throughout their lifetimes.

ly improbable, and do not lose their urge to commit their crimes even when approaching old age.[112]

While knowledgeable mental health professionals may concede the general probability of future dangerousness of pedophiles, some do not concede that the utilization of treatment programs does not alter the condition which makes future harm almost inevitable. Since, as the Group for the Advancement of Psychiatry concludes, "most, if not all, of the treatments offered for sex offenders can be considered 'experimental'" and "on the basis of subsequent sexual offenses (recidivism rates), treated and untreated groups do not appear to differ,"[113] predictions of non-dangerousness based on treatment are not likely to be accurate.

There is no known method of scientific computation of mental health variables which reveals to the mental health professional the likelihood of future repetition of a molester's behavior. Medical textbooks and medical school curricula contain little or no guidance on how to predict the dangerousness of sex offenders.[114] The determination of the probability of future danger, therefore, is necessarily influenced primarily by the clinician's subjective assessment of the efficacy of his own favored treatment methods in general and, specifically, the degree to which the patient has apparently responded to treatment. No medical litmus test for determining therapeutic success applies. The therapist, hoping he has succeeded, listens to the patient who hopes to convince the therapist that the latter has been successful. These highly subjective determinations coupled perhaps with false assumptions based on misleading reports of recidivism, are bound to lead to unjustified predictions of success which might reflect hope more than fact.

The consensus among mental health professionals is that there is no appreciable psychiatric ability to predict future behavior.[115] More-

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112. On the basis of his experience in supervising all career criminal and sex crime prosecutions at the Ventura County District Attorney's office, the author estimates that, while more than five percent of the prosecuted molesters were more than fifty years old, the percentage of other serious felons over that age was statistically insignificant. One study revealed that 19 per cent of the convicted molesters in the study group were 50 years old or older. McGeorge, *supra* note 50 at 248.

113. Group for the Advancement of Psychiatry, *supra* note 70 at 870.

114. *See, e.g.*, Ennis & Litwack, *supra* note 19 at 693.

115. *See, e.g.*, Diamond, *supra* note 19; Summit hearings, *supra* note 61 at 88-89; Thompson hearings, *supra* note 88 at 110. *See also*, Dix, *Determining the Continued Dangerousness of Psychologically Abnormal Sex Offenders*, J. OF PSYCHIATRY AND LAW 235 (1975). For a collection of authorities attesting to psychiatric incapability in predicting future behavior, *see* People v. Burnick, 14 Cal. 3d 306 at 327 (1975), n. 21 of case. Although the frequent release of sex offenders from Atascadero State Hospital based on predictions that they would no longer be dangerous suggests a position conflicting with the psychiatric profession's admission of inability to make this type of prediction, the Director of the Atas-

over, psychiatrists and psychologists are trained to attempt to help patients enjoy their lives rather than to help society to the possible detriment of their patients. Many of these professionals consequently find the job of predicting future dangerousness (and thereby supporting incarceration of offenders) on the basis of mental health variables not only almost impossible but ethically irreconcilable with a basic premise of their professions.

## Conclusion

Society cannot afford the consequences of allowing dangerous pedophiles to be treated (in the words of the California statute) "not as criminals."[116] Child molestation, at least when it involves substantial sexual contact with prepubertal children, is one of the most serious crimes confronting society. Considering the likelihood that the molester will repeat this crime and that many of his victims will later engage in criminal conduct, there should be no crime more deserving of massive efforts to prevent it. Even if allowing the freedom of much less dangerous criminals as part of an experiment with psychiatric criminology arguably might be defended as socially useful in order to assess the relative merits of the experiment, the harm done by freed molesters is much too high a price to pay for the sexual psychopath experiment. Those sexual psychopath programs and similar programs throughout the United States which, in effect, allow or assist convicted molesters to be free among children more often than would otherwise occur should be abolished.

Successful reformation of the criminal usually requires comprehension of why he is a criminal. Absent this revelation, efforts to change offenders into law-abiding citizens rarely succeed. Even if the psychodynamics of pedophilia were understood, sexual psychopath programs would not succeed because they attempt to cure without knowing how to cure and their patients generally are unwilling participants. These programs are not only expected to reform offenders but also are expected to provide safety from dangerous sex criminals. Placing this responsibility with the mental health profession, a profession lacking comprehensive knowledge about causes and cures and trained to strive for the comfort and happiness of emotionally troubled individuals rather than to protect others from them, inevitably leads to decisions which are detrimental to societal safety.

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cadero program admitted, in 1978, that "we can't predict anything. It's a fallacy." Emmons, *supra* note 93 at 5.

116. *See, supra* note 14.

Until extensive research into the etiology and psychodynamics of child molestation produces demonstrably effective mental health treatment methods for offenders, the mental health profession should not influence criminal justice decision-making in this area beyond attesting to the gravity of the problem and conceding the need to gain substantial knowledge about it. Because of the serious effects of child molestation on victims, however, the mental health profession should strongly support and implement the reallocation of resources previously directed at ineffective experimental treatment for molesters to programs devoted to effective treatment of victims.

If childhood victimization is often a substantial cause or catalyst of subsequent pedophilia and other harmful activity, effective psychological counselling of victims and long-term segregation of pedophiles are the logical components of a successful response to the problem of child molestation.

Abolition of sexual psychopath programs, by itself, does not accomplish removal of pedophiles from the presence of children. The enactment of statutes which mandate long-term confinement of repetitive molesters and of molesters who have substantial sexual contact with children is necessary to insure incarceration of dangerous offenders who would otherwise be hospitalized. Since California's new statutory approach to child molestation impliedly rejects claims that molesters can be cured and also serves to substantially segregate them from children, this legislative action is a realistic and necessary first step in solving this difficult problem.

Imprisoned pedophiles who are still clearly dangerous must be released at the end of their prison terms, even under California's new statutes. One of the original basic goals of sexual psychopath statutes was that molesters would remain segregated from children while dangerous. This goal is equally valid today. Either indeterminate sentencing or extensions of prison terms for continually dangerous pedophiles is an appropriate alternative to releasing them to be amidst children.[117] Although it is now apparent that mental health professionals are un-

117. Although opponents of lengthy incarceration of dangerous individuals inevitably invoke the Constitutional prohibition against preventive detention of individuals based on their "status," *Cf.* Robinson v. California, 370 U.S. 660 (1961), this argument should not apply to an offender whose dangerousness has been demonstrated by his criminal acts and his mental condition, who has not become less dangerous with the passage of time and to whom reasonable rehabilitative opportunities have been afforded. Otherwise, all indeterminate sentencing (which conditions release on lack of dangerousness) and, perhaps habitual criminal statutes (which base lengthy confinement on dangerousness rather than seriousness of the instant offense), would be unconstitutional and any parole of non-dangerous prisoners while continuing to confine dangerous prisoners might violate Constitutional guarantees of equal protection.

able to accurately predict dangerousness by means not available outside of their profession, no specialized knowledge is required to make this type of determination.[118] The conclusion that the best predictor of future behavior is past behavior, although sometimes elevated to the level of a "clinical maxim,"[119] is simply good common sense. Predicting dangerousness based on proven facts (prior dangerous activity) is more likely to be reliable than predicting nondangerousness based on subjective speculation which is allowed to outweigh the facts.

As one noted psychiatrist admits:

> When the facts of the present and previous sexual offenses are known, it hardly requires a psychiatrist to determine that the accused is an habitual sex offender. When the actual facts are not fully known, the psychiatrist, despite all of his clinical acumen, can seldom make a precise determination.[120]

Increased public awareness of the child molestation problem will inexorably lead to relatively greater reporting of this often hidden crime. As the dimensions of the problem become increasingly apparent throughout the United States, the need for an effective approach which recognizes the limitations of psychiatry will become more pressing. The most realistic approach combines extensive treatment of victims, long-term incarceration of offenders who present a risk of continued victimization of children, and research into the vaguely understood psychodynamics of pedophilia. Restraint of the molester is not punitive; it provides necessary protection of children. While common humanity might justifiably evoke concern for the well-being of even the most despised elements of society, common sense should compel the realization that a system which allows the freedom of men who prey on children is not only ineffective but also is morally indefensible.

---

118. No one familiar with the criminal justice system could rationally argue that most decisions made by police officers, prosecutors, probation officers and judges which relate to offender incarceration are not greatly influenced by an assessment of the offender's dangerousness. Police officers and prosecutors, sanctioned by legislation (*see, e.g.*, CAL. PENAL CODE § 999b et. seq.) target "career criminals" for apprehension, conviction and lengthy sentencing without plea-bargaining on the ground that certain types of criminals will continue to be more dangerous than others. Probation officers recommend and judges impose more lengthy sentences on those criminals who are considered dangerous, exempting less dangerous violators from this stern treatment. Parole officials are similarly primarily motivated by their assessment of the dangerousness of prisoners when making release decisions.

119. Statement of Alan Stone, President of the 1979-80 American Psychiatric Association, in Comment, *Estelle v. Smith and Psychiatric Testimony: New Limits on Predicting Future Dangerousness*, 33 BAYLOR L. REV. 1015, 1027 (1981).

120. Diamond, *The Psychiatric View*, in PSYCHIATRIC ASPECTS OF CRIMINOLOGY 40, 46 (1968).

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FROM INTEGRATED TREATMENT OF CHILD SEXUAL ABUSE, Henry Giarretto



# Treatment Premises Regarding the Incestuous Family

From the working principles of humanistic psychology tested by firsthand experience with incestuous families, the following major premises regarding the interpersonal dynamics of the families were developed and are fundamental to the treatment approach.

1. The family is viewed as an organic system. Family members assume behavior patterns to maintain system balance (family homeostasis).
2. A distorted family homeostasis is evidenced by psychological and/or physiological symptoms in family members.
3. Incestuous behavior is one of the many symptoms of a dysfunctional family.
4. The marital relationship is a key factor in family organic balance and development.
5. Parent–child incestuous behavior is not likely to occur when parents enjoy mutually beneficial relations.
6. High self-concepts in the mates is a prerequisite for a healthy marital relationship.
7. High self-concepts in the parents help to engender high self-concepts in the children.
8. Individuals with high self-concepts are not apt to engage others in hostile, aggressive behavior. In particular, they do not undermine the self-concept of their mates or their children through incestuous behavior.
9. Conversely, individuals with low self-concepts are usually angry, disillusioned, and feel they have little to lose. They are primed for behavior that is destructive to others and themselves.
10. When such individuals are punished in the depersonalized manner of institutions, the low self-concept/high destructive-energy syndrome is reinforced. Even when punishment serves to frustrate one type of hostile conduct, the destructive energy is diverted to another outlet or turned inward.
11. Productive case management of the molested child and her family includes therapeutic procedures that alleviate the emotional stresses of the experience and the resulting punitive action of the community and that enhance the processes of self-awareness and self-management, as well as feelings of family unity and growth.

ATT 1

# THE CHARACTERISTICS OF MEN WHO MOLEST YOUNG CHILDREN

GENE G. ABEL, MARY S. MITTELMAN, JUDITH V. BECKER, JERRY CUNNINGHAM-RATHN
AND LOUIS LUCAS, NEW YORK STATE PSYCHIATRIC INSTITUTE, NEW YORK CITY

PRESENTED AT THE WORLD CONGRESS OF BEHAVIOR THERAPY, DECEMBER 10, 1983
WASHINGTON, D.C.

RECEIVED
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ATT. 2

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## SUMMARY

CHILD MOLESTERS WHO VOLUNTEERED TO PARTICIPATE IN A CLINICAL RESEARCH PROJECT WERE EVALUATED AS TO THE PRESENCE OF OTHER PARAPHILIA (SEXUAL DEVIATIONS) AND THE FREQUENCY OF THEIR VARIOUS DEVIANT SEXUAL ACTS. RESULTS INDICATE A TREMENDOUS OVERLAP ACROSS CHILD MOLESTATION DIAGNOSES (OFFENDERS TARGETED MALE OR FEMALE CHILDREN, WITHIN OR OUTSII OF THEIR FAMILIES) AND ACROSS NON-CHILD MOLESTATION DIAGNOSES, ESPECIAI RAPE AND EXHIBITIONISM. THESE FINDINGS SUGGEST THAT CLINICIANS SHOULD DO A VERY THOROUGH ASSESSMENT OF ALL CHILD MOLESTERS TO IDENTIFY OTHER TYPES OF UNDISCLOSED MOLESTATION AND PARAPHILIAS. RESULTS FROM THE MOLESTER'S REPORTS OF COMPLETED PARAPHILIAC ACTS INDICATED THE FREQUENC OF CHILD MOLESTATION TO BE MUCH HIGHER THAN SUGGESTED IN THE LITERATURE ESPECIALLY IN CASES WHERE THE TARGET WAS A MALE CHILD OUTSIDE OF THE FAMILY:

| TARGET | MEDIAN | MEAN |
|---|---|---|
| FEMALE CHILD, NON INCEST | 1.7 | 24.9 |
| MALE CHILD, NON INCEST | 9.8 | 278.7 |
| FEMALE CHILD, INCEST | 3.6 | 83.4 |
| MALE CHILD, INCEST | 2.3 | 51.3 |

THESE RESULTS SUGGEST THAT GREATER EFFORTS NEED TO BE MADE TO TREAT CHILD MOLESTERS TO PREVENT THEIR HIGH RATES OF MOLESTATION.

METHOD

CONSECUTIVE REFERRALS TO THE CHILD MOLESTER TREATMENT PROGRAMS AT THE NEW YORK STATE PSYCHIATRIC INSTITUTE AND THE MEMPHIS MENTAL HEAL INSTITUTE WERE EVALUATED BY CLINICIANS EXPERIENCED IN THE ASSESSMENT TREATMENT OF PARAPHILIAS. SUBJECTS WERE 18-76 YEARS OLD, NON-PSYCHO AND ABLE TO GIVE INFORMED CONSENT. EACH WAS INFORMED OF THE EXTREME CONFIDENTIALITY OF THEIR RECORDS AND PROTECTION OF THEIR DATA BY A CERTIFICATE OF CONFIDENTIALITY FROM THE U.S. GOVERNMENT.

DETAILED HISTORIES WERE OBTAINED OF PARAPHILIAC BEHAVIOR DURING VARIOUS STAGES OF THE MOLESTER'S LIFE. ADDITIONAL EVIDENCE OF PARAPHILIAC DIAGNOSIS WAS OBTAINED FROM PAPER AND PENCIL TESTS AND ERECTION MEASUREMENT. IRRESPECTIVE OF THE DEGREE OF EVIDENCE SUPPOR A PARAPHILIAC DIAGNOSIS, THE DIAGNOSIS WAS ONLY MADE IF THE SUBJECT ADMITTED TO THE PARAPHILIA. WHEN THE REPORTED FREQUENCY OF BEHAVIOR INCLUDED A RANGE OF INCIDENTS, THE LOWEST FREQUENCY OF PARAPHILIAC BEHAVIOR IN THAT RANGE WAS USED.

## RESULTS

TABLE 1 SHOWS THE SPECIFIC CHILD MOLESTATION DIAGNOSIS AND THE OTHER CATEGORIES OF PARAPHILIAC DIAGNOSES ALSO HELD BY THESE SUBJECTS. THERE IS OBVIOUSLY A TREMENDOUS OVERLAP ACROSS CHILD MOLESTATION DIAGNOSES; SUBJECTS MOLESTED BOTH FEMALE AND MALE CHILDREN, WITHIN OR OUTSIDE OF THEIR FAMILIES. CHILD MOLESTERS ARE NOT SIMPLY INTERESTED IN ONE CATEGORY OF PARAPHILIA.

TABLE 2 SHOWS THE FREQUENCIES OF VARIOUS PARAPHILIAC ACTS COMMITTED BY THE FOUR MAJOR CATEGORIES OF CHILD MOLESTERS. THERE IS CONSIDERABLE VARIABILITY IN THE NUMBERS OF SEX CRIMES COMMITTED, BUT IT IS OBVIOUS THAT THE HOMOSEXUAL PEDOPHILE (WHOSE TARGETS ARE YOUNG BOYS OUTSIDE OF THE FAMILY) HAS OFFENDED AT THE HIGHEST FREQUENCY. IF CHILD MOLESTATION IS TO BE PREVENTED, TREATMENT NEEDS TO FOCUS PRIMARILY ON THE HOMOSEXUAL PEDOPHILE.

| CHILD MOLESTATION DIAGNOSES | ADDITIONAL DIAGNOSES | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | PED. FEM. | PED. MALE | PED. FEM. INCEST | PED. MALE INCEST | RAPE | EXHIB. | VOYEUR | FROTTAGE | SADISM | PARA |
| **PED. FEMALE NON INCEST** | | | | | | | | | | |
| NUMBER | 208 | 76 | 63 | 21 | 41 | 59 | 28 | 21 | 8 | 42 |
| % OF ROW | 100% | 37% | 30% | 10% | 20% | 28% | 14% | 10% | 4% | 20 |
| **PED. MALE NON INCEST** | | | | | | | | | | |
| NUMBER | 76 | 146 | 16 | 23 | 14 | 28 | 15 | 8 | 8 | 23 |
| % OF ROW | 52% | 100% | 11% | 16% | 10% | 19% | 10% | 6% | 6% | 16 |
| **PED. FEMALE INCEST** | | | | | | | | | | |
| NUMBER | 63 | 16 | 142 | 16 | 25 | 25 | 13 | 7 | 5 | 30 |
| % OF ROW | 44% | 11% | 100% | 11% | 18% | 18% | 9% | 5% | 4% | 21% |
| **PED. MALE INCEST** | | | | | | | | | | |
| NUMBER | 21 | 23 | 16 | 37 | 7 | 7 | 5 | 3 | 1 | 7 |
| % OF ROW | 57% | 62% | 43% | 100% | 19% | 19% | 14% | 8% | 3% | 19% |

## ...LATIONSHIP BETWEEN PARAPHILIAS: COMPLETED ACTS

## NUMBER OF COMPLETIONS BY DIAGNOSIS

| IAGNOSIS | PED. FEM. | PED. MALE | PED. FEM. INCEST | PED. MALE INCEST | RAPE | EXHIB. | VOYEUR | FROTTAGE | SADISM | OT PARA |
|---|---|---|---|---|---|---|---|---|---|---|
| ED. FEMALE ON-INCEST N=203) | | | | | | | | | | |
| MEAN | 24.9 | 128.3 | 33.1 | 0.5 | 1.7 | 82.7 | 16.7 | 95.9 | 2.7 | 41.( |
| MEDIAN | 1.7 | 0.2 | 0.2 | 0 | 0.1 | 0.2 | 0.1 | 0.1 | 0 | 0.: |
| ED. MALE ON-INCEST N=146) | | | | | | | | | | |
| MEAN | 14.8 | 278.7 | 11.2 | 12.7 | 1.5 | 36.7 | 5.5 | 7.5 | 3.6 | 7.3 |
| MEDIAN | 0.3 | 9.8 | 0.1 | 0.1 | 0 | 0.1 | 0.1 | 0.1 | 0.1 | 1.3 |
| ED. FEMALE NCEST N=142) | | | | | | | | | | |
| MEAN | 17.2 | 9.8 | 83.4 | 2.6 | 0.6 | 95.1 | 9.5 | 13.5 | 1.0 | 58.3 |
| MEDIAN | 0.2 | 0.1 | 3.6 | 0.1 | 0.1 | 0.1 | 0 | 0 | 0 | 1.6 |
| ED. MALE NCEST N=37) | | | | | | | | | | |
| MEAN | 10.4 | 99.1 | 8.4 | 51.3 | 0.8 | 36.4 | 19.8 | 31.5 | 1.6 | 97.4 |
| MEDIAN | 0.4 | 1.1 | 0.3 | 2.3 | 0.1 | 0.4 | 0.1 | 0.1 | 0.8 | 0.3 |

U.S. Department of Justice
Bureau of Justice Statistics

Bureau of Justice Statistics
Special Report

# Sentencing Practices in 13 States

By Herbert Koppel
Statistician, BJS

October 1984

A fundamental issue in the administration of justice concerns the type and length of sentences given to convicted offenders. In this Special Report, the Bureau of Justice Statistics reports findings from a survey of selected States.

Among key findings are the following: despite the wide diversity among States in their sentencing systems, there appears to be a reasonable consistency in the end results produced; incarceration is much more likely for serious crimes against the person than for property crimes or drug crimes; the likelihood of incarceration increases markedly with increasing severity of the offense and increasing seriousness of the offender's criminal history; and rates of incarceration and sentence lengths appear comparable from State to State for similar crimes committed by persons with similar criminal records, when differences among sentencing systems are taken into account. In most cases, these data were obtained from criminal justice Statistical Analysis Centers in the States. Such centers have been established with support from the Bureau of Justice Statistics in 40 States, the District of Columbia, Puerto Rico, and the Virgin Islands. In addition to providing data to BJS, their functions are the gathering, analysis, and dissemination of statistical information pertaining to crime and criminal justice in their States for the benefit of decisionmakers, criminal justice practitioners, and the public.

The Bureau of Justice Statistics will continue to report on sentencing practices in the States as further changes occur and will attempt to expand the data base to include all States.

Steven R. Schlesinger
Director

The sentencing of a convicted offender is a key event in the complex process by which criminals in the United States are brought to justice. The judge is acting for society in determining whether or not the offender will go to prison and, if so, for how long. This report will examine the sentencing of convicted felons in several States with respect to whether or not they are sent to prison and the lengths of their sentences.

**State law and policies**

Every State has its own set of laws and practices for sentencing criminals, and the differences among them are substantial. An earlier brief overview of sentencing practices, Setting Prison Terms (Bureau of Justice Statistics Bulletin, NCJ-76218, August 1983), presents much useful descriptive information, as does a recent report by the New York State Division of Criminal Justice Services.[1] However, it requires more than 200 pages to describe the basic features of the sentencing laws in each State.[2]

In addition to the different laws that govern sentencing, there are differences in how specific offenses are defined and classified by the criminal code in each State.

In some States, the law specifies a rather wide range of sentence lengths for each crime; the judge has broad discretion in selecting a sentence from within that range. In other States, the judge's discretion is limited by law to a relatively narrow range of sentence lengths.

The judge usually is empowered to decide whether or not an offender will be sent to prison at all; he can suspend a prison sentence, impose a sentence of probation or a fine or, in some cases, select an alternative to incarceration such as requiring the offender to make restitution or to perform community service. This discretionary power, however, is far from absolute; as of January 1983, 48 States and the District of Columbia had enacted laws mandating a prison sentence for certain serious offenses or under certain aggravating circumstances.[3] Examples include use of a firearm in committing a felony, certain violations of drug laws, and a history of prior felony convictions.

The judge's sentence is not the only factor that determines the length of an offender's stay in prison. The parole board often has considerable discretionary power in deciding when a prisoner will be released. In some States, the board can release a prisoner at any time after incarceration. In at least nine States, parole board discretion has been abolished completely.[4] Most parole boards have discretionary authority that falls between these limits. In addition, 47 States, the District of Columbia, and the Federal system have provisions that enable an inmate to earn "good time"; that is, a reduction in the length of the prison stay through good behavior or participation in certain programs.

### Sentencing systems

Differences among sentencing systems are so great that any comparison of sentence lengths among States is nearly meaningless unless the sentencing systems are taken into account. In some States, sentences may be relatively short, but with a high probability that all or nearly all of the sentence actually will be served. In other States, the sentences may be very long, but most offenders will be released after serving only a fraction of the sentence imposed by the courts.

There has not been complete consistency in defining the various types of sentencing systems that are used by the States. The following definitions have been adapted from those developed by the New York State Division of Criminal Justice Services.[5]

**Indeterminate sentencing.** In jurisdictions that use indeterminate sentencing, the court sets upper and lower bounds on the time to be served. The lower bound may be explicit or implicit. The actual release date (and therefore the time actually served) is determined subsequently by parole authorities.

With minimum/maximum indeterminate sentencing, the court specifies both minimum and maximum prison terms, but the parole board determines the actual release date within those limits. The States vary as to whether "good time" may be deducted from the minimum, the maximum, or both.

With fixed indeterminate sentencing, only a single prison term is specified by the court, but it is treated as a maximum for which an associated minimum automatically is implied. The implied minimum might be zero for all sentences, one year for all sentences, or a fixed proportion of the maximum.

**Determinate sentencing.** The court specifies a fixed term of incarceration which must be served in full (less any "good time" earned in prison). There is no discretionary parole release.

**Mandatory sentencing.** The court is required to impose an incarcerative sentence, often of specified length, for certain crimes or certain categories of offenders. There is no option of probation, suspended sentence, or immediate parole eligibility.

**Presumptive sentencing.** The judge's discretion is constrained by a sentence length that is set by law for each offense or class of offense. This sentence must be imposed in all unexceptional cases. When there are mitigating or aggravating circumstances, however, the judge is allowed to shorten or lengthen the sentence within specified boundaries, usually with written justification being required.

In recent years, a number of States have reformed their sentencing systems, most often changing from indeterminate sentencing to a determinate system in which presumptive or mandatory provisions are included and parole discretion is eliminated or drastically curtailed.

### The judge's role

Individual judges differ in the rationales, attitudes, and beliefs that affect their sentencing decisions. A survey in Delaware[6] asked judges of the Superior Court to assign priorities to five possible rationales for sentencing decisions: rehabilitation; deterrence of the offender from further criminality through fear of punishment; deterrence of others; retribution; and incapacitation (protection of the public while the offender is incarcerated). The survey found "an absence of a common philosophy or rationale for punishment" among the judges and concluded that "the dispersion of action and opinion in the judiciary is as diverse as would be found in the general population."

It may be that, in at least some instances, the judge making a sentencing decision takes into account the possibility of early release through parole and the accumulation of "good time." As an illustration, the Delaware survey states that a judge would have to impose a sentence of 19 years to be sure that the person would remain incarcerated for at least 5 years. A striking example occurred recently in Maryland. A man who had murdered three people and wounded several others at his former place of employment was convicted on 75 charges and sentenced to 3 consecutive life terms plus 1,080 years.

Several States have instituted or are considering the use of sentencing guidelines. Such guidelines are aimed at improving the consistency and rationality of sentencing by basing sentencing decisions upon offense severity, the offender's criminal record, prevailing sentencing patterns, or some combination of these factors. The guidelines may be advisory, or they may be prescriptive and presumptive, requiring the judge to explain sentences outside the specified ranges.

### Incarceration rates

When a convicted person is sentenced, the most fundamental decision is whether or not he or she will be incarcerated. The judge usually is free to make this decision but, in many States, incarceration is mandatory for certain serious offenses or for persons with prior felony convictions. Also, the judge may be required to provide written justification for any departure from presumptive guidelines.

Not every sentence to incarceration involves a substantial term of confinement in a State prison. In some States, a very short term may be imposed, which may be served in a county jail or State prison, in cases where the offender does not have a significant criminal record and where the offense was not especially serious or significant mitigating factors were involved. Such short sentences often are combined with other sanctions such as fines, restitution, performance of community service, or participation in drug or alcohol treatment programs. Several States make use of split sentences, which consist of a short prison term to be followed by an extensive period of supervised probation. Some sentences provide for part-time incarceration; typically, the person is released during the day to work at an outside job, but spends nights and weekends in confinement. In most of the data that follow, a sentence is considered incarcerative if it involves any amount of confinement.

**Specific offenses.** Table 1 shows the incarceration rates (percentage of convictions that resulted in sentences of incarceration) for certain categories of offenses in six States.

Because of the different ways that offenses are defined by statute in the various States and the different formats in which the States provided their data, and because of the different ways individual statutory offenses had to be combined to fit generic crime categories, the comparability of this information is somewhat limited. In particular, where different States show significantly different incarceration rates for the same crime category, this may be caused by differences in the specific offenses that were included in

Table 1. Incarceration rates for specific crime categories

| Crime type | Iowa[a] 1980-83 Number of convictions | Iowa[a] 1980-83 Percent incarcerated | New York 1982 Number of convictions | New York 1982 Percent incarcerated | Oklahoma 1978-82 Number of convictions | Oklahoma 1978-82 Percent incarcerated | Pennsylvania 1981 Number of convictions | Pennsylvania 1981 Percent incarcerated | Washington 1971-82 Number of convictions | Washington 1971-82 Percent incarcerated | Wyoming 1981-84 Number of convictions | Wyoming 1981-84 Percent incarcerated |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **All felonies** | **2,125** | **39.3%[b]** | **22,[illegible]** | **44.5%** | * | * | **37,147** | **35.0%[b]** | **78,036** | **20.3%** | * | * |
| **Serious violent crimes[c]** | **161** | **74.5** | **7,380** | **67.7** | **7,472** | **57.3%** | **4,507** | **59.7** | **14,854** | **38.3[d]** | **427** | **56.7%** |
| Criminal homicide[e] | 22 | 86.4 | 893 | 90.6 | 599 | 78.1 | 484 | 73.3 | 1,834 | 52.8 | 72 | 88.9 |
| Rape | 28 | 92.9 | 224 | 97.8 | 618 | 71.0 | 198 | 77.3 | 4,530 | 27.2[d] | 86 | 68.6 |
| Robbery | 38 | 100.0 | 5,290 | 67.4 | 2,506 | 79.2 | 2,010 | 73.4 | 3,464 | 56.1 | 111 | 57.7 |
| Aggravated assault | 73 | 50.7 | 973 | 41.5 | 3,749 | 37.2 | 1,815 | 39.1 | 5,026 | 30.8 | 158 | 34.8 |
| **Serious property crimes[f]** | **849** | **31.2** | **6,585** | **36.2** | **19,822** | **36.5** | **9,131** | **43.9** | **40,506** | **19.3** | **1,309** | **35.0** |
| Burglary | 351 | [illegible] | 5,124 | 38.8 | 9,168 | 43.6 | 3,165 | 61.3 | * | * | 731 | 37.4 |
| Larceny | 382 | 25.4 | 1,235 | 24.8 | 7,895 | 25.1 | 5,393 | 33.7 | * | * | 381 | 28.1 |
| Auto theft | 98 | 33.7 | g | g | 2,379 | 46.9 | 447 | 41.6[h] | * | * | 152 | 42.1 |
| Arson | 18 | 36.8 | 226 | 40.7 | 380 | 37.6 | 126 | 53.2 | * | * | 45 | 31.1 |
| **Drug crimes** | **148** | **29.7** | **3,168** | **38.9** | **6,982** | **33.9** | **3,606** | **26.9** | **13,911** | **12.1** | **253** | **43.9** |

* Data not available.
a Three counties.
b Includes certain misdemeanors which would be classified as felonies in many other states.
c Criminal homicide, rape, robbery, and aggravated assault.
d Includes other sex crimes in addition to rape.
e Includes murder and non-negligent manslaughter.
f Burglary, larceny, auto theft, and arson.
g Auto thefts in New York are included with larceny.
h Due to statutory changes, many auto thefts in Pennsylvania are included with larceny.

the category rather than by differences in sentencing policy.

For example, drug offenses may range from smoking marijuana to the large-scale distribution of heroin. In the case of robbery, most States define several separate statutory offenses of different degrees of severity, depending upon such considerations as whether a weapon was used and the extent of injury to the victim. Incarceration is more likely (and sentence lengths are greater) for the more serious statutory offenses within a given category. When data for the various statutory offenses are aggregated, the combined incarceration rate for the entire category can be affected significantly by which statutory offenses are included and their relative prevalence.

Despite these limitations, table 1 shows quite clearly that incarceration is much more likely for serious crimes against the person than for property or drug crimes.

**Offense severity and criminal record.** It is useful to examine incarceration rates in terms of offense severity and the offender's criminal record, instead of relying upon definitions of specific offenses that are difficult to reconcile among the different States. In several States, the law groups offenses into classes of different severity, and in some cases the statutes define categories of offenders in terms of their prior criminal records. Where such legal categories do not exist, researchers have devised similar categories for use in their investigations.

The data in table 2 are presented separately for each State because of the different ways that offenders and offenses have been grouped into categories. These data show the percent of convictions that resulted in incarcerative sentences.

Table 2 shows that, in virtually all cases, the likelihood of incarceration increases markedly with increasing severity of the offense and increasing seriousness of the offender's criminal history.

For the data from Illinois, New York, and Connecticut, the felony classes are defined by statute and are listed in decreasing order of severity. For Minnesota, the three tabulated severity categories are condensed from the ten levels of severity defined by the State's sentencing guidelines. For North Carolina and Maryland, offenses have been classified by the nature of the crime (violent crimes, property crimes, drug crimes, etc.), and these categories are listed in what is generally perceived to be the order of decreasing severity.

All of the offender classifications in table 2 are based on the number and seriousness of the person's previous convictions. The classifications in New York are defined by statute. Minnesota's sentencing guidelines define seven levels of criminal history scores; these have been condensed into the three levels used in the tabulation. The offender classifications were defined by researchers for Connecticut and by the sentencing guidelines advisory board for Maryland.

**Effects of guidelines and changes in sentencing laws.** The Minnesota guidelines were designed to embody retribution as the primary purpose of sentencing.[7] Because of this, they place more emphasis upon the seriousness of the current offense and less upon the offender's criminal history than usually had been the case in the past. The data in table 2 show that this objective was achieved. For example, in the case of the most severe offenses being committed by those with the least serious criminal histories, the incarceration rate increased from 47.4% to 79.0%. For those with moderately serious criminal histories who were convicted of the least severe offenses, the incarceration rate dropped from 38.4% to 9.6%.

The preguidelines data for Maryland were not used because of the small sample size (339 cases) and because no significant difference in incarceration rates had been observed between corresponding portions of the preguidelines and postguidelines samples. This similarity is not surprising, since the guidelines that were tested in Maryland were intended to reduce unwarranted variations in sentencing rather than to bring about a change in the aims or philosophy of sentencing.[8]

In North Carolina (table 2) incarceration rates increased for all types of felonies (except "morals" offenses) after determinate sentencing was instituted. This is somewhat surprising because the new legislation did not affect the judge's power to decide whether or not a convicted person would be incarcerated. It has been conjectured that the judges may have been influenced by the legislation in interpreting the specified prison terms as a tacit recommendation by the legislature for incarceration, or that the increased incarceration rates were merely the continuation of a previous trend toward more frequent use of imprisonment.[9]

**Arrest offense vs. charged offense vs. conviction offense.** The data for Connecticut (table 2) include some

misdemeanor convictions that resulted from plea bargaining where the original charge had been a felony. Plea bargaining, with respect to the charge and the sentence, is prevalent in many jurisdictions. The aggregate data from Connecticut for 1976-77 and 1979-80 cover 2,756 convicted persons. Only 92 were tried; the other 2,664, or 96.7%, were convicted as the result of guilty pleas. For the Maryland postguidelines sample of 2,928 convicted persons, 74.9% were convicted through guilty pleas.

Plea bargaining is not the only reason that the level of the offense may be reduced between arrest and conviction. Often the formal charge filed by the prosecutor is for a lesser offense than the one for which the police had made the arrest. The police need only show "probable cause" when making an arrest; the prosecutor must be prepared to prove guilt "beyond a reasonable doubt."

Table 3 shows data from Oregon covering persons who were arrested in 1979.[10] These data provide information on the relationship between incarceration rates and whether or not the conviction offense was the same as the arrest offense. These data also include the percentage of convicted persons who were sentenced to any incarceration and the percentage who were sentenced to at least 1 year. Incarceration rates were higher, for both violent crimes and property crimes, when the arrest offense and the conviction offense were the same.

**Table 2. Percent of convictions resulting in incarceration for selected States based on offense and criminal history classifications**

**Illinois, 1979-81**

| Offense class[a] | Number of convictions | Percent |
|---|---|---|
| **All felonies** | **76,787** | **[illegible]9.3%** |
| M (murder) | 1,092 | 99.9[b] |
| X | 6,713 | 100.0 |
| 1 | 1,748 | 57.0 |
| 2 | 26,591 | 37.7 |
| 3 | 31,547 | 26.5 |
| 4 | 9,096 | [illegible].0 |

[a] By statute, there are six classes of felony offenses that are based on the severity of the offense; they are presented in order of decreasing seriousness. In general, a particular class can include property and violent crimes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.

[b] Does not include 54 death sentences.

**New York, 1982**

| | Offender classification | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Youthful | | First offender | | Repeat[a] | | All offenders | |
| Felony class[b] | Number of convictions | Percent incarcerated | Number of convictions | Percent incarcerated | Number of convictions | Percent incarcerated | Number of convictions | Percent incarcerated |
| **All felonies** | **2,722** | **7.5%** | **16,987** | **42.2%** | **2,578** | **99.1%** | **22,287** | **44.5%** |
| A | 2 | 50.0 | 439 | 95.7 | 25 | 100.0 | 466 | 95.7 |
| B | 165 | 23.0 | 2,116 | 94.1 | 371 | 99.7 | 2,652 | 90.5 |
| C | 587 | 14.3 | 2,780 | 77.2 | 507 | 99.4 | 3,874 | 70.6 |
| D | 1,341 | 5.0 | 6,686 | 29.7 | 937 | 99.4 | 8,964 | 33.3 |
| E | 627 | 2.2 | 4,966 | 12.7 | 738 | 98.3 | 6,331 | 21.6 |

[a] Includes persons classified as second felony offenders, persistent felony offenders, second violent felony offenders, and persistent violent felony offenders.

[b] By statute, there are five classes of felony offenses based on severity of the offense; they are presented in order of decreasing seriousness. Violent and property offenses appear in all classes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.

**Connecticut, 1979-80 (statewide sample)**

| | Criminal history[a] | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | None | | Moderate | | Serious | | All offenders | |
| Felony class[b] | Number of convictions | Percent incarcerated | Number of convictions | Percent incarcerated | Number of convictions | Percent incarcerated | Number of convictions | Percent incarcerated |
| **All felonies** | **377** | **45.1%** | **303** | **58.1%** | **327** | **77.8%** | **1,007** | **59.6%** |
| A | 1 | 100.0 | 2 | 100.0 | 3 | 100.0 | 6 | 100.0 |
| B | 111 | 53.2 | 92 | 69.6 | 108 | 87.0 | 311 | 69.8 |
| C | 78 | 48.7 | 58 | 62.1 | 69 | 79.7 | 205 | 62.9 |
| D | 95 | 49.5 | 104 | 61.5 | 95 | 76.8 | 294 | 62.6 |
| Misdemeanor[c] | 92 | 27.2 | 47 | 21.3 | 52 | 55.8 | 191 | 33.5 |

[a] Based on number and seriousness of previous convictions.

[b] By statute, there are four classes of felony offenses based on severity of the offense; they are presented in order of decreasing seriousness. In general, a particular class can include property and violent crimes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.

[c] Misdemeanor convictions resulting from plea bargaining where original charge was a felony.

## Sentence lengths

Average (mean) sentence lengths for various offenses and groups of offenses are shown in tables 4, 5, and 6. The three tables cover, respectively, minimum/maximum indeterminate sentences, fixed indeterminate sentences, and determinate sentences. As noted earlier, extreme caution must be used in making comparisons among the different States because of differences in the statutory definitions of offenses and in the ways individual offenses have been aggregated. In general, the tables show that the longest sentences are imposed for serious crimes against the person.

Data for Illinois are shown for minimum/maximum indeterminate sentences (table 4) and for determinate sentences (table 6) during the years 1978-82. Determinate sentencing was initiated near the beginning of that period, but persons whose offenses were committed when the indeterminate sentencing laws were in effect were subject to punishment under those laws. The average lengths of determinate sentences tend to fall between the average minimum and maximum lengths of corresponding indeterminate sentences. This is to be expected, since the latter represented only upper and lower bounds on the time that the convicted persons would serve.

There is a noticeable exception in the case of serious violent crimes as a group. For indeterminate sentences, the average minimum and maximum sentences were 131 months and 277 months; the average determinate sentence was only 102 months. This may be because the crimes in this group for which extremely long sentences are imposed, criminal homicides, take longest to process in the courts. A large percentage of such cases go to trial rather than being settled through guilty pleas, and it often takes considerable time to prepare and conduct the trials. As a result, a large number of homicide sentences were for offenses that dated back to the era of indeterminate sentencing, while sentencing had not yet occurred for many homicides committed after determinate sentencing was instituted. The tables show that, for serious violent crimes as a group, 25% of the indeterminate sentences were for criminal homicide, in contrast to only 16% of the determinate sentences. This may account for the disproportionately long minimum/maximum indeterminate sentences.

Data for North Carolina show sentence lengths for fixed indeterminate sentencing in 1979 (table 5) and for determinate sentencing in 1981-82 after the enactment of the State's "Fair Sentencing Act" (table 6). The determinate sentences are shorter; this is

**Table 2. (Continued)**

**Minnesota, 1978 and 1980-81**

| Offense severity* | Criminal history score*: None/Low — Number of convictions | None/Low — Percent incarcerated | Moderate — Number of convictions | Moderate — Percent incarcerated | High — Number of convictions | High — Percent incarcerated | All offenders — Number of convictions | All offenders — Percent incarcerated |
|---|---|---|---|---|---|---|---|---|
| Before the introduction of presumptive sentencing guidelines | | | | | | | | |
| **All felonies** | **3,326** | **9.9%** | **732** | **16.2%** | **307** | **70.5%** | **4,365** | **20.2%** |
| Low severity | 1,872 | 4.7 | 385 | 38.4 | 162 | 62.2 | 2,420 | 13.9 |
| Moderate severity | 1,210 | 10.5 | 273 | 46.7 | 109 | 73.1 | 1,592 | 21.0 |
| High severity | 244 | 47.4 | 73 | 85.5 | 36 | 100.0 | 353 | 60.6 |
| After the introduction of presumptive sentencing guidelines | | | | | | | | |
| **All felonies** | **4,031** | **6.5%** | **1,018** | **24.3%** | **451** | **70.7%** | **5,500** | **15.0%** |
| Low severity | 2,122 | 0.6 | 478 | 9.6 | 222 | 50.4 | 2,822 | 6.0 |
| Moderate severity | 1,680 | 4.0 | 443 | 24.4 | 186 | 88.2 | 2,309 | 14.7 |
| High severity | 229 | 79.0 | 97 | 95.9 | 43 | 100.0 | 369 | 85.9 |

**Note:** Under Minnesota law, both before and since introduction of sentencing guidelines, a convicted person may have to spend up to a year in jail or workhouse as a condition of a stayed felony sentence. Incarceration rates shown above do not include such confinement.
* The sentencing guidelines in Minnesota use 7 levels of criminal history scores and 10 levels of offense severity, which have been condensed into 3 levels each for this table.

**North Carolina, 1979 and 1981-82 (statewide sample)**

| Offense class | Before Fair Sentencing Act*: Number of convictions | Before Fair Sentencing Act*: Percent incarcerated | After Fair Sentencing Act*: Number of convictions | After Fair Sentencing Act*: Percent incarcerated |
|---|---|---|---|---|
| **All felonies** | **9,752** | **5[illegible].7%** | **3,034** | **62.8%** |
| Class 1 (violent felonies) | 2,231 | 79.5 | 666 | 84.5 |
| Class 2 (felonious larceny, breaking or entering, receiving stolen goods, etc.) | 4,481 | 55.2 | 1,452 | 65.3 |
| Class 3 (fraud, forgery, embezzlement, etc.) | 1,061 | 39.1 | 336 | 44.6 |
| Class 4 (drug felonies) | 1,642 | 30.9 | 515 | 39.6 |
| Class 5 ("morals" felonies) | 117 | 71.8 | 25 | 68.0 |
| Class 6 (other felonies) | 220 | 35.9 | 40 | 60.0 |

* North Carolina's "Fair Sentencing Act" instituted determinate sentencing in July 1981.

**Maryland, 1981-82 (entire postguidelines sample)**

| Type of offense | Prior criminal record: None — No. of convictions | None — Percent incarcerated | Minor — No. of convictions | Minor — Percent incarcerated | Moderate — No. of convictions | Moderate — Percent incarcerated | Major — No. of convictions | Major — Percent incarcerated | All offenders — No. of convictions | All offenders — Percent incarcerated |
|---|---|---|---|---|---|---|---|---|---|---|
| **Total** | **1,311** | **39.7%** | **973** | **65.2%** | **443** | **84.6%** | **201** | **89.1%** | **2,928** | **58.3%** |
| Person | 551 | 55.9 | 334 | 76.6 | 160 | 91.3 | 70 | 87.1 | 1,115 | 69.1 |
| Property | 449 | 35.4 | 440 | 68.9 | 219 | 83.1 | 104 | 91.3 | 1,212 | 61.0 |
| Drug | 311 | 17.0 | 199 | 37.7 | 64 | 73.4 | 27 | 85.2 | 601 | 32.9 |

consistent because the earlier indeterminate sentences represented only an upper bound on the amount of time that would be spent in prison.

**Offense severity and criminal record.** As would be expected, average sentence lengths are longest for the most severe offenses and for those offenders with the most serious prior criminal records. This is illustrated by the data for Illinois and New York in tables 7 and 8. The offense classes in both States and the offender classifications in New York are defined by statute.

## Conclusions

While the most prominent characteristic of the sentencing systems used by the States is their wide diversity, there appears to be a reasonable consistency in the end results produced. The highest rates of imprisonment and the longest sentences accrue to those who have been convicted of the most severe crimes and to those whose prior criminal histories are most serious. Rates of incarceration and sentence lengths are comparable from State to State for similar crimes committed by persons with similar criminal records, when differences among the sentencing systems are taken into account with regard to the meaning of the sentence in determining how long the offender actually will be imprisoned.

Many States have made fundamental changes in their sentencing systems in recent years, and this trend appears to be accelerating. No fewer than 5 of the 13 States that provided data for this report instituted comprehensive changes in their sentencing laws immediately before, during, or since the periods covered by the data. Connecticut, Illinois, North Carolina, and Washington went from indeterminate to determinate sentencing, and Minnesota instituted the use of presumptive sentencing guidelines. At least two other States, Maryland and New York, are evaluating the use of sentencing guidelines. The changes from indeterminate to determinate sentencing and the introduction of guidelines appear to signal the intention of the States to make punishment more certain, more consistent, and more in keeping with their perceptions of the basic purposes of imprisonment.

## Sources of data

Descriptions of the sentencing systems in the States that provided data for this report and characteristics of the data are critically important to the interpretation of the numerical information in this report. It is imperative that no attempt be made to interpret the numbers or to make comparisons between States without thoroughly considering this information. Different sentencing systems lead to sentence lengths that have widely different practical meanings. For example, a person sentenced to 10 years in California will serve all or nearly all of the 10 years; in Iowa or Maryland, there is a possibility of release after serving only a fraction of a similar 10-year sentence. In addition, there are substantial differences in how offenses are defined and classified in different States, as well as significant differences in the ways that the data from the States have been collected and aggregated.

**California.** The judge imposes a determinate term based on presumptive sentence lengths that are set by legislation. Three presumptive sentence lengths are specified for each class of offense; the middle one must be imposed unless there are mitigating or aggravating circumstances. The sentence must be served in full minus any "good time" reduction. There is no early parole release.

Data on sentence lengths for number of offenses were obtained from two reports with the same title, Sentencing Practices under the Determinate Sentencing Law, by the California Board of Prison Terms. The data cover all persons in the State who entered prison from February 1979 through January 1980 (report dated February 11, 1981) and during calendar year 1981 (report dated February 10, 1983). Offenses such as murder, for which life imprisonment or the death penalty can be imposed, are not included. (Some sentences for second degree murder are included in the 1979 data. The penalty for that offense was

| Table 3. Oregon: Incarceration rates for persons arrested in 1979 | | | | | | |
|---|---|---|---|---|---|---|
| | Incarceration rates for persons arrested for | | | | | |
| | Violent Crimes[a] | | | Property crimes[b] | | |
| Conviction type | Number of convictions | Percent of convictions | Percent incarcerated | Number of convictions | Percent of convictions | Percent incarcerated |
| **All convictions** | 858 | 100.0% | | 2,815 | 100.0% | |
| Percent of all convictions resulting in: | | | | | | |
| Any incarceration sentence | | | 62.5% | | | 38.3% |
| Incarceration sentence of at least one year | | | 51.9 | | | 22.2 |
| **Convictions where arrest offense and conviction offense are the same** | 323 | 37.6 | | 1,650 | 58.6 | |
| Percent of these convictions resulting in: | | | | | | |
| Any incarceration sentence | | | 73.4% | | | 40.5% |
| Incarceration sentence of at least one year | | | 69.7 | | | 27.2 |
| **Convictions where arrest offense and conviction offense are different** | 535 | 62.4 | | 1,165 | 41.4 | |
| Percent of these convictions resulting in: | | | | | | |
| Any incarceration sentence | | | 55.9% | | | 35.0% |
| Incarceration sentence of at least one year | | | 41.1 | | | 15.2 |

[a] Criminal homicide, rape, robbery, and aggravated assault.
[b] Burglary, larceny, auto theft, and arson.

changed in November 1978; these data are for persons whose offenses were committed before that date, but who entered prison in 1979.)

**Connecticut.** The data used in this report cover sentences that were imposed during years when the State used minimum/maximum indeterminate sentencing with wide judicial discretion.

Subsequently, in July 1981, legislation was enacted to require the imposition of a determinate prison term. The judge selects the sentence length within wide limits defined by statute for each class of offense. Parole has been abolished; the entire term, less "good time," must be served.

Data were provided by the Connecticut Statistical Analysis Center in a report entitled Sentencing Patterns in Connecticut. The data cover samples of 1,749 persons who were convicted in 1976-77 and 1,011 who were convicted in 1979-80. Each jurisdiction in the State was sampled randomly; in some

Table 4. Minimum/maximum indeterminate sentences, average (mean) sentence length in months

| Type of felonies | Connecticut,[a] 1976-77 and 1979-80 | | Illinois, 1978-82[b] | | | New York, 1982 | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Number of incarcerative sentences | Minimum | Number of incarcerative sentences | Minimum | Maximum | Number of incarcerative sentences | Minimum | Maximum | Number of maximum life imprisonment sentences |
| **All felonies** | • | • | **4,429** | **80 mos.** | **173 mos.** | **9,930** | **40 mos.** | **79 mos.** | **495** |
| **Serious violent crimes[c]** | • | • | **2,229** | **131** | **277** | **4,999** | **53** | **99** | **359** |
| Criminal homicide[d] | 22 | 91 mos. | 564 | 346 | 743 | 809 | 130 | 156 | 304 |
| Rape | • | • | 125 | 154 | 356 | 219 | 67 | 156 | 10 |
| Robbery | 337 | 42 | 1,292 | 55 | 108 | 3,567 | 38 | 91 | 44 |
| Aggravated assault | 125 | 24 | 248 | 29 | 79 | 404 | 28 | 69 | 1 |
| **Serious property crimes[e]** | • | • | • | • | • | **2,388** | **25** | **59** | **8** |
| Burglary | 175 | 24 | 1,057 | 21 | 60 | 1,990 | 25 | 61 | 8 |
| Larceny | 246 | 23 | 370 | 16 | 40 | 306 | 18 | 42 | |
| Auto theft | • | • | • | • | • | f | f | f | |
| Arson | • | • | • | • | • | 92 | 29 | 81 | |
| **Drug crimes** | **213** | **22** | • | • | • | **1,[illegible]33** | **26** | **5[illegible]** | **117** |

| Type of felonies | Pennsylvania,[g] 1981 | | | | Wyoming, 1981-84 | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Number of incarcerative sentences | Minimum | Maximum | Number of maximum life imprisonment sentences[h] | Number of incarcerative sentences | Minimum | Maximum | Number of minimum life imprisonment sentences | Number of maximum life imprisonment sentences |
| **All felonies** | **13,004** | **14 mos.** | **39 mos.** | **121** | • | • | • | • | • |
| **Serious violent crimes[c]** | **2,813** | **25** | **70** | **121** | **242** | **69 mos.** | **112 mos.** | 24 | 31 |
| Criminal homicide[d] | 476 | 42 | 112 | 121 | 64 | 146 | 195 | 23 | 30 |
| Rape | 153 | 53 | 136 | | 59 | 70 | 127 | 1 | 1 |
| Robbery | 1,475 | 24 | 68 | | 64 | 56 | 99 | | |
| Aggravated assault | 709 | [illegible] | 40 | | 55 | 29 | 61 | | |
| **Serious property crimes[c]** | **4,008** | **13** | **38** | | **458** | **25** | **55** | | |
| Burglary | 1,940 | 19 | 52 | | 273 | 28 | 58 | | |
| Larceny | 1,815 | 7 | 25 | | 107 | 21 | 47 | | |
| Auto theft | 186 | 7 | 26[i] | | 64 | 22 | 54 | | |
| Arson | 67 | 17 | 51 | | 14 | 29 | [illegible] | | |
| **Drug crimes** | **969** | **9** | **26** | | **111** | **19** | **43** | | |

**Note:** Life sentences not included in computing mean maximum and mean minimum sentence lengths.
• Data not available.
[a] Maximum-sentence and life-sentence data not available for Connecticut; "criminal homicide" data are for manslaughter only.
[b] Illinois life-sentence data not available.
[c] Criminal homicide, rape, robbery, and aggravated assault.
[d] Includes murder and non-negligent manslaughter.
[e] Burglary, larceny, auto theft, and arson.
[f] New York's auto theft included with larceny.
[g] Pennsylvania data include certain misdemeanors that would be classified as felonies in many other States.
[h] In Pennsylvania, a life sentence has no associated minimum term. Release requires commutation by the Governor.
[i] Because of statutory changes, many auto thefts in Pennsylvania are included with larceny.

cases, small jurisdictions were oversampled. Connecticut law defines four categories of felonies, Class A through Class D, in decreasing order of seriousness. Most of the data are presented in terms of these classes, although information on sentence length is available for certain specific crimes. Some misdemeanor convictions appear in the data; these result from plea bargaining when the initial charge was a felony.

**Illinois.** The judge sets a determinate term based upon a sentence range prescribed by legislation for each class of offense. There is no early release on parole, but "good time" can be earned.

Incarceration rates for persons convicted of felonies in 1979-81, obtained from the Administrative Office of the Illinois Courts, were provided by the Illinois Statistical Analysis Center. Because of differences in reporting by individual counties, these data are a mix of charge-based and offender-based information. That is, where a person was convicted on more than one charge, in some instances the data include each charge separately, while in other instances the person is represented only once in the data. Sentence lengths are derived from a report, Statistical Presentation 1982, published by the Illinois Department of Corrections in April 1983. These data are charge-based; each sentence is included separately where a person was sentenced on more than one charge. The data cover sentences that were imposed from 1978 through 1982. During those years, there was a transition from minimum/maximum indeterminate sentencing to determinate sentencing, and the report shows sentence lengths for both types of sentences. (The determinate sentencing law took effect in February 1978. Because a convicted person is subject to the penalties that were in effect when the crime was committed, however, a number of sentences in the 1978-82 period were imposed under the old indeterminate sentencing laws.)

Illinois law defines six categories of felony offenses. They are, in order of decreasing seriousness: Class M (murder), Class X, and Classes 1 through 4. Although for some specific offenses there is information on average sentence lengths, in most cases the data are broken down by class of felony.

**Iowa.** A prison sentence, when imposed, is automatically for a fixed indeterminate term prescribed by statute for each class of offense. The actual release date is determined by the parole board, but the prison stay cannot exceed the statutory sentence length.

**Table 5. Fixed indeterminate sentences, average (mean) sentence length in months**

| Crime type | North Carolina, 1979 Statewide sample: Number of incarcerative sentences | North Carolina: Sentence length (months) | Oklahoma, 1978-82: Number of incarcerative sentences | Oklahoma: Sentence length (months) | Oklahoma: Number of life sentences | Oklahoma: Number of death sentences |
|---|---|---|---|---|---|---|
| **Serious violent crimes[a]** | • | • | **4,367** | **123 mos.** | **179** | **24** |
| Murder[b] | 160 | 552 mos. | 291 | 168 | 150 | 24 |
| Manslaughter | 147 | 164 | 177 | 81 | | |
| Rape | • | • | 143 | 168 | 6 | |
| Robbery | 681 | 224 | 2,017 | 157 | 12 | |
| Aggravated assault | 176 | 63 | 1,439 | 57 | 11 | |
| **Serious property crimes[c]** | • | • | **7,591** | **46** | **5** | |
| Burglary | 1,486 | 68 | 4,201 | 53 | 2 | |
| Larceny | 443 | 52 | 2,077 | 31 | | |
| Auto theft | • | • | 1,163 | 49 | 2 | |
| Arson | • | • | 150 | 55 | 1 | |
| **Drug crimes** | **178** | **55** | **2,405** | **39** | | |

**Note:** Life sentences not included in computing mean sentence lengths.
• Data not available.
[a] Murder, manslaughter, rape, robbery, and aggravated assault.
[b] North Carolina data are for second degree murder only. Oklahoma data include accessory to murder as well as first and second degree murder.
[c] Burglary, larceny, auto theft, and arson.

Data were furnished by the Iowa Statistical Analysis Center and cover incarceration rates for persons convicted in three counties in 1981-83. These counties contain slightly less than 10% of the State's population. "Aggravated misdemeanors" are included as well as felonies; such misdemeanors in Iowa are punishable by incarceration for up to 2 years and would be classified as felonies in most other States.

**Maryland.** For each offense, an upper limit to the sentence length is prescribed by statute. The judge imposes a fixed indeterminate sentence that may not exceed that limit. For some offenses the statute also prescribes a lower limit, and the imposed sentence may not be less than that amount. Release prior to expiration of the sentence can take place through action of the parole commission, commutation of the sentence by the Governor, or court order.

Data were provided in a report by the Maryland Statistical Analysis Center.[11] The data cover four jurisdictions in which sentencing guidelines have been tested since June 1981. The four jurisdictions (Harford, Montgomery, and Prince George's counties and Baltimore City) account for 60% of the reported serious crimes in the State and 68% of the commitments to prison. The preguidelines sample consists of 339 cases that were selected randomly from those cases that had sentencing dates within an 8 month period in 1980-81, and for which (a) there had been a conviction on only one count and (b) a presentence investigation (PSI) report had been prepared. The postguidelines data set consists of the 2,928 single-

**Table 6. Determinate sentences, average (mean) sentence length in months**

| | California, 1979 and 1981: Number of incarcerative sentences | California: Sentence length (months) | Illinois, 1978-82: Number of incarcerative sentences | Illinois: Sentence length (months) | North Carolina, 1981-82 Statewide sample: Number of incarcerative sentences | North Carolina: Sentence length (months) |
|---|---|---|---|---|---|---|
| **Serious violent crimes[a]** | **8,981** | **59 mos.** | **14,641** | **102 mos.** | • | • |
| Murder[b] | 180 | 91 | 820 | 332 | 165 | 453 mos. |
| Attempted murder | 107 | 130 | 767 | 161 | • | • |
| Manslaughter | 730 | 60 | 701 | 61 | 144 | 82 |
| Robbery | 5,419 | 56 | 8,919 | 89 | 544 | 135 |
| Aggravated assault | 1,730 | 48 | 2,253 | 40 | 114 | 38 |
| **Serious property crimes[c]** | • | • | • | • | • | • |
| Burglary | 5,973 | 31 | 10,494 | 47 | 1,352 | 47 |
| Larceny | 1,228 | 27 | 6,458 | 33 | 350 | 38 |
| Auto theft | 976 | 26 | • | • | • | • |
| **Drug crimes** | **1,646** | **36** | • | • | **157** | **40** |

**Note:** Data on life sentences not available.
• Data not available.
[a] Murder, attempted murder, manslaughter, rape, robbery, and aggravated assault.
[b] Includes only second degree murder for California (1979 only) and for North Carolina.
[c] Burglary, larceny, auto theft and arson.

**Table 7. New York: Average (mean) sentence lengths in months, by class of felony and offender classification, 1982**

| | Offender classification | | | | | | |
|---|---|---|---|---|---|---|---|
| | Youthful[a] | | | First offender | | | |
| Felony class[b] | Number of incarcerative sentences | Minimum (months) | Maximum (months) | Number of incarcerative sentences | Minimum (months) | Maximum (months) | Number of maximum life imprisonment sentences |
| **All** | **203** | **14 mos.** | **43 mos.** | **7,171** | **40 mos.** | **82 mos.** | **390** |
| A | 1 | 12 | 36 | 420 | 182 | 87 | 390 |
| B | 35 | 11 | 44 | 1,991 | 49 | 128 | |
| C | 84 | 14 | 43 | 2,145 | 29 | 79 | |
| D | 66 | 13 | 41 | 1,985 | 19 | 51 | |
| E | 14 | 14 | 43 | 630 | 15 | 40 | |

| | Offender classification | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Repeat[c] | | | | All offenders | | | |
| Felony class[b] | Number of incarcerative sentences | Minimum (months) | Maximum (months) | Number of maximum life imprisonment sentences | Number of incarcerative sentences | Minimum (months) | Maximum (months) | Number of maximum life imprisonment sentences |
| **All** | **2,556** | **42 mos.** | **76 mos.** | **105** | **9,930** | **40 mos.** | **79 mos.** | **495** |
| A | 25 | 243 | 108 | 24 | 446 | 184 | 86 | 414 |
| B | 370 | 91 | 177 | 47 | 2,399 | 55 | 133 | 47 |
| C | 504 | 51 | 97 | 19 | 2,733 | 33 | 81 | 19 |
| D | 931 | 29 | 58 | 14 | 2,982 | 22 | 53 | 14 |
| E | 726 | 19 | 38 | 1 | 1,370 | 17 | 39 | 1 |

**Note:** Life sentences not included in computing mean sentence lengths.

[a] Persons classified as youthful offenders generally are sentenced as though the offense had been a Class E felony, regardless of the actual offense.

[b] By statute, there are five classes of felony offenses based on severity of the offense; they are presented in order of decreasing seriousness. Violent and property offenses appear in all classes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.

[c] Includes persons classified as second felony offenders, persistent felony offenders, second violent felony offenders, and persistent violent felony offenders.

count cases (1,760 with PSI's and 1,168 without) for which conviction and sentencing took place from June 1981 through April 1982.

The data provide information on incarceration rates for certain categories of offenses and offenders. Data from the preguidelines sample have not been used in this report because of the small sample size and the restriction of the sample to cases with PSI's.

**Minnesota.** The judge sets a determinate prison term based on sentencing guidelines that took effect in May 1980. The guidelines use information about the seriousness of the offense and the offender's criminal history to indicate whether the offender should be incarcerated and, if so, the presumptive range of sentence lengths. These ranges are quite narrow. If the judge departs from the guidelines, written justification must be presented. Parole release has been abolished, but the prison stay can be shortened through "good time." When the offender enters prison, a prescribed amount of "good time" is credited that can be reduced or eliminated as the result of unsatisfactory behavior while incarcerated.

The sentencing guidelines were designed to reflect retribution or "just deserts" as the primary aim of sentencing. Other objectives were uniformity in sentencing and avoiding an increase in prison population. The guidelines currently measure criminal history in terms of the number of prior felony convictions, but they are being revised to take into account the severity of these prior offenses.

Data were taken from a report that investigates the impact of the sentencing guidelines.[12] The data show incarceration rates, in terms of the offender's criminal history and the seriousness of the offense, for a preguidelines group of 4,369 persons and a postguidelines group of 5,500 persons. The preguidelines group includes all persons who were convicted of felonies from July 1977 through June 1978; the data are based on a sampling of approximately 50% of that group. The postguidelines group consists of all persons convicted under the guidelines, from their inception in May 1980 until the fall of 1981.

**New York.** For most felonies, the judge imposes a minimum/maximum indeterminate sentence within limits that are specified by statute for each class and type of offense. The minimum term must be at least 1 year and not more than one-third of the maximum term. The minimum for repeat offenders is generally half of the maximum term. The offender can be considered for parole after serving the minimum term.

New York defines five basic classes of felonies, Class A through Class E, in decreasing order of seriousness. Classes B through E are subdivided into violent and nonviolent felonies with different statutory sentence ranges. For a number of relatively serious offenses, imprisonment is mandatory, especially when the offender has a prior record of felony convictions.

Under New York law, there are different sentencing provisions for each of six categories of offenders. For a first offender, no special provisions apply; sentencing is governed only by the offense. A "youthful offender" is subject to relatively mild sentencing provisions under certain circumstances. Generally a youthful offender is sentenced as though the offense had been a Class E felony, regardless of the actual offense. The other four categories cover persons with prior felony convictions (second felony offender, persistent felony offender, second violent felony offender, persistent violent felony offender) and are subject to much harsher penalties.

The data for New York were provided by the New York Statistical Analysis Center and cover 22,287 felony convictions in calendar year 1982 that resulted from 1982 felony indictments. This is a subset of all 29,330 felony convictions in 1982, and could be biased by underrepresentation of cases with long processing times. The data include incarceration rates and sentence lengths broken down by offense, class of felony, and offender category. The unit of count is the indicted defendant; if there were several indictments of the same person, they are included separately in the data.

**North Carolina.** North Carolina used indeterminate sentencing until July 1981. The judge imposed a maximum sentence that could not exceed an upper limit prescribed by statute for each offense. In many cases, a minimum sentence also was imposed. There was wide parole discretion and generous provision for earning "good time" credit. In most cases, an inmate became eligible for parole after serving either the imposed minimum sentence or a fifth of the statutory upper limit, whichever was less.

Determinate sentencing was instituted by legislation that took effect on July 1, 1981. A presumptive sentence length is provided by statute for each offense. The court must impose a fixed determinate sentence of that length un-

less there are significant mitigating or aggravating circumstances. "Good time" credit can be accumulated but, until July 1984, there was no discretionary parole except for certain youthful offenders. Discretionary parole release was partially reinstated on July 1, 1984. Certain offenders considered to be good risks can be released into rigidly supervised community programs after serving at least half of their sentences.

A report evaluating the change to determinate sentencing provided data on incarceration rates and sentence lengths for a number of offenses, based on statewide samples of several thousand persons each in 1979 and in 1981-82, before and after the determinate sentencing legislation became effective.[13]

**Oklahoma.** The judge imposes a fixed indeterminate sentence that is the maximum amount of time for which the offender can be imprisoned. The sentence may not exceed an upper limit that is stipulated by statute for each offense. The actual date of release is determined by the parole board, which can release the offender at any time before the expiration of the imposed sentence. The initial parole hearing must take place before a third of the imposed sentence has been served.

Data covering each year from 1978 through 1982 were provided by the Oklahoma Statistical Analysis Center. The data include information on incarceration rates and sentence lengths for specific offenses. The offenses are those for which charges were filed originally; changes due to plea bargaining are not reflected in the data. A case-based system is used; that is, each charge is covered separately in the data, and so a person sentenced on more than one charge will account for several data entries.

**Oregon.** The judge imposes a fixed indeterminate sentence that may not exceed the maximum prescribed by statute for each class of offense. The sentence is the maximum duration of imprisonment. The parole board sets the actual release date, using guidelines that it has developed.

A report by the Oregon Statistical Analysis Center provided information on incarceration rates in 1979 for certain categories of offenses, broken down by whether or not the most serious conviction offense was the same as the most serious offense for which the person had been arrested.[14]

**Pennsylvania.** The judge imposes a minimum/maximum indeterminate sentence. For sentences with a maximum of 2 years or more, the parole board determines the actual date of release, but release cannot occur before the expiration of the minimum sentence. Offenders generally are released at the expiration of the minimum term. When the maximum term is less than 2 years, release by court order may take place prior to the expiration of the minimum term.

**Table 8. Illinois: average (mean) sentence length in months, by class of felony, 1978-82**

| Felony[a] class | Minimum/maximum indeterminate sentences: Number of incarcerative sentences | Minimum (months) | Maximum (months) | Determinate sentences: Number of incarcerative sentences | Sentence length (months) |
|---|---|---|---|---|---|
| **All felonies** | **4,429** | **80 mos.** | **173 mos.** | **41,317** | **67 mos.** |
| M (murder) | 347 | 495 | 1,047 | 820 | 332 |
| X | 1,111 | 100 | 194 | 8,227 | 132 |
| 1 | 141 | 65 | 156 | 1,816 | 83 |
| 2 | 1,721 | 22 | 62 | 15,682 | 48 |
| 3 | 983 | 23 | 55 | 12,750 | 34 |
| 4 | 124 | 16 | 39 | 2,022 | 24 |

Note: Data on life sentences not available.
[a] By statute, there are six classes of felony offenses that are based on the severity of the offense; they are presented in order of decreasing seriousness. In general, a particular class can include property and violent crimes. The class of a particular offense depends upon factors such as injury or loss to the victim, weapons use, etc.

The Pennsylvania Statistical Analysis Center provided data in a tabulation entitled Pennsylvania Judicial Sentencing Practices, 1978-1981. Information is given on incarceration for specific offenses. The data for 1981 are used in this report; these data are more complete and are estimated to be more reliable than the data for earlier years.

In addition to felonies, some offenses are included that are classified as misdemeanors under Pennsylvania law, but are punishable by more than 1 year in prison and would be considered felonies in many other States.

The data do not include those cases in which Accelerated Rehabilitative Disposition (ARD) was used. This is a type of probation that can be imposed by the court without a formal finding of guilt. It usually is used with non-violent first offenders. If this option were not available, most ARD cases probably would have resulted in convictions with no incarceration.

**Washington.** During the period covered by the data in this report, Washington used fixed indeterminate sentencing. The law defined three classes of felonies, each with a prescribed upper limit on sentence length. Where a prison sentence was imposed, it was for a fixed indeterminate term equal to the statutory maximum. The paroling authority determined the actual sentence length and the release date. The only restriction was that period of imprisonment could not exceed the statutory maximum sentence length.

A determinate sentencing law was enacted in July 1984. It provides for judicial consideration of the specific offense characteristics and the offender's prior record in selecting a determinate sentence from within a narrow statutory range.

The Washington Statistical Analysis Center provided data covering incarceration rates for certain offenses in 1971-82.

**Wyoming.** The judge sets a minimum/maximum indeterminate sentence within limits fixed by statute for each offense. The parole board establishes the actual release date from within the range of the sentence.

Data were furnished by the Wyoming Statistical Analysis Center, covering persons sentenced from January 1, 1981, through June 30, 1984. The data are offender-based; each convicted person is represented once in the data. Where a person was convicted on several charges, the data cover the most serious charge. The data were taken from two independent information systems, one covering probation and the other imprisonment. As a result, any person receiving a sentence other than probation or imprisonment is not covered by the data. Since other types of sentences are rarely used in Wyoming, these omissions are not believed to be significant.

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Special Report

# Presumptive and mandatory sentencing impact

On January 1, 1980, a comprehensive revision of Alaska's Criminal Code became effective. The four most important features of the new code were:

- The criminal code was completely revised and a new sentencing scheme was adopted to accompany the substantive revisions.

- All crimes, with the exception of murder and kidnapping, were classified on the basis of their seriousness as Class A, B, or C felonies or Class A or B misdemeanors. Uniform penalty provisions apply to the five classes of crimes.

- The sentencing provisions left judicial discretion intact in the sentencing of misdemeanants and most first-time felony offenders. Judicial discretion, however, was substantially restricted by the specification of presumptive sentences for repeat felons.

Since 1980, several significant changes have been made to the revised Criminal Code. They include:

- The State's drug laws were completely revised and classified according to the uniform penalty provisions of the Criminal Code.

- Sexual Assault I was reclassified as an Unclassified felony.

- The new offense of Sexual Abuse of a Minor I was classified as an Unclassified felony.

- Class A felonies were made subject to the presumptive sentencing provisions.

In order to evaluate the impact of these changes on Alaska's correctional system, a preliminary and tentative study was conducted by the Department of Corrections. The study compared the prisoner population during November 1979 with the prisoner population during November 1984 in an attempt to determine whether a signifi[illegible]ber of persons was being convicted for spec[illegible]es and whether these were crimes falling u[illegible]e provisions of presumptive sentencing, thereby having a substantial effect on the size of the correctional population.

### *Overview of findings*

- Felons sentenced under the presumptive sentencing provisions of the revised Criminal Code for A, B, or C felonies are serving 29 percent more man-years than those sentenced non-presumptively.

- Felons sentenced presumptively to serve time for unclassified crimes will serve 39 percent more man-years than those sentenced non-presumptively.

- The additional 496 man-years to be served by those ineligible for an early release program converts into 181,040 man-days to serve. At the current $84.72 per day cost of supervision in an institution, the total cost will be $15,337,700.

- The estimated costs to construct beds to hold prisoners for the extended period of time is $40,734,000.

- A full and careful study of the impact of presumptive and mandatory sentencing should be completed by an objective, competitively selected study team funded under contract to the Department of Corrections. The results of the study should then be reported to the legislature.

The data leading to these findings are presented in the following tables.

### *1979 versus 1980 prisoner populations*

The following table presents a comparison of the prisoner population immediately preceding the implementation of the Revised Criminal Code with the prisoner population on November 7, 1984, five years after the implementation.

Comparison of sentenced prisoner populations, most serious offense committed November 1979 versus November 1984

| Offense | November 1979 # | % | November 1984 # | % | Difference |
|---|---|---|---|---|---|
| Attempt to commit felony | 14 | 3 | 15 | 1 | + 1 |
| Murder I | 26 | 5 | 80 | 6 | + 54 |
| Murder II | 22 | 4 | 61 | 4 | + 39 |
| Manslaughter | 33 | 6 | 42 | 3 | + 9 |
| Negligent homicide | 6 | 1 | 5 | * | − 1 |
| Assault | 47 | 8 | 132 | 10 | + 85 |
| Kidnapping | 9 | 2 | 27 | 2 | + 18 |
| Sexual assault | 45 | 8 | 276 | 20 | +231 |
| Robbery | 60 | 11 | 119 | 9 | + 59 |
| Coercion | | | 1 | * | + 1 |
| Theft | 34 | 6 | 51 | 4 | + 17 |
| Issuing bad checks | 1 | * | 2 | * | + 1 |
| Fraud | 3 | * | 2 | * | − 1 |
| Burglary | 58 | 10 | 117 | 8 | + 59 |
| Arson | 4 | 1 | 7 | 1 | + 3 |
| Criminal mischief | 6 | 1 | 7 | 1 | + 1 |
| Forgery | 10 | 2 | 14 | 1 | + 4 |
| Bribery | 1 | * | + | 1 | |
| Escape | 5 | 1 | 22 | 2 | + 17 |
| Interfere official proceedings | | | 1 | * | + 1 |
| Terroristic threatening | | | 1 | * | + 1 |
| Misconduct weapons | | | 7 | 1 | + 7 |
| Promote prostitution I | | | 1 | * | + 1 |
| Drugs — possession and sale | 24 | 4 | 67 | 5 | + 43 |
| Probation | 62 | 11 | 105 | 7 | + 43 |
| Parole | 14 | 3 | 18 | 1 | + 4 |
| Misdemeanors, other | 72 | 13 | 195 | 14 | +123 |
| Totals | 555 | 100% | 1,376 | 100% | +821 |

* = Less than 1%.

The categories showing the greatest increases in the number of prisoners are Sexual assault (+231), Assault (+85), Robbery (+59), Murder I (+54), Drugs (+43) and Murder II (+39). The increases have occurred in the violent crime categories and are primarily Unclassified or A felonies.

### *Prisoners serving presumptive sentences*

In order to identify prisoners serving presumptive sentences under the Revised Criminal Code, the sentence records for sentenced prisoners incarcerated on November 7, 1984 were reviewed, and the length and type of sentence data was collected and analyzed. The following table presents the results of this analysis.

Impact of presumptive sentencing
on man-years to be served by crime class
November 7, 1984

| Class | Felons with presumptive sentences | | Eligibility of early release program | | |
|---|---|---|---|---|---|
| | # | Total man-years to serve | Total man-years to serve | Difference in man-years to serve | Percent change |
| Unclassified | 12 | 114 | 82 | + 32 | +39% |
| A Felony | 202 | 1,472 | 1,143 | +329 | +29% |
| B Felony | 85 | 346 | 269 | + 77 | +29% |
| C Felony | 69 | 278 | 220 | + 58 | +27% |
| Total | 368 | 2,210 | 1,714 | +496 | +29% |

The total number of man-years to be served is calculated based upon the amount of actual jail time imposed less good time provisions. It was found that 368 felons were sentenced presumptively under the revised Criminal Code and that they had a total of 2,210 man-years to serve.

To determine the impact of presumptive sentencing on the actual jail time to be served by these 368 prisoners, calculations were made to ascertain the amount of jail time which would be served if they were eligible for an early release program after serving one-third of the sentences. This is the criteria for Parole Board consideration of felons serving non-presumptive sentences.

These calculations show that an estimated 496 fewer man-years would be served by the 368 prisoners if an early release mechanism were available. Felons serving time under presumptive sentences are serving 27 to 39 percent more jail time than felons serving non-presumptive sentences.

### *Overview of sentences being served on November 7, 1984*

The average sentence being served for all sentenced prisoners incarcerated in Alaska's correctional institutions and the Federal Bureau of Prisons is presented in the following table. Within each crime category, the number of prisoners and the average sentence being served is shown. The data are also broken down to show the number of prisoners and the average sentence for those sentenced under the previous criminal code and those sentenced presumptively or non-presumptively under the revised Criminal Code.

More detailed charts showing sentences received by year of sentencing are available upon request.

See Susan Knighton 3376, for explanation

Sentenced prisoners by
most serious offense committed as of November 7, 1984
Average sentence length

| | Non-presumptive sentence | | Presumptive sentence | | Old case | | |
|---|---|---|---|---|---|---|---|
| Offense | # | Average sentence | # | Average sentence | # | Average sentence | Total # |
| Attempt to commit misdemeanor | 1 | 75D | | | | | 1 |
| Attempt to commit felony | 7 | 5Y | 8 | 5Y | | | 15 |
| Solicit to commit crime | 1 | 3Y | | | | | 1 |
| Murder I — Life and 50Y | 30 | | 2 | | 17 | | 49 |
| Murder I | 21 | 30Y | 4 | 14Y | 5 | 39Y | 30 |
| Murder II — Life and 50Y | | | | 4 | | 4 | |
| Murder II | 30 | 29Y | 4 | 13Y | 23 | 23Y | 57 |
| Manslaughter | 24 | 7Y | 12 | 7Y | 7 | 17Y | 43 |
| Negligent homicide | 5 | 4Y | | | | | 5 |
| Assault I | 15 | 5Y | 28 | 9Y | 8 | 16Y | 51 |
| Assault II | 23 | 3Y | 12 | 6Y | | | 35 |
| Assault III | 20 | 3Y | 9 | 4Y | | | 29 |
| Assault IV | 17 | 5M | 1 | 3Y | | | 18 |
| Kidnapping — Life | | | | | 2 | | 2 |
| Kidnapping | 17 | 20Y | 4 | 11Y | 4 | 28Y | 25 |
| Sexual assault I | 96 | 10Y | 88 | 11Y | 15 | 17Y | 199 |
| Sexual assault II | 18 | 4Y | 2 | 4.5Y | 2 | 20Y | 22 |
| Sexual assault III | 1 | 6M | | | | | 1 |
| Sexual abuse of a minor | 37 | 4Y | 10 | 6Y | | | 47 |
| Incest | 4 | 2Y | | | | | 4 |
| Exploitation of minor | 3 | 15Y | | | | | 3 |
| Robbery I | 27 | 6Y | 69 | 9Y | 5 | 12Y | 101 |
| Robbery II | 13 | 4Y | 5 | 6Y | | | 18 |
| Coercion | 1 | 1.5Y | | | | | 1 |
| Theft I | 5 | 5Y | | | 1 | 10Y | 6 |
| Theft II | 20 | 3Y | 18 | 4Y | | | 38 |
| Theft III | 1 | 1Y | 1 | 3Y | | | 2 |
| Theft IV | 4 | 82D | | | | | 4 |
| Theft of service | | | 1 | 6Y | | | 1 |
| Issuing bad checks | 1 | 8Y | 1 | 7Y | | | 2 |
| Fraud use of credit card | 1 | 95D | 1 | 3Y | | | 2 |
| Burglary I | 33 | 3Y | 32 | 5Y | 1 | 15Y | 66 |
| Burglary II | 26 | 2Y | 25 | 4Y | | | 51 |
| Trespass III | 1 | 1.5Y | | | | | 1 |
| Arson I | 1 | 15Y | | | 1 | 20Y | 2 |
| Arson II | 4 | 3Y | | | 1 | 12Y | 5 |
| Criminal mischief II | 2 | 1.5Y | 2 | 3Y | | | 4 |
| Criminal mischief III | 2 | 3M | 1 | 2Y | | | 3 |
| Forgery I | 2 | 7Y | 2 | 1.5Y | | | 4 |

## Sentenced prisoners by most serious offense committed as of November 7, 1984
## Average sentence length

| Offense | Non-presumptive sentence # | Non-presumptive sentence Average sentence | Presumptive sentence # | Presumptive sentence Average sentence | Old case # | Old case Average sentence | Total # |
|---|---|---|---|---|---|---|---|
| Forgery II | 4 | 5Y | 6 | 10Y | | | 10 |
| Bribery | 1 | 3Y | | | | | 1 |
| Escape I | 2 | 5Y | 1 | 10Y | | | 3 |
| Escape II | 5 | 4Y | 13 | 7Y | | | 1 |
| Escape III | 1 | 4Y | | | | | 1 |
| Promoting contraband I | 1 | 3Y | 1 | 5Y | | | 2 |
| Promoting contraband II | 1 | 6Y | | | | | 1 |
| Interfere official proceedings | 1 | 5Y | | | | | 1 |
| Terroristic threatening | 1 | 2Y | | | | | 1 |
| Disorderly conduct | 1 | 50D | | | | | 1 |
| Misconduct weapons I | 2 | 11Y | 5 | 12Y | | | 7 |
| Misconduct weapons II | 2 | 6M | | | | | 2 |
| Misconduct weapons III | | | 1 | 1Y | | | 1 |
| Prostitution | 1 | 50D | | | | | 1 |
| Promote prostitution I | | | 1 | 4Y | | | 1 |
| Controlled substance I | 16 | 4Y | | | | | 16 |
| Controlled substance II | 3 | 6Y | 4 | 7Y | | | 7 |
| Controlled substance III | 25 | 3Y | 9 | 5Y | | | 34 |
| Controlled substance IV | 4 | 2Y | 1 | 5Y | | | 5 |
| Controlled substance V | 2 | 5M | | | | | 2 |
| Probation | | | | | | | 105 |
| Parole | | | | | | | 18 |
| DWI | | | | | | | 108 |
| Alcohol, other | | | | | | | 5 |
| Other jurisdiction case | | | | | | | 36 |
| Drugs, other | | | | | | | 1 |

U.S. Department of Justice
Bureau of Justice Statistics

Bureau of Justice Statistics
Special Report

# Felony Sentencing in 18 Local Jurisdictions

This report presents sentencing outcomes in the felony courts of 18 predominantly urban jurisdictions for the offenses of homicide, rape, aggravated assault, burglary, and drug trafficking.[1]

An earlier Bureau of Justice Statistics report described aggregate statewide data on sentencing practices.[2] To examine sentencing outcomes in more detail, this study collected and analyzed case-specific data on the sentences imposed in 1983 on more than 15,000 felony offenders.

The 18 jurisdictions range in size from Lancaster County (Lincoln, Neb.) with a population of 192,884 to Los Angeles, Calif., with a population of 2,966,850. The average population is nearly 900,000, and the median population is about 660,000. The jurisdictions are located in 15 different States and are distributed across the major geographical regions of the country: three are in the northeast, seven in the south, five in the midwest, and three in the west. The study includes such major cities as Baltimore, Miami, Denver, Minneapolis, Los Angeles, Phoenix, Milwaukee, and New Orleans. No claim is made here, however, that the findings presented statistically represent sentencing patterns in all felony courts in the Nation or in all urban jurisdictions.

May 1985

One of the most serious gaps in our knowledge of the criminal justice system in the United States is reliable multijurisdictional data on the sentencing of convicted felons. The Bureau of Justice Statistics began to fill this informational need in 1984 with Sentencing Practices in 13 States, a report on aggregate statewide data on felony sentencing. The current special report presents a wealth of additional data on felony sentencing in 18 mostly urban jurisdictions, including such major cities as Baltimore, Denver, Los Angeles, Miami, Milwaukee, Minneapolis, New Orleans, and Phoenix.

By collecting case-specific data on the sentences imposed on more than 15,000 felony offenders in 1983, this study was able to measure the use of different kinds and degrees of sanctions for seven major felonies in a variety of large jurisdictions throughout the country. It was also able to analyze the impact on sentencing patterns of such factors as crime severity, different types of sentencing systems, the number of conviction offenses, and the use of pleas vs. trials.

Special thanks are due to the National Association of Criminal Justice Planners, which conducted the research under a cooperative agreement with the Bureau of Justice Statistics, and to the many individuals in the 18 jurisdictions who assisted in the collection of the data.

Steven R. Schlesinger
Director

(See appendix table 1 for a list of the participating jurisdictions.)

## Highlights

Principal findings from these 18 counties include the following:

- Forty-five percent of the sentences for the felonies studied were to State prison; 26% were to local jail (with or without an additional probation sentence); and 28% were to probation only.

- Those convicted of homicide were most likely to be sentenced to prison (85%) and those convicted of drug trafficking were least likely (23%).

- Average prison sentences for each crime varied greatly among the jurisdictions, but within each jurisdiction sentence lengths were ordered with great consistency.

- The use of jail in felony sentencing varied substantially among the participating jurisdictions, ranging from less than 1% of the sentences in Baltimore City to half of the sentences in Hennepin County (Minneapolis).

- The average prison term imposed in determinate sentencing jurisdictions

[1] This study is drawn from a longer report, Sentencing Outcomes in 18 Felony Courts, NCJ-97690 (forthcoming).

[2] Bureau of Justice Statistics Special Report, Sentencing Practices in 13 States, NCJ-95399, October 1984.

was 40% to 50% shorter than in jurisdictions using indeterminate sentencing.

• Nearly three-fourths (74%) of the sentences to life imprisonment or death were for those convicted of homicide; 26% of all homicide sentences were to life in prison or death.

• For robbery and burglary, those convicted of an attempted offense were less likely to be sentenced to prison and received shorter average prison terms than those convicted of the completed offense.

• The number of charges on which a person was convicted affected sentencing outcomes. Forty percent of those convicted on a single charge received prison sentences, averaging 5.3 years; in contrast, 69% of those convicted on four or more charges received prison terms averaging 13.5 years.

• About 1 in 9 of those convicted of multiple charges and sentenced to prison received consecutive rather than concurrent sentences. The average prison term imposed on those with consecutive sentences was 18.9 years; for those with concurrent sentences it was 8.9 years.

• Nearly six times as many offenders were convicted on the highest original charge as on a lesser charge (85% vs. 15%).

• There were about five times as many convictions through guilty pleas as by trial. About five-sixths (83%) of all guilty pleas were to the highest original charge. Those pleading guilty were slightly less likely to be sentenced to prison (44%) than those found guilty at trial (51%). Those pleading guilty also received shorter average prison terms than those found guilty at trial for each of the crimes studied.

**Overview of sentencing outcomes**

While a felony sentence is sometimes thought of as a term of incarceration in a State prison imposed by a judge on the convicted felon, sentencing actually involves a broader range of outcomes. If a defendant is convicted of a felony, the judge must make up to three major sentencing decisions. The first decision is whether to incarcerate. If the decision is to incarcerate, the judge must decide whether the offender should be sent to a State facility (prison) or to a local facility (jail). Finally, the judge must determine the sentence length. Although judges have considerable flexibility in these decisions, State law may 1) mandate incarceration for certain crimes, 2) require that longer sentences (e.g., 1 year or more) be served in State prisons rather than local jails, and 3) set a minimum sentence length in certain cases.

Incarceration was the sentence in 71% of all of the felony convictions studied (26% to jail and 45% to prison, figure 1). Nearly all of the remaining sentences (28%) were to probation only. Approximately 1% of convicted persons received a sentence other than that of incarceration or probation, normally a fine or restitution to the victim.

Persons convicted of a felony are usually viewed as a State responsibility. With 1 out of 4 felony offenders sentenced to jail, however, local correctional institutions play a prominent role in the incarceration of convicted felons. (Persons sentenced to the jail should not be confused with others who are sentenced to a State facility and are held in a local jail until space becomes available at the State prison.)

Jail sentences can be imposed by the courts in several different ways. In some cases the offender receives a straight jail term, while in others part of the sentence is a jail term and part is probation: Straight jail terms constituted 30% of jail sentences imposed; 68% of the felons sentenced to jail also received a probation sentence. In another 2% of the cases, the jail sentence was to time served, i.e., the sentence of incarceration was made to equal the amount of time the offender had already spent in pretrial detention.

Those sentenced to a straight jail term received a longer average jail sentence, 12 months, than those sentenced to jail as part of a split sentence, in which cases the jail term averaged 7 months. The shorter term for felons serving a split sentence is offset by the period of probation that also must be served. The average probation term for those serving a split sentence was 3 years and 2 months, 1 month longer than the average for those sentenced to straight probation.

**Offense differences**

Overall, 45% of the felony offenders received prison sentences. (Because nearly half of the cases—48%—involved the property crimes of burglary and larceny, the overall sentencing outcomes are heavily influenced by the patterns found for these crimes.) The likelihood of a prison sentence was highest for those convicted of homicide (85%), rape (69%), and robbery (65%); it was lowest for those convicted of drug trafficking (25%) and larceny (29%) (table 1). For the purposes of this study, drug trafficking includes "possession with intent" to sell, manufacture or distribute. The relatively low percentage of drug offenders sentenced to prison may be explained by the fact that the threshold weight for "possession with intent" generally involves ounces, not pounds. Consequently, many of the drug trafficking cases involve small-time dealers.

The use of jail varied across the different crime categories. Jail was not a common sanction for murder, rape, or robbery. It was a much more prevalent sanction for aggravated assault, burglary, larceny, and especially for drug trafficking, with 41% of drug dealers sentenced to jail. With larceny the use of jail is equally striking: for each convicted felon sent to prison, another is sent to jail (29% and 32% respectively).

Straight probation was rarely used for the crimes of homicide, rape, or robbery. It was a more frequently used sanction for aggravated assault, burglary, larceny, and drug trafficking. Indeed, for larceny, where straight probation was imposed in 38% of the

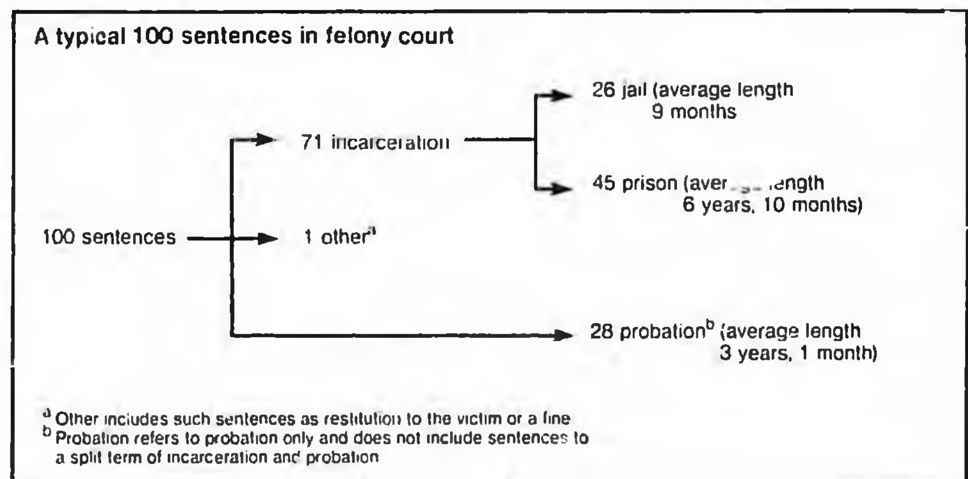

Figure 1

| Table 1. Distribution of sentences, by type of sentence and conviction offense | | | | | | |
|---|---|---|---|---|---|---|
| Conviction offense | Prison | Jail only | Jail and probation | Probation only | Other | Total |
| **Total** | **45%** | **8%** | **16%** | **28%** | **1%** | **100%** |
| Violent | | | | | | |
| Homicide | 85 | 1 | 5 | 9 | — | 100 |
| Rape | 69 | 2 | 10 | 18 | 1 | 100 |
| Robbery | 65 | 4 | 12 | 17 | 1 | 100 |
| Aggravated assault | 39 | 11 | 19 | 31 | 2 | 100 |
| Property | | | | | | |
| Burglary | 46 | 8 | 17 | 28 | 1 | 100 |
| Larceny | 29 | 15 | 17 | 38 | 2 | 100 |
| Other | | | | | | |
| Drug trafficking | 23 | 6 | 35 | 35 | 2 | 100 |

Note: May not add to 100% because of rounding.
— Less than 0.5%.

cases, it was the most frequently used sanction.

### Sentence lengths

The average sentences imposed were longest for prison sentences and shortest for jail sentences (table 2). Prison sentence length, like the proportion of offenders sentenced to prison, was longest for the crimes of homicide, rape, and robbery and shortest for larceny and drug trafficking.

Average jail terms for the different crime categories varied less than prison terms. Only those sentenced to jail for larceny and drug trafficking had average jail sentences shorter than the range of 0.8 years to 1 year.

Average terms of probation fell in the fairly narrow range of 2.6 to 3.7 years for all crime categories other than homicide and rape. The length of the probation term, however, is only one consideration in viewing what is to be accomplished with probation. Judges often impose conditions with probation such as restitution, drug and alcohol counseling, and community service. The convicted felon's progress in meeting those conditions and keeping out of trouble are indicators of whether or not probation is succeeding. These considerations do not necessarily correlate directly with time. This may explain why there is no strong pattern between the average duration of probation and the nature of the offense.

### Prison sentences

Among the 18 jurisdictions studied, there was substantial variation in the average prison sentences imposed for the seven felony crime categories (table 3). Robbery, for example, varied from 3.8 years to 20.6; aggravated assault from 3.7 years to 14.4; and burglary from 2.2 years to 10.2. Nonetheless, there was great consistency in how sentence lengths were ordered across crimes within each jurisdiction. In 15 of the 18 jurisdictions rape sentences were longer than robbery sentences; in 13, robbery sentences were longer than those for aggravated assault; in 14, aggravated assault sentences exceeded the average length of burglary sentences; and in 17, the average sentence for burglary was greater than that for larceny.

The homicide data cannot reasonably be compared to that for other crimes since the sentence length calculations exclude sentences to life in prison or to death, which constitute 26% of all homicide sentences but no more than 2% of the sentences for any of the other crime categories. In a few other cases sentence lengths for a particular crime that seem out of step with others in the same jurisdiction—e.g., 3.5 years for rape in Jefferson County—may be attributable to a very small number of cases or to a disproportionate number of attempts rather than completed crimes.

**Table 2. Average sentence length, by conviction offense**

| Conviction offense | Average sentence length: Prison | Jail | Probation only |
|---|---|---|---|
| Violent | | | |
| Homicide | 14.9 yrs. | .9 yrs. | 5.6 yrs. |
| Rape | 12.6 | .8 | 5.4 |
| Robbery | 8.7 | .9 | 3.7 |
| Aggravated assault | 6.7 | .8 | 3.4 |
| Property | | | |
| Burglary | 4.6 | .8 | 2.9 |
| Larceny | 3.3 | .6 | 2.6 |
| Other | | | |
| Drug trafficking | 4.2 | .4 | 3.1 |

Note: Persons receiving life or death sentences (less than 2% of all cases but 26% of all homicide cases) were excluded in the computation of the average prison terms. Information on persons receiving life or death sentences is provided elsewhere in this report. Jail column includes those sentenced to jail and probation.

**Table 3. Average prison sentence length in years for each conviction offense, by jurisdiction**

| | Average prison sentence length in years for: | | | | | | |
|---|---|---|---|---|---|---|---|
| Jurisdiction | Homicide | Rape | Robbery | Aggravated assault | Burglary | Larceny | Drug trafficking |
| **Average for all jurisdictions** | **14.9** | **12.6** | **8.7** | **6.7** | **4.6** | **3.3** | **4.2** |
| **Determinate sentencing jurisdictions** | | | | | | | |
| Hennepin County | 10.0 | 5.8 | 4.1 | 3.7 | 2.2 | 2.1 | 1.5 |
| Los Angeles | 6.5 | 11.5 | 3.8 | 5.2 | 2.5 | 2.1 | 2.6 |
| Riverside County | 5.2 | 9.7 | 4.6 | 3.8 | 3.0 | 2.6 | 3.1 |
| Kane County | 9.3 | 8.6 | 5.8 | 4.0 | 4.2 | 2.2 | 5.4 |
| Denver | 7.6 | 11.8 | 7.1 | 5.7 | 4.8 | 4.7 | 4.5 |
| Median | 7.6 | 9.7 | 4.6 | 4.0 | 3.0 | 2.2 | 3.1 |
| **Indeterminate sentencing jurisdictions** | | | | | | | |
| Maricopa County | 11.2 | 7.6 | 7.4 | 5.3 | 3.9 | 3.1 | 5.4 |
| Milwaukee County | 12.7 | 8.3 | 7.6 | 9.1 | 4.0 | 3.3 | 3.6 |
| Lancaster County | 7.5 | 11.0 | 4.6 | 6.8 | 2.7 | 2.0 | 2.4 |
| Davidson County | 15.4 | 12.1 | 13.2 | 7.9 | 5.8 | 5.0 | 5.8 |
| Philadelphia | 14.7 | 11.9 | 8.4 | 5.3 | 5.8 | 3.9 | 5.7 |
| Jefferson Parish | 11.6 | 3.5 | 16.8 | 11.3 | 4.7 | 2.9 | 7.6 |
| New Orleans | 15.4 | 18.4 | 9.8 | 9.3 | 4.7 | 2.6 | 5.0 |
| Oklahoma County | 13.7 | 21.3 | 13.5 | 10.0 | 6.2 | 4.1 | 4.9 |
| Lucas County | 22.5 | 18.2 | 20.6 | 11.4 | 10.2 | 4.2 | 9.2 |
| Baltimore City | 17.4 | 11.2 | 6.7 | 14.4 | 3.3 | * | * |
| Baltimore County | 25.3 | 20.3 | 10.4 | 10.5 | 6.3 | 2.0 | 3.5 |
| Dade County | 28.7 | 26.2 | 15.6 | 4.3 | 5.9 | 3.3 | 6.4 |
| Jefferson County | 13.9 | 15.7 | 13.7 | 7.1 | 7.4 | 4.1 | 4.9 |
| Median | 14.7 | 12.1 | 10.4 | 9.1 | 5.8 | 3.3 | 5.0/5.4 |

Note: Persons receiving life or death sentences (less than 2% of all cases but 26% of all homicide cases) were excluded in computing the average prison terms.
*Sentencing data were not collected for these crimes in Baltimore City.

## The differential use of jail

Another substantial difference in sentencing patterns among the 18 jurisdictions was the use of jail as a sanction for convicted felons.

At one extreme were Baltimore City and Denver, where only about 1% of felons received a jail sentence; at the other extreme were Hennepin County (Minneapolis) and Los Angeles,[3] where about half the sentenced felons received some type of jail term (table 4).

Generally, the more frequent the use of jail, the higher the incarceration rate for a jurisdiction. Hennepin County and Los Angeles, for example, were among the top three jurisdictions with the highest overall incarceration rates (table 5). Denver, on the other hand, one of the jurisdictions that imposed jail sentences least often, had the lowest overall incarceration rate.

Other jurisdictions where jail was rarely used for felons, such as Baltimore City and Jefferson County (Louisville), imposed prison sentences on relatively high percentages of offenders (66% and 64%, respectively).

The differential use of jail among these jurisdictions reflects differences in how State and local authorities have elected to deal with convicted felons. Denver, for example, has a fairly extensive community-based residential corrections program, which tends to take the place of jail in the sentencing of convicted felons. In Minnesota, on the other hand, jail is used extensively to divert convicted felons from prison, especially by using short or part-time stays such as weekends in jail. In other States the criminal codes have been revised to permit judges to sentence felons to local jails for more than a year. A judge in Louisiana, for example, may sentence a person up to 12 years in the parish (county) jail.

But even where no State program exists and no code revisions have taken place, judges often retain wide discretion in deciding the type of sentence to be imposed. A judge, believing that a sentence to prison might be inappropriate but that the offender should do some time in an institution, can combine a jail term with a period of probation.

In addition to variation among the jurisdictions in how frequently jail is used, there is also considerable variation in the length of jail sentences.

[3]Los Angeles refers to the Central District Court of Los Angeles County, which generally conforms to the boundaries of the City of Los Angeles.

**Table 4. Proportion of jail sentences and average jail sentence length, by jurisdiction**

| Jurisdiction | Percent of all sentences to: Straight jail | Jail and probation | Average jail sentence length for: Straight jail | Jail and probation |
|---|---|---|---|---|
| Baltimore City | — | — | 23 weeks | 9 weeks |
| Baltimore County | 13% | 14% | 37 | 44 |
| Dade County | 13 | 10 | 32 | 32 |
| Davidson County | 13 | 7 | 55 | 23 |
| Denver | — | 1 | 31 | 19 |
| Hennepin County | 1 | 50 | 22 | 15 |
| Jefferson County | 1 | 2 | 57 | 12 |
| Jefferson Parish | 17 | — | 61 | 52 |
| Kane County | 1 | 32 | 5 | 12 |
| Lancaster County | 19 | 12 | 22 | 6 |
| Los Angeles | 4 | 40 | 36 | 29 |
| Lucas County | — | 26 | 13 | 14 |
| Maricopa County | 4 | 19 | 14 | 16 |
| Milwaukee County | 3 | 24 | 45 | 22 |
| New Orleans | 13 | 5 | 40 | 25 |
| Oklahoma County | 4 | 9 | 29 | 24 |
| Philadelphia | 23 | 11 | 84[a] | 86[a] |
| Riverside County[b] | 1 | 1 | 36 | 30 |

Note: This table includes those who received "time serve" sentences.
— Less than 0.5%.
[a] Philadelphia judges impose maximum and minimum jail terms, unlike any of the other 17 jurisdictions. Average minimum jail sentences are shown here.
[b] Because the record source used in Riverside County did not always indicate when a jail term was imposed along with a probation sentence, the number of jail sentences in Riverside County is most probably understated.

**Table 5. The use of incarceration, by jurisdiction**

| Jurisdiction | Percent of all sentences to: Incarceration (jail and prison) | Jail[a] | Prison |
|---|---|---|---|
| Los Angeles County | 88% | 44% | 44% |
| Kane County | 85 | 33 | 52 |
| Hennepin County | 82 | 50 | 32 |
| Dade County | 80 | 23 | 57 |
| Davidson County | 77 | 19 | 58 |
| Lancaster County | 76 | 31 | 45 |
| Lucas County | 74 | 27 | 47 |
| Milwaukee County | 68 | 27 | 41 |
| Jefferson County | 67 | 3 | 64 |
| Philadelphia | 67 | 34 | 33 |
| Baltimore City | 66 | — | 66 |
| New Orleans | 64 | 18 | 46 |
| Oklahoma County | 61 | 13 | 48 |
| Riverside County[b] | 57 | 3 | 54 |
| Baltimore County | 57 | 26 | 31 |
| Maricopa County | 55 | 22 | 33 |
| Jefferson Parish | 43 | 17 | 26 |
| Denver | 42 | 1 | 41 |
| **Average for all cases** | 71% | 26% | 45% |

— Less than 0.5%.
[a] Includes those sentenced to "time served."
[b] See table 4, footnote b.

With the exception of Philadelphia (discussed below), average terms ranged from 5 weeks in Kane County (suburban Chicago) to 61 weeks in Jefferson Parish (suburban New Orleans) for straight jail terms and from 6 weeks in Lancaster County (Lincoln, Neb.) to 52 weeks in Jefferson Parish for jail terms coupled with probation (table 4).

Interestingly, three of the four jurisdictions—Kane, Lucas (Toledo, Ohio), and Hennepin—that most often used split sentences (to both jail and probation), had very similar average jail sentence lengths: between 12 and 15 weeks. The fourth, Los Angeles, had a substantially higher average jail sentence of 29 weeks.

The average jail terms for Philadelphia—84 weeks for straight jail terms and 86 weeks for those receiving jail and probation—were by far the longest imposed among the participating jurisdictions. Unlike any other jurisdiction encompassed by this study, however, judges in Philadelphia impose a minimum as well as a maximum term on those sentenced to jail. Table 4 shows the average maximum jail sentences. Because most offenders sentenced to jail in Philadelphia are released shortly after serving their minimum sentence

(about a third of the maximum), the average jail sentences in table 4 for Philadelphia overstate the time that the sentenced felon actually serves in jail.

**Probation**

Straight probation constituted more than a fourth (28%) of sentences imposed for the felonies examined in this study. Probation sentences imposed with jail constituted another 18% of felony sentences (table 1). Thus, probation was a factor in 46% of the felony sentences covered by this study.

Total use of probation varied considerably among the 18 jurisdictions, from fewer than 1 out of 4 sentences in Dade County (Miami) to more than 2 out of 3 sentences in Hennepin County. The length of the average probation term ranged from 2.0 years in Kane County to 4.8 years in Jefferson County.

Within jurisdictions the average terms of probation did not differ substantially between offenders receiving straight probation and those receiving probation with jail: for no jurisdiction was the difference greater than 0.8 years.

**Sentencing systems**

While sentencing practices may vary, the concepts of incarceration and probation do not change their meaning from one jurisdiction to another. Even the time periods associated with jail and probation are a relatively stable concept from one jurisdiction to another. This is not true, however, with prison terms. Prison sentences have different meanings in different jurisdictions based on what State law permits with regard to correctional and parole board discretion, minimum terms, earned time, and time off for good behavior (good time).

There are two general legislative schemes that guide sentencing in the United States. One is determinate sentencing, under which a judge imposes a specified sentence not later reviewable by another body. The other type of sentencing scheme—indeterminate sentencing—does permit review of the judicially imposed sentence; this review function is usually performed by a parole board. Although parole boards have discretionary release authority under indeterminate sentencing systems, the scope of that discretionary power can vary substantially from State to State.

The primary mechanism for the control of parole board discretion is the use of minimum terms. Either the judge or the law specifies a minimum term of incarceration that must be served before the prisoner can be considered for parole. The shorter the minimum (including no minimum at all in some States), the greater is the discretion afforded the parole board. Conversely, the longer the minimum the more constrained the paroling authority's discretion.

Another distinguishing characteristic of the two sentencing systems is in the sentence lengths set by legislation. The legislatively prescribed penalties in determinate sentencing States generally have shorter time spans than those in indeterminate sentencing States. For example, in California, a determinate sentencing State, the prescribed penalties for robbery range from 2 to 6 years. On the other hand, in Kentucky, an indeterminate sentencing State, the prescribed penalties for robbery range from 5 to 20 years. This difference between the two States likely reflects the desire of State legislatures in determinate sentencing States to have greater certainty in the time served in prison for criminal violations.

Another factor that affects the time that actually will be served is the practice known as "good time." In all but five of the jurisdictions involved in this study (New Orleans, Jefferson Parish, Davidson County, Oklahoma County, and Philadelphia are the exceptions), State law specifies the rate at which prison terms can be reduced by the convict's good behavior in the correctional institution.[4] The rate at which good time can be accumulated varies among the jurisdictions; the average sentence reductions range between 25% and 33%. Generally, good-time reductions affect only the maximum term to be served. Two States, however, Ohio (Lucas County) and Nebraska (Lancaster County), permit good-time reductions of the minimum term.

Finally, sentences can be reduced in some jurisdictions through the discretion of correctional officials for time spent in prison industries or educational programs.

**Sentence length and actual time served**

Average sentence lengths were considerably lower in the 5 determinate sentencing jurisdictions than in the 13 indeterminate sentencing jurisdictions (table 3). This was true for each of the crime categories, with the biggest difference for the violent crimes. Because the two kinds of jurisdictions operate under different kinds of prison release mechanisms, the longer sentences in indeterminate sentencing jurisdictions do not necessarily translate into stiffer criminal penalties (i.e., more time actually served in prison).

Figure 2 shows how the average prison sentence for burglary can be affected by minimum terms, parole board discretion, correctional official discretion (earned time for time spent in prison industry and educational programs) and the behavior of the inmate (good time). The jurisdictions are grouped by the type of sentencing system under which they operate: determinate or indeterminate. Within each group jurisdictions are listed in descending order of the percentage of the maximum term that must be served before the convicted felon can be considered for release from prison.

The two determinate sentencing jurisdictions with the longest average terms (Denver and Kane County) also have the most generous good time rate (50%, or one day off the sentence for every day of good behavior). Denver is also in a State that awards earned time based on the inmate's work or educational advancement at the rate of 8% or 1 day off the sentence for every 12.5 days of involvement in correctional programs. Earned time is also a factor in California (Los Angeles and Riverside County), where it can be awarded at the rate of 17%. In Minnesota (Hennepin County) the State awards good time at a rate of 33%.

In these jurisdictions, therefore, the minimum amount of time that must be served by the sentenced burglar has a much narrower range than the range of the average maximum sentence imposed. Thus, it is likely that the differences in the average amount of time actually served in prison for burglary among these five jurisdictions will be a matter of months rather than years.

Among the indeterminate sentencing jurisdictions there is no consistent relationship between sentence length and minumum terms. Nonetheless, as figure 2 shows, the eight indeterminate jurisdictions that require more than 20% of the maximum sentence to be served have much less variation in mimumum sentence lengths than in the maximum sentence imposed. Indeed, these minumums are quite similar to those found in the five determinate

[4] The State of Louisiana does allow good time for those convicted of some felonies, but the crimes encompassed by this study do not fall into any of the eligible crime categories. Consequently, for the purposes of this study, Louisiana law does not provide for good-time credits.

sentencing jurisdictions. Altogether, 14 of the 18 jurisdictions had minimum terms between 1.25 and 2.32 years; average maximum sentences imposed in these same jurisdictions fell in the much wider range of 2.2 to 10.2 years.

This finding suggests that judges may adjust their sentences to compensate for the sentence reduction policies and practices operating in their State: by giving relatively shorter sentences in jurisdictions where the proportion of sentence that must be served is greater and giving relatively longer sentences in jurisdictions where the proportion of sentence that must be served is less. (In the two jurisdictions, for example, where the minimum is zero, average sentence lengths were among the top 5 of the 18 jurisdictions.)

It follows, then, that focusing on average prison sentence length can be misleading for assessing the variation in the criminal penalties imposed for similar crimes in different jurisdictions. A more useful indicator may be the actual minimum term that must be served before possible release from prison. At least for the crime of burglary, there was much less variation among most of the jurisdictions studied in the minimum time that must be served on an average sentence than in the sentence lengths themselves. Consequently, the average time served by imprisoned felons in different jurisdictions may vary less than the impression given by differences in average maximum sentences.[5]

Table 6 presents additional data on the differences in sentencing patterns for burglary in determinate and indeterminate jurisdictions. In the determinate jurisdictions 89% of the burglary sentences were in the range of 1 to 4 years. Less than 2% of the sentences were to terms of 10 years or more. In the indeterminate jurisdictions, on the other hand, only 55% of the maximum sentences imposed were in the range of 1 to 4 years, and 13% were to 10 years or more (including 8 life sentences).

## Sentences to life imprisonment and to death

For the purposes of this study, a life sentence is defined as any prison sentence with a maximum term of life in prison, regardless of the possibility of parole. (Only about 5% of the life sentences imposed did not allow for parole.)

[5]For data on actual time served in prison by convicted felons, see Bureau of Justice Statistics Special Reports, Time Served in Prison, NCJ-93924, June 1984, and Prison Admissions and Releases, NCJ-95043, September 1984.

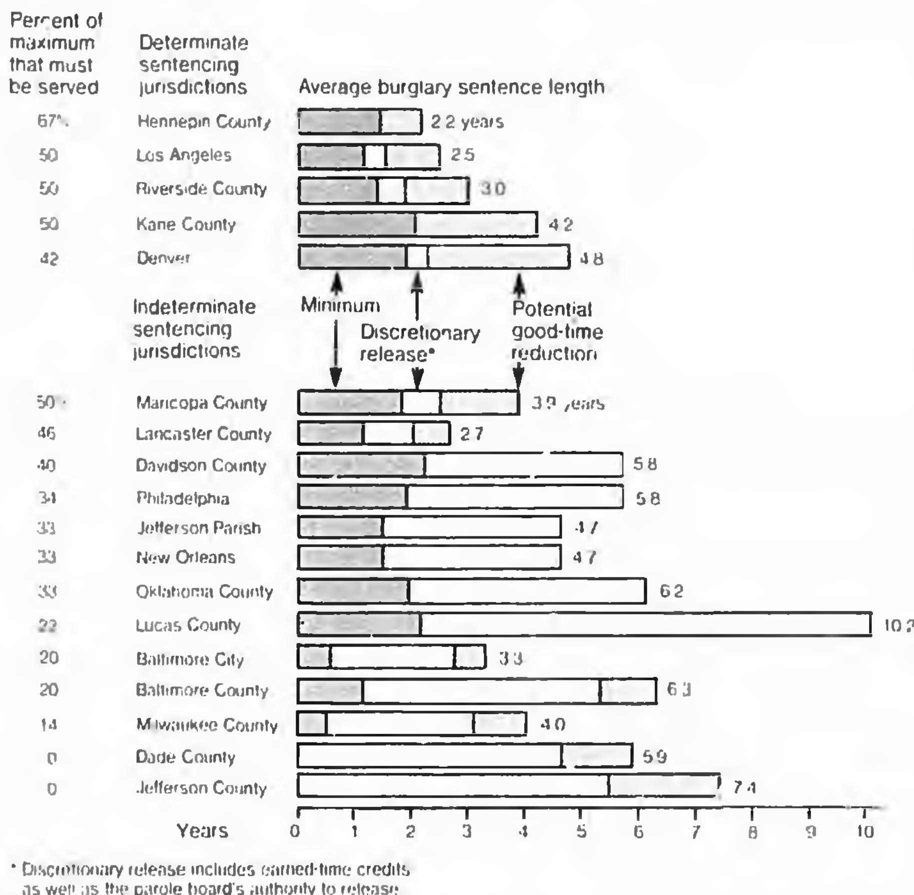

Figure 2

**Table 6. Distribution of sentences for burglary, by type of sentencing system**

| Maximum sentence length | Number of sentences to a specified maximum length: Determinate sentencing jurisdictions | Indeterminate sentencing jurisdictions |
|---|---|---|
| Less than 1 year | 0 | 33 |
| 1 year | 201 | 363 |
| 2 | 357 median | 321 |
| 3 | 90 | 435 |
| 4 | 203 | 278 median |
| 5 | 22 | 522 |
| 6 | 40 | 117 |
| 7 | 4 | 115 |
| 8 | 17 | 41 |
| 9 | 2 | 63 |
| 10 | 10 | 105 |
| 11 | 1 | 0 |
| 12 | 2 | 16 |
| 13 | 2 | 3 |
| 14 | 1 | 8 |
| 15 | 1 | 135 |
| 16 | 0 | 3 |
| 17 | 0 | 1 |
| 18 | 0 | 2 |
| 19 | 0 | 0 |
| 20 | 0 | 23 |
| 21 or more | 0 | 28 |
| Life | 0 | 8 |
| Average burglary sentence | 2.9 years | 5.2 years |

Note: Sentence lengths include fractions of a year. For example, a sentence to 1 year and 9 months would be classified as 1 year.

For the crimes and jurisdictions studied here, there were 445 life sentences and 12 sentences to death, or about 2% of all sentences imposed. Though a very small proportion of all sentences, these constituted 26% of homicide sentences. After homicide, the proportion of sentences to life imprisonment or death for a particular crime category falls to 2% of rape sentences, less than 2% of robbery sentences, and well under 1% for the other crimes.

The following table examines the distribution of the total 457 sentences to life imprisonment and death across the various crime categories:

| | Percent | Number |
|---|---|---|
| Total sentences to life in prison or death | 100% | 457 |
| Homicide | 74 | 336 |
| Rape | 5 | 23 |
| Robbery | 18 | 84 |
| Aggravated assault | 1 | 5 |
| Burglary | 2 | 8 |
| Larceny | 0 | 0 |
| Drug trafficking | — | 1 |

— Less than 0.5%.

Nearly three-fourths of all the sentences to life in prison or death were for homicides; and nearly 1 in 5 were for robbery. Although the proportion of all such sentences imposed for rape (about 1 in 20) was much lower than for robbery, as shown above a slightly higher percentage of all rape sentences were to life in prison than of all robbery sentences.

While some States allow a judge to impose a life sentence on a first-time rapist or robber, most of the life sentences for crimes other than homicide were imposed under authority of habitual offender laws.

### Degrees of severity within crime categories

Most State penal codes recognize degrees of severity or aggravating circumstances within general crime categories. Many penal codes, for example, authorize (or mandate) a more severe penalty for armed robbery than for robbery without a weapon. Similarly, some States penalize burglars who break into residences or who carry weapons more severely than those who burglarize commercial establishments or who operate unarmed. Finally, all States prescribe different degrees of punishment for different kinds of homicides, usually distinguishing murder, where there is intent to kill, from manslaughter, where there is no premeditation, and from negligent manslaughter, where death is attributable to the negligence or recklessness of the offender.

In the 18 jurisdictions studied here there was a direct relationship between the likely sentence and the kind of homicide, robbery, or burglary for which the offender was convicted (table 7). The proportion of sentences to prison and the average prison sentence length were higher for the more serious crime within each crime category. Of those convicted of homicide, for example, 93% were sentenced to prison for an average term of 17.3 years if the offense was murder, while 41% were sentenced to prison for an average term of 3.9 years if the conviction offense was negligent manslaughter. (Note that sentence length data exclude life sentences. Moreover, because the definition of murder varies considerably among the 15 States in the study, some of the murder convictions included in table 7 would be classified as manslaughter in other States.)

Similar patterns exist for robbery and burglary. Those convicted of armed robbery were much more likely to be imprisoned (81%) than those convicted of the less serious offense of unarmed robbery (57%); and those convicted of either armed or residential burglary were substantially more likely to receive a prison sentence (67% and 65%) than those convicted of nonresidential burglary (38%).

Penal codes are written to reflect differences in the severity of different kinds of crimes (e.g., rape vs. burglary) as well as the elements that can aggravate or mitigate the severity of a perticular kind of crime (e.g., armed vs. unarmed robbery). These findings on how punishments vary both across and within the major crime categories (especially tables 1, 2, 3, and 7) illustrate how the sentencing practices of judges reflect these legal distinctions.

### Completed vs. attempted offenses

Nearly all the State penal codes for the jurisdictions participating in this study have provisions that lower the penalty if the offender is convicted of an attempted rather than completed crime. Most States have gradations of felonies (e.g., 1 to 5 or A to E) and assign a different penalty range to each gradation. Moreover, most penal codes specify that the criminal penalty be lowered by one gradation for an attempted crime. For example, in Arizona (Maricopa County), armed robbery is a class 2 felony with a presumed sentence of 7 years for a first offender. If the charge is attempted armed robbery, however, Arizona reclassifies the offense as a class 3 felony, which carries a presumed sentence of 5 years, or 2 years less than that for the completed crime. Some State codes, Wisconsin for example, go as far as cutting the potential maximum sentence in half if the conviction is for an attempted rather than completed crime.

Table 8. Sentences to prison for attempted and completed robberies and burglaries

| | Robbery | Burglary |
|---|---|---|
| **Percent of sentences to prison terms for:** | | |
| Attempted crime | 58% | 26% |
| Completed crime | 69 | 49 |
| **Average prison term for:** | | |
| Attempted crime | 3.6 yrs. | 2.8 yrs. |
| Completed crime | 5.6 | 4.3 |

Note: Table shows only those cases where information on whether the crime was completed or attempted was available: 62% of the robbery cases and 65% of the burglary cases.

To examine the impact of this distinction on sentencing, the study compared sentences for attempted robberies and burglaries with those for the completed crimes (table 8). For both crimes the likelihood of going to prison and prison sentence length were less for those convicted of attempts. Those convicted of attempted burglary, for example, were only about half as likely to be sentenced to prison as those convicted of the completed crime (26% vs. 49%).

### Multiple conviction offenses

In two-thirds of the felony convictions studied the offender was found guilty of a single offense (figure 3). In 28% of the cases the offender was convicted on more than one charge: 17% of the cases involved convictions on two crimes and 11% involved convictions on three or more crimes. In the remaining cases (5%) the study was not able to ascertain the number of crimes on which the offender was convicted. Multiple-charge convictions occurred most frequently when the highest conviction offense was homicide (39%) or rape (37%) and least frequently when it was larceny (22%) or drug trafficking (19%).

The number of conviction offenses had a significant impact on the like-

Table 7. For homicide, robbery and burglary, distribution of sentences, by type of sentence and average prison sentence length

| Conviction offense | Percent of sentences to: Probation only | Jail | Prison | Total | Average prison sentence length |
|---|---|---|---|---|---|
| **Homicide** | | | | | |
| Murder | 1% | 3% | 93% | 100% | 17.3 years |
| Manslaughter | 17 | 8 | 75 | 100 | 9.2 |
| Negligent | 30 | 29 | 41 | 100 | 3.9 |
| **Robbery**[a] | | | | | |
| Armed | 11 | 8 | 81 | 100 | 11.2 |
| Unarmed | 28 | 15 | 57 | 100 | 7.9 |
| **Burglary**[b] | | | | | |
| Armed | 22 | 11 | 67 | 100 | 9.5 |
| Residential | 17 | 18 | 65 | 100 | 4.4 |
| Nonresidential | 39 | 23 | 38 | 100 | 3.3 |

[a] Table presents data only for those 63% of the cases where the distinction between armed and unarmed robbery could be made.

[b] Table presents data for those 50% of the cases where the distinction between the three classes of burglary could be made.

**Table 9. Sentences to prison, by the number of conviction charges**

| Number of conviction charges | Percent of all sentences to prison | Average prison terms |
|---|---|---|
| One | 40% | 5.3 years |
| Two | 56 | 8.3 |
| Three | 60 | 10.3 |
| Four or more | 69 | 13.5 |

Note: Table does not show those cases where number of charges were not ascertained.

**Table 10. Average prison sentence length, by the number of conviction charges and conviction offense**

| | Number of conviction charges | | | |
|---|---|---|---|---|
| Conviction offense | One | Two | Three | Four or more |
| Violent | | | | |
| Homicide | 11.2 years | 18.1 years | 23.0 years | 34.5 years |
| Rape | 8.8 | 14.7 | 18.8 | 23.2 |
| Robbery | 6.4 | 10.5 | 11.4 | 17.6 |
| Aggravated assault | 5.9 | 7.3 | 8.6 | 9.3 |
| Property | | | | |
| Burglary | 3.8 | 5.8 | 7.3 | 6.1 |
| Larceny | 2.8 | 4.4 | 4.4 | 4.0 |
| Other | | | | |
| Drug trafficking | 3.4 | 5.3 | 6.0 | 7.5 |

Note: Sentences were classified according to the most serious conviction offense. Offenses are listed in order of seriousness. In addition to the most serious conviction charge, multiple convictions charges may include lesser offenses not covered in the study, including misdemeanors.

lihood of receiving a prison sentence, ranging from 40% of those convicted of one offense to 69% of those convicted of four or more (table 9). Similarly, average prison sentence length was directly related to number of convictions, from 5.3 years for one offense to 13.5 years for four or more.

For homicide, rape, and robbery average prison sentence length consistently increased with the number of conviction offenses (table 10). For each of these three crimes, average prison sentences were about three times higher for those convicted of four or more charges than for those convicted on a single charge.

Aggravated assault and drug trafficking evidence a similar pattern, differing only in degree: the average prison sentence for those convicted on four or more charges was about twice as long as for those convicted of only one charge. For burglary and larceny the biggest jumps in sentence length occurred between those convicted on a single charge and on two charges.

### Consecutive sentences

When a person is convicted of two or more crimes, the judge must decide whether to sentence the offender to concurrent or consecutive terms. A concurrent sentence means that the convicted felon is able to satisfy the time requirements on each charge at the same time; a consecutive sentence means that the sentences on each charge must be served sequentially. For example, if a person is convicted on two counts of burglary and sentenced to 2 years on each count, the sentence will be satisfied in 2 years if the sentences are concurrent, but will take 4 years if the judge made the terms consecutive.

Consecutive sentences were analyzed only when a single case led to a conviction on multiple charges. Excluded were instances where the judge made the sentence consecutive with another sentence previously passed on the same convicted felon. (For example, a person convicted of a new crime while on parole might have the new sentence added to the unexpired previous sentence.)

Consecutive sentences constituted a very small proportion (2%) of all sentences imposed (figure 3). Indeed, consecutive terms were rarely imposed even when the prerequisite condition (a multiple-charge conviction) was met. About 1 out of every 9 offenders convicted of multiple charges and sentenced to prison (513 out of 4,604) was required to serve consecutive sentences.

Consecutive sentences may be rare, but when invoked they carry significantly longer prison terms. The average prison term for offenders receiving consecutive sentences (18.9 years) was more than twice as long as those with concurrent sentences (8.9 years) and nearly three times as long as the average prison sentence for all cases studied (6.8 years).

### Conviction on original charge

Conviction on the highest original charge occurred nearly six times as often as convictions on a lesser charge (85% versus 15%). The data reveal a fairly narrow range (83% to 89%) in the frequency of convictions on the highest original charge for all of the crime categories except larceny (78%). The following are the proportions for each crime category of offenders convicted of the highest original charge:

| | |
|---|---|
| Total convicted on highest original charge | 85% |
| Homicide | 83 |
| Rape | 87 |
| Robbery | 89 |
| Aggravated assault | 84 |
| Burglary | 86 |
| Larceny | 78 |
| Drug trafficking | 89 |

The overall difference in imprisonment between those convicted on the highest original charge compared to

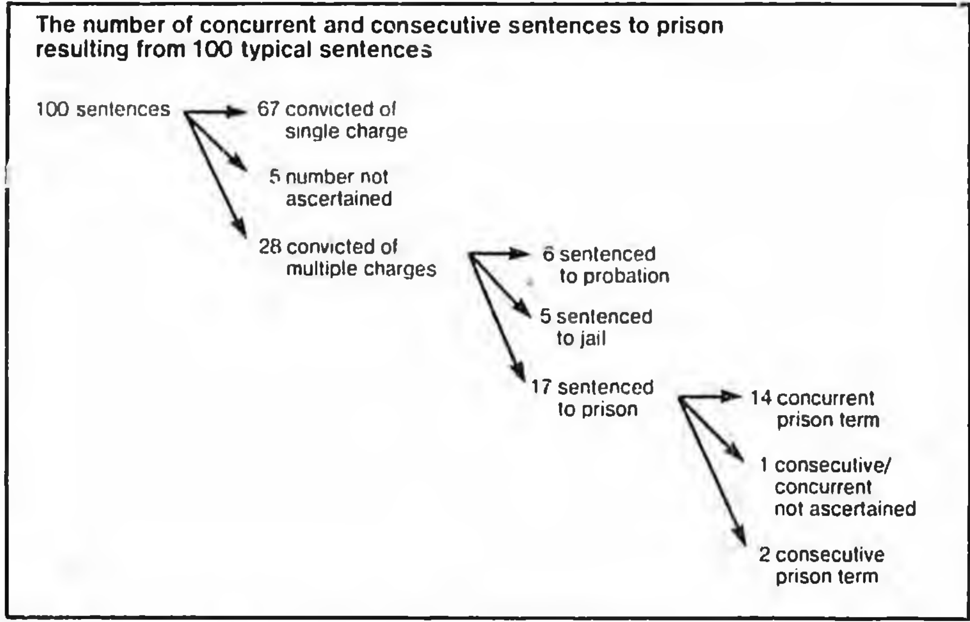

*Figure 3*

| Table 11. Sentences to prison for those convicted on the highest original charge or a lower charge | | | | |
|---|---|---|---|---|
| | Percent of sentences to prison for those convicted on: | | Average prison sentence length for those convicted on: | |
| Conviction offense | Highest original charge | Lower charge | Highest original charge | Lower charge |
| **Total** | **48%** | **35%** | **7.1 years** | **5.9 years** |
| Violent | | | | |
| Homicide | 87 | 80 | 16.3 | 10.8 |
| Rape | 70 | 59 | 13.9 | 7.9 |
| Robbery | 66 | 59 | 9.0 | 6.5 |
| Aggravated assault | 40 | 32 | 6.7 | 6.3 |
| Property | | | | |
| Burglary | 50 | 30 | 4.7 | 4.4 |
| Larceny | 32 | 23 | 3.3 | 3.3 |
| Other | | | | |
| Drug trafficking | 24 | 15 | 4.2 | 4.4 |

Note: Table excludes those cases (9%) where the study could not ascertain whether or not the felon was convicted on the highest original charge. Lower charge may be for a lower grade of the same general offense class: for example, a 2nd-degree murder conviction on an original 1st-degree murder charge.

those convicted on some lower charge was substantial (48% vs. 35%, table 11). This difference in imprisonment was also present for each of the crimes separately. Overall, prison sentences were longer for those convicted on the original charge. This difference was considerable for the violent crimes of homicide, rape, and robbery but disappeared for the property crimes.

**Pleas vs. trials**

A person may be found guilty of a crime either through admitting guilt—a guilty plea—or as a result of a trial before a judge or a jury. Information on pleas versus trials was available in 91% of the cases. An analysis of these cases reveals that conviction by trial in the felony courts studied was the exception rather than the rule. Only one out of every six felony convictions (16%) was the result of a finding by a judge or jury.[6]

The rate at which trials took place varied substantially among the crime categories studied. Generally, the more serious the crime, the greater the proportion of trials. For the less serious offenses of burglary, larceny, and drug trafficking, about 1 out of 10 convictions was the result of a trial. For aggravated assault and robbery this ratio was 1 out of 5. For rape it rose to 1 out of 4. Finally, for homicide about 3 out of 8 convictions resulted from trials.

Overall, defendants who pled guilty were somewhat less likely to be sentenced to prison than those found guilty at trial (44% vs 51%, table 12). This was not true, however, for all seven crime categories in the study. The reverse relationship held for burglary and larceny, and there was virtually no difference for robbery.

For all the crimes studied the average prison sentence lengths were shorter for those who pled guilty. Overall, those who pled guilty and were sentenced to prison received an average sentence of 6.0 years; those found guilty at trial and sentenced to prison averaged 10.7 years.

Although average homicide prison sentences were only slightly longer for those found guilty by trial (16.6 years) than for those who pled guilty (14.2 years), the former were much more likely to receive a sentence to life in prison or death (46%) than the latter (22%).

**Pleas and conviction offense**

In 7 out of 8 cases (88%), information on the manner in which the person was convicted (trial vs. plea) and the charge on which the person was convicted (highest original charge vs. a lower charge) was available. For the overwhelming share of these cases (70%) the offender pled guilty to the highest original charge. Much smaller proportions were offenders found guilty of the highest charge at trial (15%), offenders who pled guilty to a lesser charge (14%), and offenders found guilty at trial of a lower charge (1%). Considering only those who pled guilty, about five-sixths (83%) pled to the highest original charge.[7]

Those who pled guilty to a lower charge were less likely to be sentenced to prison (33%) than those who pled guilty to the highest original charge (47%) (table 13). The difference, however, in average prison sentence lengths for these two groups was only half a year.

[6]Other data on plea-to-trial ratios are presented in the Bureau of Justice Statistics Special Report, The Prevalence of Guilty Pleas, NCJ-96018, December 1984. For the 14 jurisdictions examined in that report, the median ratio of pleas to trials was 11 to 1, varying from a high of 37 pleas for every trial to a low of 4 pleas per trial.

[7]Data from The Prevalence of Guilty Pleas, op. cit., for eight jurisdictions showed a mean percentage of guilty pleas to the top charge of 60%.

| Table 12. Sentences to prison, by method of conviction | | | | |
|---|---|---|---|---|
| | Percent of sentences to prison for those convicted by: | | Average prison sentence length for those convicted by: | |
| Conviction offense | Trial | Guilty plea | Trial | Guilty plea |
| **Total** | **51%** | **44%** | **10.7 years** | **6.0 years** |
| Violent | | | | |
| Homicide | 92 | 82 | 16.6 | 14.2 |
| Rape | 81 | 65 | 16.2 | 10.9 |
| Robbery | 66 | 65 | 12.7 | 7.3 |
| Aggravated assault | 47 | 36 | 9.8 | 5.6 |
| Property | | | | |
| Burglary | 42 | 48 | 6.4 | 4.3 |
| Larceny | 24 | 30 | 4.2 | 3.1 |
| Other | | | | |
| Drug trafficking | 27 | 21 | 5.7 | 3.8 |

Note: Table excludes those cases (9%) where the study could not ascertain how the person was convicted.

| Table 13. Sentences to prison for those convicted on the highest original charge or a lower charge, by method of conviction | | | | |
|---|---|---|---|---|
| | Percent of sentences to prison terms for those convicted on: | | Average prison sentence length for those convicted on: | |
| Method of conviction | Highest original charge | Lower charge | Highest original charge | Lower charge |
| Trial | 52% | 55% | 10.8 years | 8.7 years |
| Guilty plea | 47 | 33 | 6.0 | 5.5 |

## Methodology

**Geographical coverage.** For all the jurisdictions participating in the study (appendix table 1) the sentencing data come from the entire county or independent city except in Los Angeles County. In Los Angeles multiple prosecutorial offices and courts are scattered throughout the county. Because the data had to be verified against the original court record as well as supplemented from the original court record, the decision was made to simplify this task by limiting the scope of the study in Los Angeles to the Central District Court, which serves the City of Los Angeles.

**Frame of reference.** Exception for Baltimore County, Dade County, and New Orleans, the data in this report represent all of the sentences imposed during calendar year 1983 for the crimes under study. Baltimore County provided sentencing data for the period 4/1/83 through 3/31/84. On October 1, 1983, the State of Florida implemented new sentencing procedures. In the interest of obtaining a full year's worth of data under a single sentencing approach, Dade County information was collected on sentences from 10/1/82 through 9/30/83. In New Orleans the nature of the record system necessitated studying cases initiated in 1983, resulting in the inclusion of some sentences imposed in 1984.

**Crime definitions.** The penal codes from each of the participating jurisdictions provided the basis for defining the seven crimes analyzed in this study; i.e. homicide, rape, robbery, aggravated assault, burglary, larceny, and drug trafficking. Project staff specified which penal code citations applied to these various crime types and in some instances specified what citations did not. These exclusions took place where the participating jurisdiction's penal code could lead to potential confusion with the general parameters that were laid down for the study. For example, a number of States have statutes dealing with criminal trespass, a crime that could easily be confused with burglary. Project staff made explicit that criminal trespass should be excluded from the data collection effort.

Project staff compiled a listing of all statutes falling into the study in a separate publication titled, "Penal Code Citations: Guidelines for BJS Sentencing Project Participants," which shows the differences in how the crimes are defined from jurisdiction to jurisdiction. Such differences are to be expected with each State legislating its own code. For the seven crimes in this study, the differences do not seriously impair the ability to obtain comparable definitions.

**Sampling.** Whether sampling was used and its extent varied by jurisdiction and crime category (appendix table 2). In 11 of the 18 jurisdictions there was no sampling at all. In the other seven jurisdictions sampling was used when the volume of sentences was large. This applied to fewer than half of the crimes in these seven jurisdictions and in no case included homicide or rape. A total of 15,018 cases were examined in the study. These were adjusted by their sampling ratio to represent 27,641 weighted cases. The analysis throughout this report is based on weighted cases.

**Appendix table 1. Jurisdictions that participated in the study**

| Jurisdiction | Population | Major city |
|---|---|---|
| Baltimore City, Maryland | 786,775 | Baltimore |
| Baltimore County, Maryland | 655,615 | Towson (suburban Baltimore) |
| Dade County, Florida | 1,625,781 | Miami |
| Davidson County, Tennessee | 455,651 | Nashville |
| Denver, Colorado | 492,365 | Denver |
| Hennepin County, Minnesota | 941,411 | Minneapolis |
| Jefferson County, Kentucky | 685,004 | Louisville |
| Jefferson Parish, Louisiana | 454,592 | Kenner (suburban New Orleans) |
| Kane County, Illinois | 278,405 | Geneva (suburban Chicago) |
| Lancaster County, Nebraska | 192,884 | Lincoln |
| Los Angeles County, California | 2,966,850 | Los Angeles |
| Lucas County, Ohio | 471,741 | Toledo |
| Maricopa County, Arizona | 1,509,052 | Phoenix |
| Milwaukee County, Wisconsin | 964,988 | Milwaukee |
| New Orleans, Louisiana | 557,515 | New Orleans |
| Philadelphia, Pennsylvania | 1,688,210 | Philadelphia |
| Oklahoma County, Oklahoma | 568,933 | Oklahoma City |
| Riverside County, California | 663,166 | Riverside |

Note: Los Angeles population is for the Central Court District only.

**Appendix table 2. Distribution of the number of sentences, by jurisdiction**

| Jurisdiction | Total | Homicide | Rape | Robbery | Aggravated assault | Burglary | Larceny | Drug trafficking |
|---|---|---|---|---|---|---|---|---|
| **Total** | 27,641[a] | 1,268 | 1,144 | 5,460 | 2,698 | 7,740 | 5,401 | 3,930 |
| Baltimore City | 1,713 | 118 | 102 | 792[b] | 119 | 582[b] | c | c |
| Baltimore County | 633 | 11 | 16 | 133 | 12 | 102[b] | 276[b] | 83 |
| Dade County | 3,715 | 231 | 97 | 711[b] | 226 | 1,148 | 1,020[b] | 282[b] |
| Davidson County | 964 | 53 | 65 | 216 | 98 | 269 | 156 | 107 |
| Denver | 697 | 33 | 14 | 106 | 61 | 254 | 60 | 169 |
| Hennepin County | 834 | 18 | 69 | 117 | 78 | 280 | 216 | 56 |
| Jefferson County | 945 | 53 | 69 | 177 | 89 | 224 | 175 | 158 |
| Jefferson Parish | 610 | 25 | 10 | 68 | 54 | 167 | 245 | 41 |
| Kane County | 330 | 8 | 12 | 29 | 21 | 122 | 85 | 53 |
| Lancaster County | 146 | 3 | 13 | 15 | 12 | 39 | 25 | 39 |
| Los Angeles County[d] | 5,772 | 303 | 172 | 1,155[b] | 680[b] | 1,068[b] | 604[b] | 1,790[b] |
| Lucas County | 471 | 15 | 13 | 54 | 50 | 125 | 154 | 60 |
| Maricopa County | 3,000 | 73 | 105 | 224 | 432[b] | 970[b] | 975[b] | 221 |
| Milwaukee County | 1,324 | 33 | 107 | 238 | 52 | 496[b] | 191 | 207 |
| New Orleans | 800 | 20 | 9 | 120 | 37 | 249 | 251 | 114 |
| Oklahoma County | 1,204 | 64 | 45 | 133 | 103 | 341 | 264 | 254 |
| Philadelphia | 3,549 | 169 | 119 | 999[b] | 450[b] | 1,040[b] | 651[b] | 121[b] |
| Riverside County | 934 | 38 | 107 | 173 | 124 | 264 | 53 | 175 |

[a] The study used 15,018 cases that were adjusted by their sampling ratios so as to produce 27,641 weighted cases.
[b] For these crimes and jurisdictions, a sample of all cases was drawn for this study.
[c] Sentencing data not collected for these crimes in Baltimore City.
[d] Data from Central Court District only.

Bureau of Justice Statistics Special Reports are prepared principally by BJS staff under the direction of Joseph M. Bessette, deputy director for data analysis, assisted by Marianne W. Zawitz. This report was written by Mark A. Cunniff of the National Association of Criminal Justice Planners under the direction of Carla K. Gaskins, program manager, BJS adjudication unit, and was edited by Benjamin H. Renshaw. deputy director for management. Marilyn Marbrook, publications unit chief, administered report production, assisted by Millie Baldea and Joyce M. Stanford.

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## Bureau of Justice Statistics reports

(revised May 1985)

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### National Crime Survey

**Criminal victimization in the U.S.:**
- **1982** (final report), NCJ-92820, 11/84
- 1973-82 trends, NCJ-90541, 9/83
- **1981** (final report), NCJ-90208
- **1980** (final report), NCJ-84015, 4/83
- **1979** (final report), NCJ-76710, 12/81

*BJS special reports:*
- **The risk of violent crime**, NCJ-97119, 5/85
- **The economic cost of crime to victims**, NCJ-93450, 4/84
- **Family violence**, NCJ-93449, 4/84

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## SENTENCES FOR SEX-RELATED OFFENSES: 1982-1984

## EXECUTIVE SUMMARY

Alaska Judicial Council
February 1986

# EXECUTIVE SUMMARY

## SENTENCES FOR SEX-RELATED OFFENSES: 1982-1984

INTRODUCTION. The following report is based on an analysis of sentences imposed in Alaska Superior Courts during calendar years 1982-1984 for conviction of offenses initially charged as sex-related felonies. (See Appendix A for definition of data) For analytical purposes, data collected in this study were compared to data from earlier Judicial Council sentencing studies.

PURPOSES. The purposes of this study are to:

A. Describe sentences imposed for sex-related offenses statewide; and

B. To provide a basis for assessing the impact on sentencing patterns of social and legal policy changes.

SUMMARY OF FINDINGS.

A. DESCRIPTION OF SENTENCES IMPOSED:

1. As might be expected, defendants convicted of the most serious offenses served the longest terms (50% of all those convicted of the most serious sex offenses served six years or more); and those convicted of the least serious offenses served the shortest sentences (90% of all those convicted of the least serious sex offenses served less than three years) (see Figure 1);

2. Thirty-seven percent (37%) of all sex-related convictions occurred in the north and west parts of the state, an area which has twenty-three percent of the population; while forty-three percent of the total number of convictions occurred in Southcentral Alaska, a region with about sixty-five percent of the state's population (Figure 2);

3. Alaska Natives constituted thirty-eight percent of the total number of defendants convicted, as compared to sixteen percent of the state's population; and Caucasians accounted for fiftv-two percent of the total number of persons convicted as compared to seventy-eight percent of the state's population (Figure 3); and

4. Most (ninety to ninety-five percent) persons convicted of sex-related offenses had no prior felony record (Figure 4).

B. SOCIAL AND LEGAL POLICY CHANGES. Sex-related offense data may be useful in assessing the impacts of the following three legal and social policy changes:

1. Increased reporting and enforcement of sex-related offenses.

2. Adoption by the Legislature of the presumptive sentencing scheme in 1980; and

3. (Upward) reclassification by the Legislature of most sex-related offenses over the last four years.

Each of these issues will be treated separately below.

1. <u>Increased reporting and enforcement of sex-related offenses</u>: Alaska has experienced a three hundred percent (300%) increase in the number of defendants convicted of all sex-related offenses over the past five years. At the same time, the percentage of all such offenses which can be characterized as "most serious" increased by twenty-five percent, from forty percent (40%) to fifty percent (50%) of the total (Table 1).

2. <u>Adoption of Presumptive Sentencing.</u> The impact of this change can be evaluated in terms of impact on judicial resources (trial rate) and impact on jail capacity.

a. <u>Impact on Judicial Resources</u>. Of all those convicted of sex-related offenses, twenty-nine percent were initially charged with offenses carrying presumptive terms, while seventy-one percent were charged with offenses carrying non-presumptive terms. Thirty percent (30%) of those facing presumptive terms were convicted at trial, while fourteen percent of those facing non-presumptive terms were convicted at trial. <u>In other words, persons convicted of offenses originally charged as presumptive went to trial at slightly more than twice the rate as convicted defendants charged with offenses carrying non-presumptive terms (Table 2)</u>.

However, it is important to note that the trial rates for defendants convicted of "most serious" offenses (such as violent offenses) have always been about twice the rate for defendants convicted of "less serious" (such as property crimes) cases. (Figure 5)

One conclusion which might reasonably be drawn from the above is that presumptive sentencing has replaced, rather than significantly added to the trial demand increase which resulted from the plea bargaining ban.

b. Impact on Jail Population. Sentence length for most sex-related offenses was similar in 1982-1984 to sentence lengths imposed prior to the adoption of the presumptive scheme. For example, the mean sentence for rapes/sexual assault I from 1974-1980 was similar to the period 1982-1984 (i.e., seven to nine years) (Table 3).

In addition, the proportion of defendants sentenced to probation for sex-related offenses during 1982-1984 was only slightly lower than the proportion sentenced to probation in the period 1976-1979 (Table 4).

Thus, at least as to sex-related offenses, the adoption of the presumptive sentencing scheme appears to have contributed only slightly and indirectly to the prison overcrowding problem. Presumptive sentences for most sex-related offenses essentially codified the mean sentences imposed prior to adoption of the scheme; and the proportion of the total convicted defendant population sentenced to no jail time is only slightly lower during 1982-1984 than 1976-1979.

Reclassification of Sex-Related Offenses. Reclassification presumably accounts for most of the 25% increase in the percentage of cases charged as "most serious" (Table 1).

Conclusions.

1. The most important factor in accounting for the increased demand on justice system resources to respond to sex-related offenses has been the three hundred percent (300%) increase in the total number of defendants prosecuted for such offenses.

2. Upward reclassification of most sex-related offenses has resulted in an increase in the number and percentage of persons facing presumptive terms and therefore most likely to proceed to trial.

3. The presumptive scheme, *per se*, appears to have had only limited impact on the percentage of convicted defendants sentenced to serve jail time, and little effect on mean sentence for most types of offenses (except for conduct reclassified from "least serious" to "most serious".)

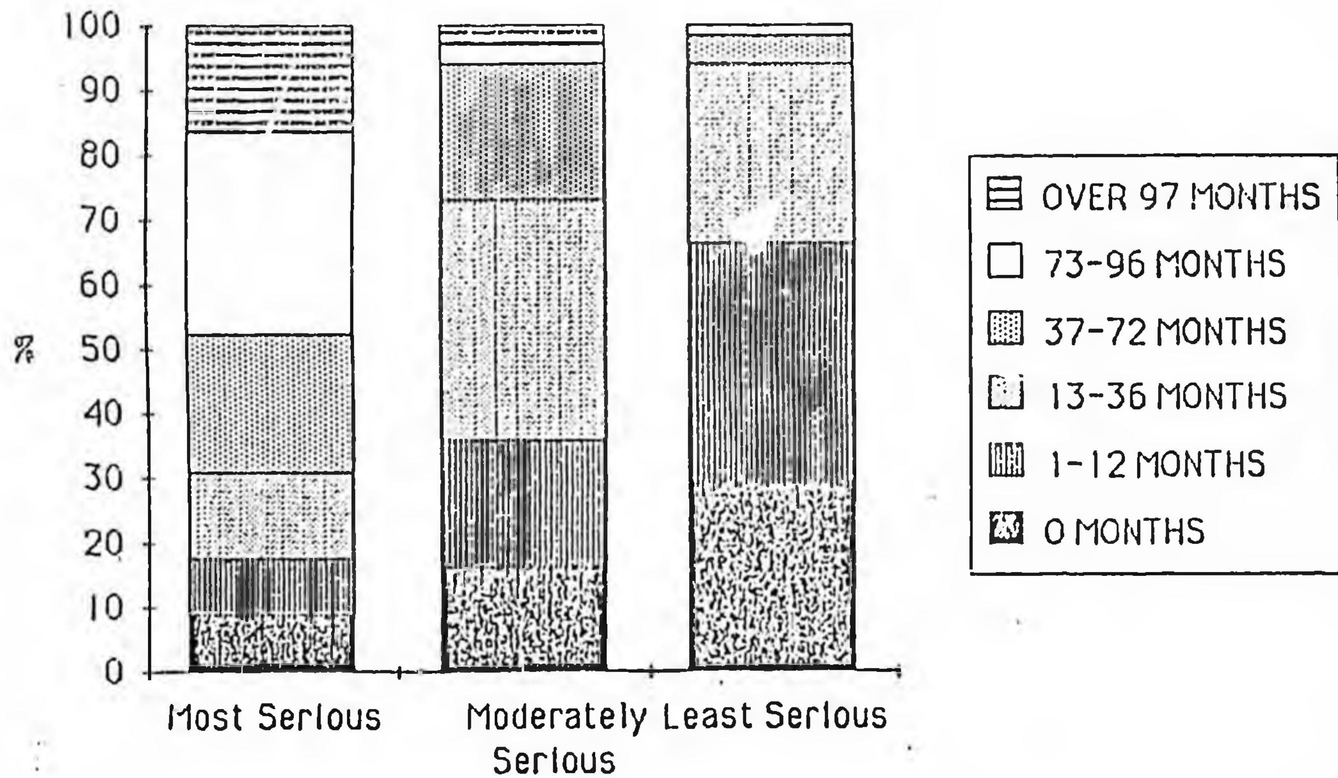



FIGURE 1

SENTENCING OF SEX-RELATED OFFENSES: 1982-1984

FIGURE 2

SENTENCING OF SEX-RELATED OFFENSES: 1982-1984

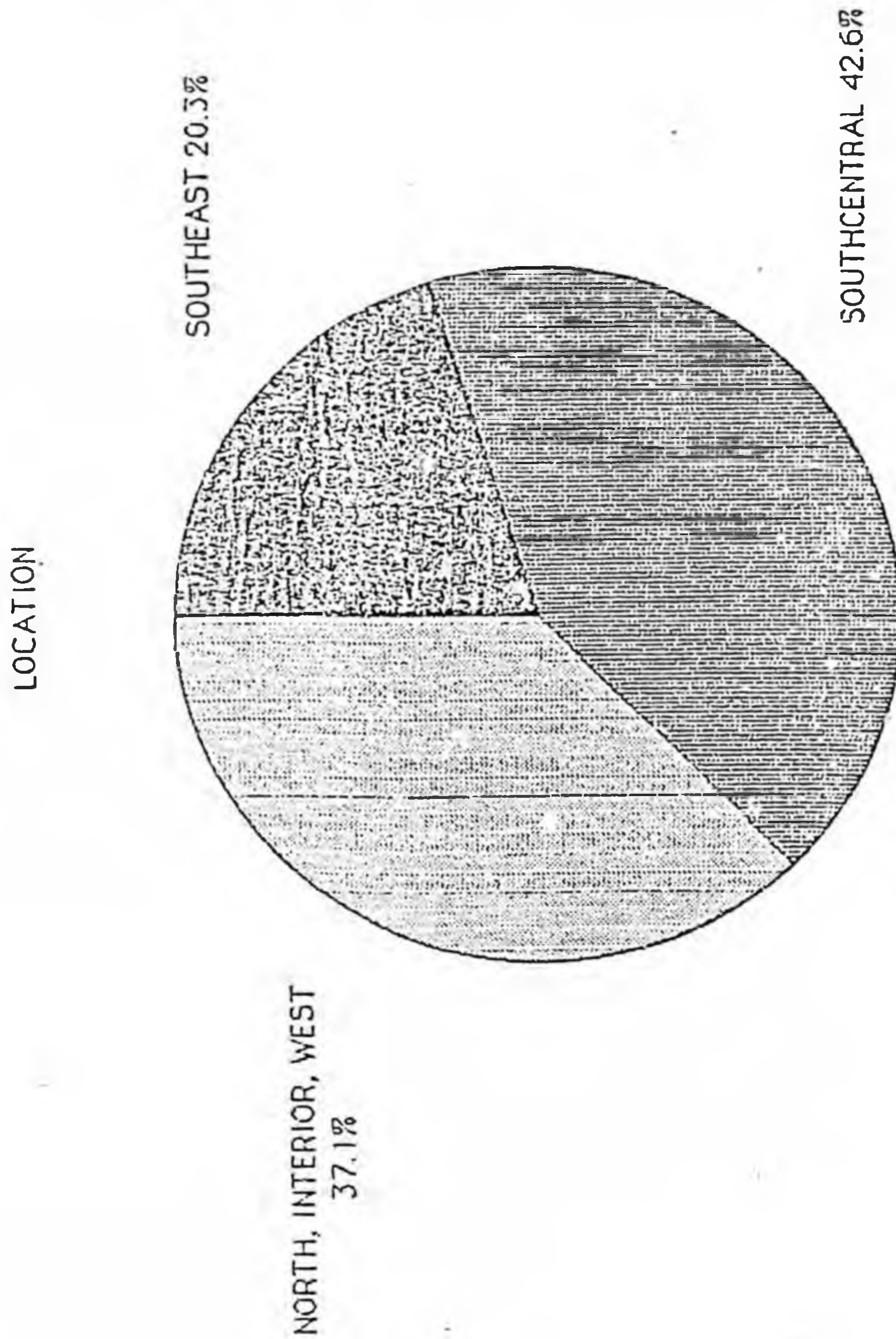


FIGURE 3

SENTENCING OF SEX-RELATED OFFENSES: 1982-1984

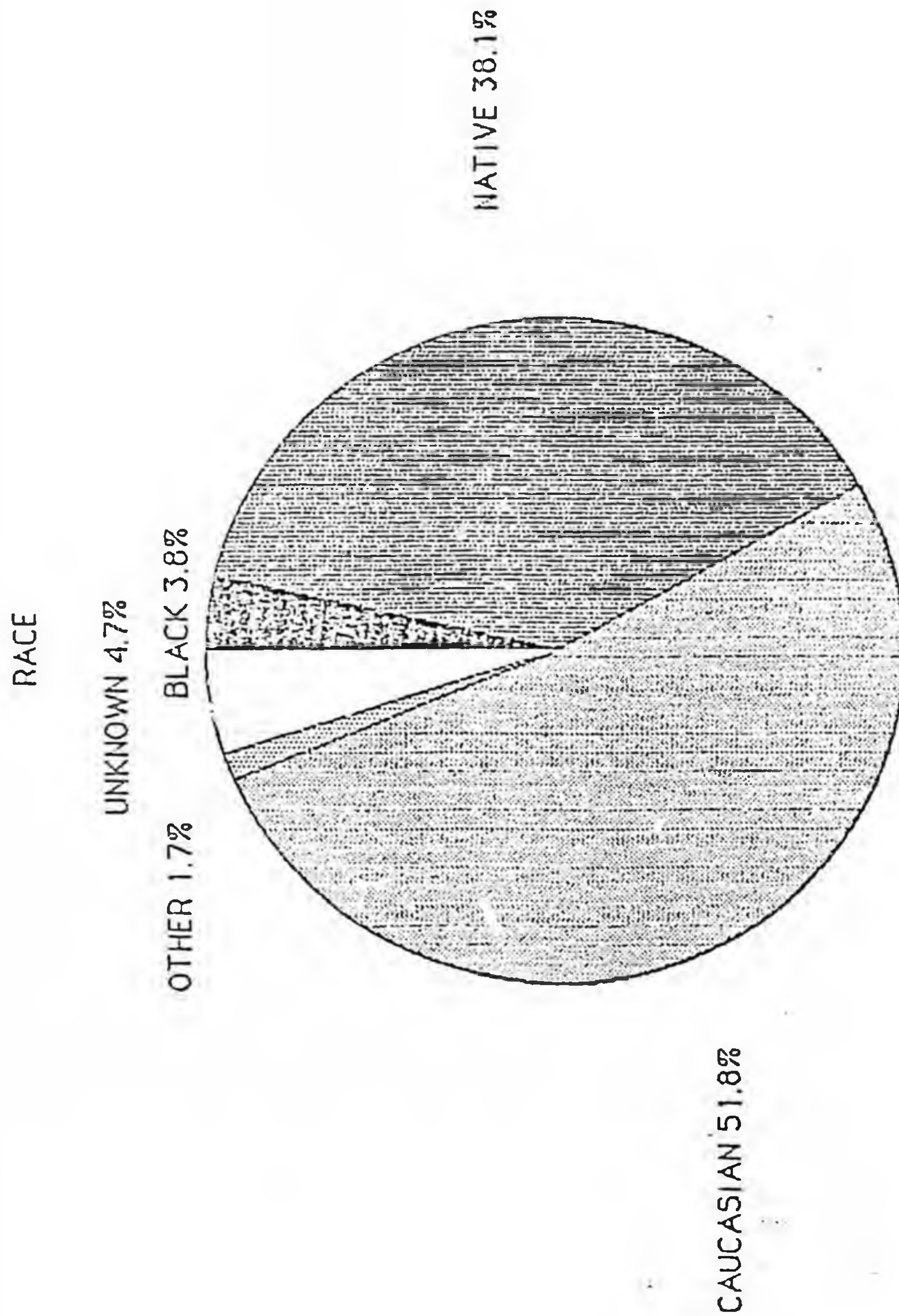
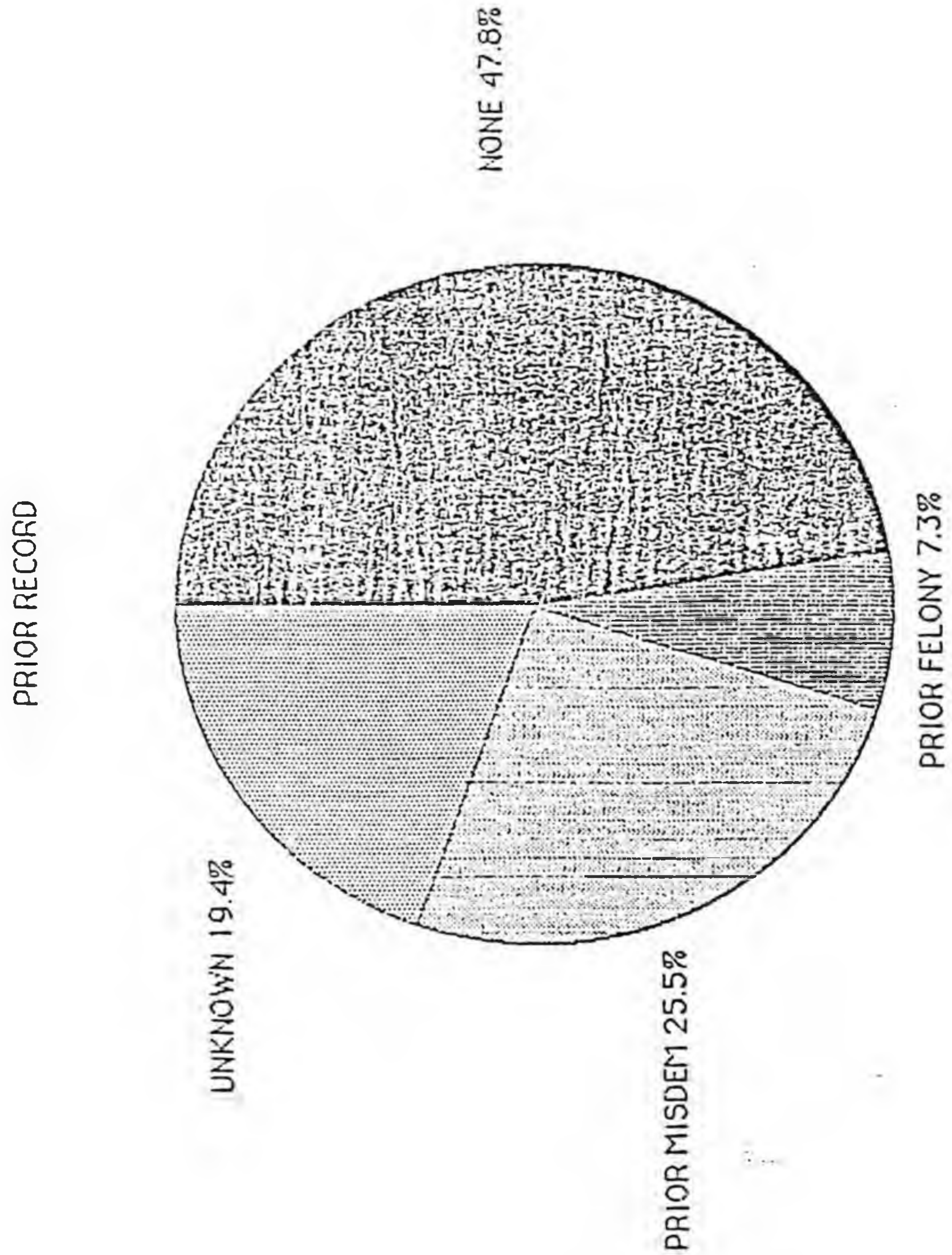
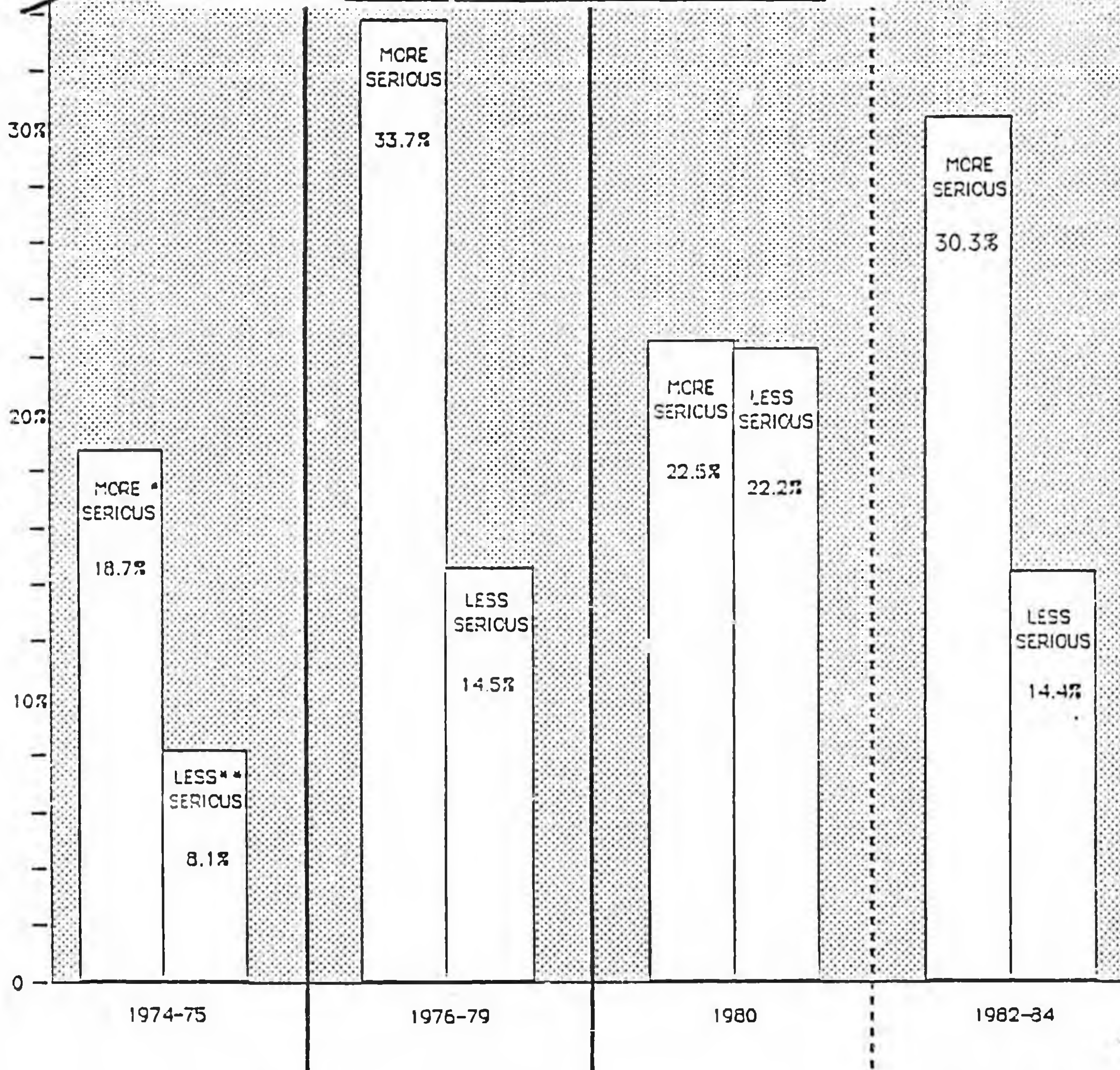


FIGURE 4

SENTENCING OF SEX-RELATED OFFENSES: 1982-1984






* "More Serious" includes all violent offenses, such as rape, robbery and serious assaults, for 1974 through 1980. For 1982-84 data, it includes all sex-related offenses for which the defendant received a presumptive sentence.

** "Less Serious" includes all child sex abuse cases from 1974 through 1980, such as Lewd and Lascivious Acts, Statutory Rape and Sex Abuse of a Minor. For 1982-1984, it includes all sex-related offenses for which the defendant received a non-presumptive sentence.

Table 1

NUMBERS OF SEX-RELATED CASES CONVICTED
AND PERCENTAGE OF "MOST SERIOUS" CHARGES

Sentencing of Sex-related Offenses: 1982-1984

| | 1976-79 Study | 1980 Study | 1982-84 Study |
|---|---|---|---|
| Numbers of Convictions | 35 (average, per year) | 55 | 141 (average, per year) |
| % of "Most Serious" charges* | 40% | 40% | 50% |

* This figure shows the percentage of the total number of cases for the year(s) constituted by the "Most Serious" charges, i.e., Rape, Sex Assault I and Sex Abuse of a Minor I.

Table 3

SENTENCE LENGTH
(mean sentence, in months)

Sentencing of Sex-related Offenses: 1982-1984

| | "Most Serious" Offenses* | "Less Serious" Offenses** |
|---|---|---|
| 1974-76 Urban | 94.0 mo. | 21.1 mo. |
| 1976-79 Urban | 154.6 mo.*** | 44.0 mo.*** |
| 1976-79 Rural | 106.5 mo. | 15.7 mo. |
| 1980 Urban | 106.0 mo. | 16.7 mo. |
| 1980 Rural | 47.5 mo. | 16.8 mo. |
| 1982-84 All | 80.3 mo. | 17.9 mo. |

* "Most Serious" offenses are Rape (1974-79), Sex Assault I (1980 through 1985), and Sex Abuse of a Minor I (Oct., 1983 - 1985).

** "Less Serious" offenses include a) 1974-79: Lewd and Lascivious Acts, Statutory Rape and Incest; b) 1980-1983: Sex Abuse of a Minor, Incest, Attempted Sex Abuse of a Minor; and c) Oct. 1983 and after: Sex Abuse of a Minor III, Incest, and Att. Sex Abuse of a Minor II.

*** Sentences were higher for nearly all types of offenses during 1976-79 than during the preceding two years, or during 1980.

## Table 4

## PROPORTION OF DEFENDANTS RECEIVING JAIL SENTENCES

### Sentencing of Sex-related Offenses: 1982-1984

| | "Most Serious" Offenses* | "Less Serious" Offenses** |
|---|---|---|
| 1974-76 | no data | 44% |
| 1976-79 | 3% | 33% |
| 1980 | 5% | 56% |
| 1982-84 | 0%*** | 29% |

* "Most Serious" offenses are Rape (1974-79), Sex Assault I (1980 through 1985), and Sex Abuse of a Minor I (Oct., 1983 - 1985).

** "Less Serious" offenses include a) 1974-79: Lewd and Lascivious Acts, Statutory Rape and Incest; b) 1980-1983: Sex Abuse of a Minor, Incest, Attempted Sex Abuse of a Minor; and c) Oct. 1983 and after: Sex Abuse of a Minor III, Incest, and Att. Sex Abuse of a Minor II.

*** It is assumed that all probationary sentences were imposed in cases in which the original charge had been amended to a lesser final charge.

## Definition of Data

To study patterns of sentencing for sex-related offenses, data were gathered from the Prosecutors' Management Information System (PROMIS), the Department of Public Safety, and the Department of Corrections. The data set consisted of all cases recorded on the PROMIS system for the years 1980 through 1985, for which a conviction had been obtained on a sex-related charge. The final data set included 423 defendants, most of whom had been charged with offenses in 1982, 1983 and 1984 (only a few cases were recorded for 1980, 1981, and 1985).

The cases studied included offenses against both children and adults. The age of the victim was unknown for 29% of the 423 cases. The cases had been filed in all areas of the state, with the exception of Nome, Kotzebue and Kenai where information about cases had not yet been entered on the PROMIS system.

Offenses were classified for purposes of study into three groups: "Most Serious" (Sex Assault I and Sex Abuse of Minor I), "Class A and B" (all class A and B felonies for which the classification was known), and Class C felonies (also referred to as "less serious" offenses). The classification was based on the original charge filed by the prosecutor since the final offense of conviction was unknown. About 22% of all the offenses studied were amended or reduced prior to conviction. Each defendant was characterized by the single most serious charge against him or her.

HB 554 House Judiciary
Pg 1 of 4

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A CSATP is made up of three components: The first consists of the integrated interventions of the professional law enforcement, criminal justice and human services agencies; the second consists of the self-help groups known as Parents United, Daughters and Sons United and Adults Molested as Children United; and the third consists of the cadre of trained volunteers. The persons representing these components work cooperatively for the child-victim's best interests, i.e., with the common understanding that this objective is satisfied, in the majority of cases, if the child can be returned to his/her family—a family headed by parents who have been taught to be caring and effective.

Key features and results of the Santa Clara County CSATP approach are:

- The intensive public education effort encourages victims and their parents to report abusive situations. The annual referral rate has increased from 30 cases in 1971 to over 1,000 cases in 1984. (The current active caseload averages 1,000 individuals.)
- Repeated interrogation of the child is avoided since about ninety percent of father-offenders confess their sexually abusive behavior to the authorities.
- Over ninety percent of the children avoid foster or institutional placement and remain with their mothers and siblings (father-offenders are given no-contact orders and leave their homes).
- After long term therapy, father-offenders are returned to their homes only if they are deemed both physically and psychologically safe for their children.
- The reported recidivism rate among father-offenders who have been treated has remained at less than one percent.
- Child-victims treated by CSATP do not persist in the self-abusive behavior (promiscuity and other sexual behavior problems, drug and alcohol abuse, marital difficulties, criminal activities, etc.) reported by adults who were molested as children who did not receive individual and family therapy.
- The CSATP method is cost-effective:
  a. Typically, a CSATP is coordinated by personnel in existing official agencies (child protective services, mental health agencies, probation and police departments).
  b. Due to the use of volunteers, especially in the crisis stages, the cost to the community for client contacts is very low (less than $5 per contact hour).
  c. Most of the families are reconstituted and, therefore, the community is not saddled with costs of foster home and institutional placements and welfare payments.
  d. Because most of the fathers confess (about 90%), the costs due to prolonged court proceedings are sharply curtailed.
  e. The fathers usually are rehabilitated within the community and do not receive long prison sentences. Those serving short jail sentences are placed on work furlough. The county and the state, therefore, avoid the high costs of incarceration and of family upkeep.
  f. Since the fathers continue to work, there are no losses in federal and state tax revenues due to unemployment.

Above all must be stressed the ability of the CSATP to induce children and their parents to report the abusive situations and to treat them successfully. From a humane viewpoint, it is immensely gratifying to note that the children will not suffer lifelong devastation from the incestuous experience. From a social health viewpoint, it is also rewarding to realize that when treated early, abused children are not likely to become the future social derelicts and/or criminals of society, as attested to by recent studies indicating that about eighty percent of our prisoners were physically, and/or sexually abused as children. A detailed description of the principles, methods and results of the CSATP is given in the book, "Integrated Treatment of Child Sexual Abuse" by Dr. Giarretto.

MARCH 1985

# Treatment Premises Regarding the Incestuous Family

From the working principles of humanistic psychology tested by firsthand experience with incestuous families, the following major premises regarding the interpersonal dynamics of the families were developed and are fundamental to the treatment approach.

1. The family is viewed as an organic system. Family members assume behavior patterns to maintain system balance (family homeostasis).
2. A distorted family homeostasis is evidenced by psychological and/or physiological symptoms in family members.
3. Incestuous behavior is one of the many symptoms of a dysfunctional family.
4. The marital relationship is a key factor in family organic balance and development.
5. Parent–child incestuous behavior is not likely to occur when parents enjoy mutually beneficial relations.
6. High self-concepts in the mates is a prerequisite for a healthy marital relationship
7. High self-concepts in the parents help to engender high self-concepts in the children.
8. Individuals with high self-concepts are not apt to engage others in hostile, aggressive behavior. In particular, they do not undermine the self-concept of their mates or their children through incestuous behavior.
9. Conversely, individuals with low self-concepts are usually angry, disillusioned, and feel they have little to lose. They are primed for behavior that is destructive to others and themselves.
10. When such individuals are punished in the depersonalized manner of institutions, the low self-concept/high destructive-energy syndrome is reinforced. Even when punishment serves to frustrate one type of hostile conduct, the destructive energy is diverted to another outlet or turned inward.
11. Productive case management of the molested child and her family includes therapeutic procedures that alleviate the emotional stresses of the experience and the resulting punitive action of the community and that enhance the processes of self-awareness and self-management, as well as feelings of family unity and growth.

# 2. History of the CSATP

In mid-1971, a pilot project was started to offer counseling to sexually abused children and their families in Santa Clara County. Most of the child sexual abuse cases referred to the project were cases of intrafamily sexual molestation—usually father-daughter incest. Because of the relatively large number of such cases (around thirty a year during the early 1970s) and because there was no other coordinated system of case management, the pilot project was continued and eventually grew into what is now known as the Child Sexual Abuse Treatment Program (CSATP). To understand the origin of this innovative resource, it is necessary first to look at the situation as it existed just before the project was formed.

## The Problem

The population of Santa Clara County, California, in 1970 was approximately one million (322,870 households). The median educational level was quite high: 12.6 years. The population was 76.8 percent white, 17.5 percent hispanic, 4 percent oriental, 1.7 percent black and 1 percent other races. The county's economy before the Second World War had been primarily agricultural; by 1970, it was strongly based in the electronics, aerospace, research-and-development, and data-processing industries.

Along with this meteoric rise in industry had come a similar rise in population, and much of the county that had once been farmland and orchards was now given over to middle-income housing developments. The average household in Santa Clara County earned over thirteen thousand dollars a year, the highest median income of any metropolitan community in California. The county's main population center was and is the city of San Jose (population: 561,382).

No reliable statistics exist on the incidence of incest or of child abuse in general in Santa Clara County before 1971. Although the county was receiving around thirty referrals a year of cases involving sexual abuse of children, this figure did not include other cases in the juvenile justice system such as the so-called "beyond control" girls, many of whom, as it turned out, also were victims of incest. Despite the fact that the thirty reported cases a year in no way reflected the true number of ongoing cases, it was considered quite high in relation to the generally accepted estimate of one or two cases per million. (S. Kirson Weinberg had arrived at this estimate in 1955, citing 203 court cases over the period 1907–1938.[1] Other studies had substantiated Weinberg's figure, and it was regarded as the best statistic available.)

The reason that the CSATP was formed, however, was not so much the high number of child sexual abuse cases. More immediately pressing was the problem of how these cases were being handled by the criminal justice system at that time. Most often, the traditional tactics of law enforcement further aggravated the family's already deeply troubled state. The criminal justice system relied primarily on two devices: separation and punishment. It seemed that the courts' primary interest in the child had to do with what testimony she could give toward the conviction of the alleged perpetrator. In incest cases particularly, the whole family became entangled in the process of retribution. The damage to the family and the marriage was often irreparable.

In short, traditional community intervention added to the child-victim's fear, shame, guilt, and confusion, often ruined the father's career as well as his self-respect, and usually led to

[1] S. Kirson Weinberg, *Incest Behavior* (New York: Citadel Press, 1955), p. 96.

the break-up of the entire family. With these alarming consequences to be expected, it is no wonder that most families would not risk the danger of reporting their incestuous situation and did not receive the help and therapy they desperately needed.

In Santa Clara County, the Juvenile Probation Department (JPD) is the mandated reporting agency for child abuse cases; Child Protective Services is the agency usually responsible for this function elsewhere. The help the JPD offered was fragmented and complicated by bureaucracy, with the result that the already dysfunctional family dynamics were subjected to additional trauma.

The victim and her family were referred to one of the counseling agencies scattered over the county. Many clients resisted treatment because it was made so difficult for them. There were complicated eligibility requirements and long waiting lists. A counselor usually was assigned to a case on the basis of availability, rather than on the basis of training and skill. In fact, rather than receiving counseling, the client was often subjected to many diagnostic tests that would later be used in court.

Even when counseling was provided, there was little cooperation between mental health workers and probation officers. The supervising probation officer usually lacked the information, resources, and authority for proper case management. This poor management of reported cases of incest and child sexual abuse was not unique to Santa Clara County. In fact, it is a situation that still prevails in most communities throughout the United States.

## The CSATP Is Started

In 1971, Eunice Peterson, supervisor of the Dependent/Placement section of the Juvenile Probation Department, and Robert S. Spitzer, M.D., the consulting psychiatrist for the JPD, contacted Hank Giarretto concerning the establishment of a pilot effort. Giarretto, a licensed marriage and family counselor, would provide counseling to sexually abused children and their families for a trial period of eighty hours spread over eight weeks. At the end of this period, the pilot program would be evaluated by Spitzer, Giarretto, and Peterson to determine if it should be continued. The initial ground rules of the pilot program were: the clients would be counseled on-site at the Juvenile Probation Department; the program would emphasize conjoint family therapy as developed by Virginia Satir; and the therapeutic approach would follow a growth model predicated on humanistic psychology.

## Early Objectives

**To provide immediate on-site counseling.** The first objective of the pilot program was to provide counseling to sexually abused children and their families as soon as possible after their referral to the JPD. Consequently it was decided that clients would be counseled at the JPD, where the counselor could be readily available to them, rather than at his private office. It also was hoped that having the counselor there would help destigmatize the JPD, so that it could be regarded as an agency where people could get help rather than punitive treatment. It was anticipated that having the counselor on hand would facilitate communication and coordination among all those persons responsible for the cases.

By the time the pilot program had completed its eight weeks, Giarretto found that he was inextricably involved with many clients. It was apparent that each client required far more time than the traditional weekly hour. In addition to the hour devoted to counseling, for example, Giarretto had to spend an equal or greater amount of time consulting with juvenile and adult probation officers, police, lawyers, school teachers, and rehabilitation officers. All of this work could not be handled by Giarretto alone, especially since he had to continue his practice to supplement his income. Most of the clients could not afford to pay for the counseling, even when the fee was based on a sliding scale. They had already suffered sudden financial setbacks as a result of exposure (bail bonds, legal fees, separate housing for the father, and juvenile hall fees, for example). It was clear that the program had to be expanded in order to be fully effective.

**To marshal and coordinate available services.** It also became apparent during the pilot program that counseling alone was not enough; the family required a great deal of practical assistance to help them through this troubled period. They needed help in locating community resources for such pressing needs as housing, employment, financial advice, and legal assistance. This effort required close

Table 4

PROPORTION OF DEFENDANTS RECEIVING JAIL SENTENCES

Sentencing of Sex-related Offenses: 1982 4

| | "Most Serious" Offenses* | "Less Serious" Offenses** |
|---|---|---|
| 1974-76 | no data | 44% |
| 1976-79 | 3% | 33% |
| 1980 | 5% | 56% |
| 1982-84 | 0%*** | 29% |

* "Most Serious" offenses are Rape (1974-79), Sex Assault I (1980 through 1985), and Sex Abuse of a Minor I (Oct., 1983 - 1985).

** "Less Serious" offenses include a) 1974-79: Lewd and Lascivious Acts, Statutory Rape and Incest; b) 1980-1983: Sex Abuse of a Minor, Incest, Attempted Sex Abuse of a Minor; and c) Oct. 1983 and after: Sex Abuse of a Minor III, Incest, and Att. Sex Abuse of a Minor II.

*** It is assumed that all probationary sentences were imposed in cases in which the original charge had been amended to a lesser final charge.

## Definition of Data

To study patterns of sentencing for sex-related offenses, data were gathered from the Prosecutors' Management Information System (PROMIS), the Department of Public Safety, and the Department of Corrections. The data set consisted of all cases recorded on the PROMIS system for the years 1980 through 1985, for which a conviction had been obtained on a sex-related charge. The final data set included 423 defendants, most of whom had been charged with offenses in 1982, 1983 and 1984 (only a few cases were recorded for 1980, 1981, and 1985).

The cases studied included offenses against both children and adults. The age of the victim was unknown for 29% of the 423 cases. The cases had been filed in all areas of the state, with the exception of Nome, Kotzebue and Kenai where information about cases had not yet been entered on the PROMIS system.

Offenses were classified for purposes of study into three groups: "Most Serious" (Sex Assault I and Sex Abuse of Minor I), "Class A and B" (all class A and B felonies for which the classification was known), and Class C felonies (also referred to as "less serious" offenses). The classification was based on the original charge filed by the prosecutor since the final offense of conviction was unknown. About 22% of all the offenses studied were amended or reduced prior to conviction. Each defendant was characterized by the single most serious charge against him or her.

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

# Discussion Paper:

# An Analysis of Correctional Bed Space Needs, 1986-1991

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Commissioner

February 10, 1986