ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5816 HOUSE JUDICIARY

Judicial Council;

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

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

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

Sec. 44.19.575. ANNUAL REPORT AND RECOMMENDATIONS. The commission shall submit to the governor and the legislature an annual report of its proceedings for the previous calendar year and shall submit recommendations for legislative and administrative action. Reports and recommendations required under this section shall be submitted no later than the 10th day of each regular session of the legislature.

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

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

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

* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

Original sponsor(s): Rules/Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 491 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

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

ARTICLE 16. SENTENCING COMMISSION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) base recommendations on the following factors:

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

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

(C) the need to rehabilitate criminal offenders;

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

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

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

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

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

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

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

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

Judicial Council;

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

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

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

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

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

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

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

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

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

CC

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: HB 491 No. 1
PUBLISH DATE: HOUSE 2/7/90

FISCAL NOTE

REQUEST:

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	140.0	144.9	149.7	155.0	160.4	
TRAVEL	39.1	39.1	39.1	39.1	39.1	
CONTRACTUAL	91.3	74.7	74.7	74.7	74.7	
SUPPLIES	6.2	6.2	6.2	6.2	6.2	
EQUIPMENT	28.2	.5	.5	.5	.5	
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	304.8	265.4	270.2	275.5	280.9	
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	304.8	265.4	270.2	275.5	280.9	
FEDERAL FUNDS						
OTHER						
TOTAL	304.8	265.4	270.2	275.5	280.9	

POSITIONS:

FULL-TIME	3	3	3	3	3	
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis

Prepared by: Michael A. Nizich, Director Phone: 465-3616
Division: Division of Administrative Services Date: 2/6/90

Approved by Commissioner: Garrey Peska, Chief of Staff Date: 2/6/90
Agency: Office of the Governor

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

Sentencing Commission
Analysis:

PERSONAL SERVICES 140.0

Fiscal note assumes Anchorage location of commission staff. Request for New Position forms are attached. Salary shown are step A for FY 91. Personal Services request for subsequent years includes a one-step merit increase for all positions.

TRAVEL 39.1

Travel assumes six annual commission meetings.

Anchorage: 4 meetings

travel @ 366/person x 5 people	=	1,830	
per diem @ 80/day x 3 days x 7 people	=	1,680	
four meetings @		3,510	= 14,040

Juneau:

travel @ 390/person x 11 people	=	4,290	
per diem @ 80 x 3 days x 12 people	=	2,880	

Administrative staff

travel @ 366/person x 2 person	=	732	
per diem @ 90 x 3 days x 2 people	=	480	8,382

Fairbanks:

travel @ 390/person x 10 people	=	3,900	
per diem @ 90 x 3 days x 11 people	=	2,970	

Administrative staff

travel @ 390/person x 2 people	=	780	
per diem @ 80 x 3 days x 2 people	=	540	8,190

Additional administrative travel: = 8,500

includes legislative hearings;
out-of-state travel to meet with
sentencing experts

Total Travel: 39,112

Sentencing Commission
Analysis:

CONTRACTUAL 91.3

Professional Services:		
Services for programmer, sentencing analysts, statisticians, corrections specialists, and other related professionals		35,000
Communication:		
Telephone (toll costs, base/local fixed costs, centrex network costs) 900/mo x 12 months	10,800	
Telecopier charges -- 25/mo x 12 months	300	
Teleconference charges -- 6 @ 450	2,700	
Postage -- 300/mo x 12	3,600	17,400
Transportation:		
Freight and express charges -- 75/mo x 12		900
Advertising, Printing & Binding:		
Subscriptions	75	
Advertising -- 6 meetings x 750	4,500	
Printing -- 6 newsletters x 800 each	4,800	
Annual report	10,000	
Forms, misc.	750	20,125
Minor Repair, Maintenance		1,200
Rental for Space:		
Space requirement per Department of Administration standards:		
693.5 SF x 2.00/SF x 12 months =		16,644
Total Contractual:		91,269

SUPPLIES AND MATERIALS 6.2

Office and library supplies, 350/mo x 12 =	4,200	
Data processing supplies =	2,000	6,200

Sentencing Commission
Analysis:

EQUIPMENT 28.2

Communication Equipment:			
Phones			1,800
Data Processing Equipment:			
3 PCs with 1 lazer printer			16,000
Furniture/Office Equipment:			
Furniture/work station equipment	=	7,500	
2 5-drawer lateral file cabinets	=	900	
Photocopier	=	2,000	15,850
Total Equipment:			28,200

No. 1
HB 491
HOUSE 2/7/90

	POSITION TITLE				RANGE/STEP	BARG. UNIT	PAGE/LINE	COV.	APPROV.	DISAPP
1.	Executive Director				24/A					
	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
2.	PFT	12				Anchorage				

3.	CONTINUATION LEVEL		ADDITION	
4.	TYPE OF EXPENDITURE			AMOUNT
	1		2	3
	PERSONAL SERVICES			
5.	Salary		56,244	
6.	Benefits		12,726	
7.	Supplemental Benefits			
8.	Fixed Benefits			
9.	TOTAL PERSONAL SERVICES	01		69.0
10.	Travel	02		5.5
11.	Contractual	03		3.8
12.	Commodities	04		.8
13.	Equipment	05		8.1
14.	Other			
15.	TOTAL COST			87.2

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	87.2
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

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

JUSTIFICATION:

Executive Director, Sentencing Commission. Attorney with 4-6 years experience in criminal justice. Responsible for overall supervision, working with Commission, legislators, other agencies and public; evaluating existing laws, programs and policies and advocating proposed legislation; anlysis of sentencing patterns and factors.

REQUEST FOR NEW POSITION

AGENCY Office of the Governor

BRU Commissions and Special Offices

COMPONENT

FY 91

Revised Date

01-1137(7/88)-13

No. 1
HB 491
HOUSE 2/7/90

1.	POSITION TITLE: Project Assistant				RANGE/STEP: 16/A	BARG. UNIT	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: Anchorage	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	32,580	
6.	Benefits	7,534	
7.	Supplemental Benefits		
8.	Fixed Benefits		
9.	TOTAL PERSONAL SERVICES 01		40.1
10.	Travel 02		5.5
11.	Contractual 03		3.0
12.	Commodities 04		.8
13.	Equipment 05		7.5
14.	Other		
15.	TOTAL COST		56.9

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	56.9
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

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

JUSTIFICATION:

Assist Exec. Director with sentencing analyses and reports. Maintain data base, data collection and compilation; prepare reports and analysis of sentencing patterns and effects of other sentencing factors; liaison with contractors.

REQUEST FOR NEW POSITION

AGENCY Office of the Governor

BRU Commissions and Special Offices

COMPONENT

FY 91

Page 6 of 7

Revised Date

01-1137(7/88)-13

NO. 1
HB 491
HOUSE 2/7/90

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

3.	CONTINUATION LEVEL		ADDITION	
4.	TYPE OF EXPENDITURE			AMOUNT
	1		2	3
	PERSONAL SERVICES			
5.	Salary		24,984	
6.	Benefits		5,868	
7.	Supplemental Benefits			
8.	Fixed Benefits			
9.	TOTAL PERSONAL SERVICES	01		30.9
10.	Travel	02		
11.	Contractual	03		1.8
12.	Commodities	04		.8
13.	Equipment	05		7.5
14.	Other			
15.	TOTAL COST			41.0

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	41.0
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

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

JUSTIFICATION:

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

REQUEST FOR NEW POSITION

AGENCY Office of the Governor

BRU Commissions and Special Offices

COMPONENT

FY 91

Page 7 of 7

Revised Date

01-1137(7/88)-13

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB491

February 7, 1990

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

Dear Mr. Speaker:

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

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

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

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

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

I urge your favorable action on this bill.

Sincerely,

Steve Cowper
Governor

alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501 (907) 279-2526 FAX (907) 276-5046

EXECUTIVE DIRECTOR
William T. Cotton

NON-ATTORNEY MEMBERS
Hilbert J. Henrickson, M.D.
Leona Okakok
Janis G. Roller

ATTORNEY MEMBERS
Daniel L. Callahan
William T. Council
James D. Gilmore

CHAIRMAN, EX OFFICIO
Warren W. Matthews
Chief Justice
Supreme Court

FELONY CASE DISPOSITIONS: 1984 - 1987

* Trial Rates
* Conviction Rates
* Average Sentences

ALASKA JUDICIAL COUNCIL

February 21, 1990

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

FELONY CASE DISPOSITIONS: 1984 - 1987

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

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

Findings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Table 35a

Number of Original Cases
(Felony Cases on PROMIS, 1984-1987*)

by Location and Offense

Alaska Judicial Council, 1990

Statewide	1984	1985	1986	1987	
Robbery I	81	81	69	48	
Sex. Assault I	238	169	141	129	
Sex. Abuse I	113	143	150	120	
Sex. Abuse II	164	184	149	140	
Burglary I	280	278	276	258	
Burglary II	302	323	236	240	
Theft II	517	420	443	354	
MICS III & IV	447	425	417	471	
Assault II & III	577	578	494	505	
All Offenses	3,730	3,557	3,352	3,177	(13,816)
Anchorage, All	1,203	1,190	1,106	1,039	
Fairbanks, All	651	535	506	456	
Southeast, All	497	432	475	437	
Bush, All	639	645	597	574	
Southcentral, SW, All	778	808	718	716	

*These numbers represent the total cases on the PROMIS system. Of the 13,816 cases shown on these tables, about one-third (34%) were screened out by prosecutors. That is, no case was filed in court against that defendant. About 9,119 cases were filed in court during these years.

Table 35 b
Number of Original Cases
All Filed Felony Cases 1984-1987

By Offense and Location

Alaska Judicial Council, 1990

	1984	1985	1986	1987
Robbery I				
Anchorage	55	46	32	26
Fairbanks	12	16	16	3
Southeast	3	3	3	2
Bush	2	3	5	3
Southcentral, SW	8	13	12	11
Statewide**	81	81	69	48
Sexual Assault I				
Anchorage	74	45	39	38
Fairbanks	25	16	9	18
Southeast	21	24	12	13
Bush	72	55	62	34
Southcentral, SW	41	27	19	24
Statewide	238	169	141	129
Sexual Abuse I				
Anchorage	44	57	36	36
Fairbanks	16	19	21	17
Southeast	10	12	15	12
Bush	13	24	37	28
Southcentral, SW	29	26	39	24
Statewide	113	143	150	120
Sexual Abuse II				
Anchorage	41	43	35	28
Fairbanks	26	24	17	20
Southeast	24	26	19	28
Bush	33	48	34	36
Southcentral, SW	40	40	44	26
Statewide	164	184	149	140

Table 35 b (continued)

	1984	1985	1986	1987
Burglary I				
Anchorage	90	91	69	82
Fairbanks	63	40	31	40
Southeast	27	30	43	22
Bush	55	44	66	56
Southcentral, SW	44	67	64	48
Statewide	280	278	276	258
Burglary II				
Anchorage	90	86	85	74
Fairbanks	58	64	25	38
Southeast	30	43	16	30
Bush	68	54	46	49
Southcentral, SW	51	71	58	46
Statewide	302	323	236	240
Theft II				
Anchorage	161	136	135	119
Fairbanks	122	80	101	86
Southeast	68	45	57	36
Bush	44	44	42	29
Southcentral, SW	113	108	103	80
Statewide	517	420	443	354
MICSIII & IV				
Anchorage	110	103	149	147
Fairbanks	54	51	55	45
Southeast	112	47	105	101
Bush	42	57	44	45
Southcentral, SW	128	107	63	133
Statewide	447	425	417	471
Assault II & III				
Anchorage	190	176	171	155
Fairbanks	95	82	59	53
Southeast	51	74	65	66
Bush	129	134	91	119
Southcentral, SW	109	111	106	109
Statewide	577	578	494	505

**The statewide totals on these tables are not the same as the total number of offenses in each column because of a small number of cases are handled by the Department of Law's Office of Special Prosecutions and Appeals (OSPA). The OSPA cases are included in the statewide totals but not in the case count for each individual location.

Table 35 c

Number of Original Cases
(Felony Cases On PROMIS, 1984-1987)

Precentage Distribution by Type of Offense

	1984		1985		1986		1987	
	N	%	N	%	N	%	N	%
Violent Offenses								
Anchorage	334	(27.8%)	294	(24.7%)	284	(25.7%)	253	(24.4%)
Fairbanks	144	(22.1%)	128	(23.9%)	107	(21.1%)	76	(16.7%)
Southeast	77	(15.5%)	93	(21.5%)	86	(18.1%)	77	(17.6%)
Bush	173	(27.1%)	163	(25.3%)	132	(22.1%)	151	(26.3%)
Southcentral, SW	151	(19.4%)	147	(18.2%)	154	(21.4%)	167	(23.3%)
Statewide	869	(23.3%)	817	(23.0%)	747	(22.3%)	719	(22.6%)
Sexual Offenses								
Anchorage	195	(16.2%)	174	(14.6%)	131	(11.8%)	124	(11.9%)
Fairbanks	86	(13.2%)	71	(13.3%)	62	(12.3%)	59	(12.9%)
Southeast	73	(14.7%)	84	(19.4%)	64	(13.5%)	67	(15.3%)
Bush	168	(26.3%)	174	(27.0%)	172	(28.8%)	150	(26.1%)
Southcentral, SW	134	(17.2%)	120	(14.9%)	129	(18.0%)	99	(13.8%)
Statewide	646	(17.3%)	612	(17.2%)	550	(16.4%)	491	(15.5%)
Property Offenses								
Anchorage	447	(37.2%)	467	(39.2%)	440	(39.8%)	418	(40.2%)
Fairbanks	317	(48.7%)	230	(43.0%)	225	(44.5%)	226	(49.6%)
Southeast	188	(37.8%)	167	(38.7%)	168	(35.4%)	146	(33.4%)
Bush	208	(32.6%)	201	(31.2%)	201	(33.7%)	177	(30.8%)
Southcentral, SW	297	(38.2%)	352	(43.6%)	297	(41.4%)	261	(36.5%)
Statewide	1,457	(39.1%)	1,410	(39.6%)	1,332	(39.7%)	1,217	(38.3%)
Drug Offenses								
Anchorage	152	(12.6%)	176	(14.8%)	163	(14.7%)	157	(15.1%)
Fairbanks	59	(9.1%)	54	(10.1%)	60	(11.9%)	46	(10.1%)
Southeast	116	(23.3%)	49	(11.3%)	114	(24.0%)	103	(23.6%)
Bush	43	(6.7%)	59	(9.1%)	47	(7.9%)	45	(7.8%)
Southcentral, SW	129	(16.6%)	109	(13.5%)	66	(9.2%)	135	(18.9%)
Statewide	493	(13.2%)	445	(12.5%)	443	(13.2%)	482	(15.2%)

Table 25
Filed Conviction Rates
All Filed Felonies, 1984-1987

Alaska Judicial Council, 1990

Anchorage/Fairbanks/Juneau

Offense Type	8/15/74-8/14/75	8/15/75-8/14/76	1984	1985	1986	1987
Robbery I	57%	43%	83%	75%	60%	79%
Sex. Assault I	35%	40%	62%	55%	62%	52%
Sex. Abuse I	53%	67%	65%	71%	76%	75%
Sex Abuse II	[100%]	[75%]	71%	62%	66%	62%
Burglary I	53%	47%	73%	75%	68%	79%
Burglary II	69%	55%	71%	68%	76%	82%
Theft II	45%	52%	48%	41%	68%	75%
MICS III & IV	49%	36%	50%	56%	64%	66%
Assault II & III	45%	37%	57%	58%	58%	67%
All Offenses	49%	44%	59%	62%	66%	72%

Statewide

Offense Type	1984	1985	1986	1987
Robbery I	78%	78%	60%	74%
Sex. Assault I	62%	56%	73%	54%
Sex. Abuse I	62%	67%	69%	66%
Sex Abuse II	71%	63%	75%	72%
Burglary I	63%	74%	62%	72%
Burglary II	66%	60%	69%	73%
Theft II	47%	44%	61%	70%
MICS III & IV	50%	48%	62%	62%
Assault II & III	62%	63%	63%	72%
All Offenses	58%	60%	65%	68%

Table 32

Incidence of Pleas Associated
with Reduced or Dismissed Charges*
All Filed Felony Cases 1984-1987

Alaska Judicial Council, 1990

Statewide	1984	1985	1986	1987
Robbery I	32%	12%	15%	29%
Sex. Assault I	18%	16%	36%	29%
Sex. Abuse I	19%	24%	26%	27%
Sex. Abuse II	24%	15%	18%	19%
Burglary I	14%	19%	19%	19%
Burglary II	12%	11%	17%	14%
Theft II	12%	11%	16%	20%
MICS III & IV	6%	11%	14%	23%
Assault II & III	27%	28%	29%	40%
All Offenses	16%	17%	20%	25%

Anchorage				
Robbery I	40%	6%	13%	48%
Sex. Assault I	18%	9%	36%	10%
Sex. Abuse I	18%	26%	25%	33%
Sex. Abuse II	16%	6%	22%	19%
Burglary I	29%	21%	26%	24%
Burglary II	30%	23%	25%	20%
Theft II	16%	8%	23%	23%
MICS III & IV	16%	14%	15%	24%
Assault II & III	39%	35%	37%	56%
All Offenses	24%	21%	25%	30%

* This table shows the percentage of cases in which a defendant pled guilty or nolo, and the plea was associated with either a reduction in the level of the most serious arrest charge or a dismissal of one or more charges between the time of filing and the disposition of the case.

Table 32 (continued)

Incidence of Pleas Associated
with Reduced or Dismissed Charges*
All Filed Felony Cases 1984-1987

Alaska Judicial Council, 1990

Fairbanks	1984	1985	1986	1987
Robbery I	0%	8%	0%	[0%]
Sex. Assault I	7%	[13%]	[0%]	[67%]
Sex. Abuse I	25%	25%	[0%]	8%
Sex. Abuse II	[44%]	[9%]	[0%]	[0%]
Burglary I	5%	0%	5%	4%
Burglary II	0%	2%	5%	4%
Theft II	8%	4%	12%	5%
MICS III & IV	3%	9%	5%	8%
Assault II & III	8%	26%	19%	22%
All Offenses	7%	10%	9%	8%
Southeast				
Robbery I	—	[67%]	[100%]	[0%]
Sex. Assault I	8%	17%	[17%]	[71%]
Sex. Abuse I	[11%]	36%	[22%]	30%
Sex. Abuse II	0%	13%	18%	42%
Burglary I	19%	19%	18%	29%
Burglary II	4%	3%	29%	14%
Theft II	13%	17%	8%	27%
MICS III & IV	0%	3%	16%	38%
Assault II & III	23%	27%	33%	21%
All Offenses	10%	16%	20%	30%

Table 32 (continued)

Incidence of Pleas Associated
with Reduced or Dismissed Charges*
All Filed Felony Cases 1984-1987

Alaska Judicial Council, 1990

Bush	1984	1985	1986	1987
Robbery I	[50%]	[50%]	[50%]	--
Sex. Assault I	22%	18%	38%	39%
Sex. Abuse I	30%	31%	41%	29%
Sex. Abuse II	39%	27%	7%	16%
Burglary I	6%	22%	12%	21%
Burglary II	5%	10%	4%	9%
Theft II	6%	0%	19%	8%
MICS III & IV	11%	14%	9%	21%
Assault II & III	18%	24%	16%	33%
All Offenses	17%	17%	17%	26%

Southcentral, SW				
Robbery I	[29%]	[17%]	[11%]	[0%]
Sex. Assault I	23%	25%	[67%]	[0%]
Sex. Abuse I	17%	0%	25%	27%
Sex. Abuse II	26%	13%	25%	0%
Burglary I	3%	23%	23%	15%
Burglary II	9%	6%	16%	16%
Theft II	9%	20%	13%	30%
MICS III & IV	2%	9%	15%	12%
Assault II & III	30%	25%	27%	40%
All Offenses	15%	17%	22%	22%

Table 26 a

Trial Rate
All Filed Felony Cases 1984-1987
Statewide

Alaska Judicial Council, 1990

Statewide	1984	1985	1986	1987
Robbery I	13%	28%	22%	11%
Sex. Asslt. I	31%	21%	10%	26%
Sex. Abuse I	12%	16%	15%	15%
Sex. Abuse II	13%	11%	5%	8%
Burglary I	5%	7%	8%	6%
Burglary II	3%	5%	3%	5%
Theft II	5%	5%	4%	4%
MICS I[illegible] & IV	5%	7%	6%	6%
Assault [illegible] & III	11%	9%	8%	8%
All Offen[illegible]	10%	10%	8%	8%

Table 26 b

Trial Rate
All Filed Felony Cases 1984-1987
Anchorage

Alaska Judicial Council, 1990

Anchorage	1984	1985	1986	1987
Robbery I	13%	21%	23%	9%
Sex. Asslt. I	33%	26%	9%	46%
Sex. Abuse I	15%	22%	20%	29%
Sex. Abuse II	11%	17%	6%	6%
Burglary I	6%	8%	9%	8%
Burglary II	3%	3%	5%	12%
Theft II	3%	6%	3%	7%
MICS III & IV	8%	8%	8%	4%
Assault II & III	8%	8%	7%	7%
All Offenses	11%	11%	9%	10%

Table 26 c

Trial Rate
All Filed Felony Cases 1984-1987
Fairbanks

Alaska Judicial Council, 1990

Fairbanks	1984	1985	1986	1987
Robbery I	9%	50%	25%	[0%]
Sex. Asslt. I	13%	[38%]	[33%]	[0%]
Sex. Abuse I	17%	25%	[13%]	15%
Sex. Abuse II	[11%]	0%	[25%]	[11%]
Burglary I	3%	16%	35%	11%
Burglary II	5%	12%	0%	0%
Theft II	6%	6%	4%	0%
MICS III & IV	3%	3%	10%	27%
Assault II & III	12%	15%	22%	25%
All Offenses	11%	14%	15%	12%

[ ] indicate fewer than 10 cases in this category

Table 26 d

Trial Rate
All Filed Felony Cases 1984-1987
Southeast

Alaska Judicial Council, 1990

Southeast	1984	1985	1986	1987
Robbery I	--*	[33%]	[0%]	[0%]
Sex. Asslt. I	25%	6%	17%	14%
Sex. Abuse I	[11%]	0%	[22%]	0%
Sex. Abuse II	19%	7%	9%	5%
Burglary I	13%	6%	4%	5%
Burglary II	4%	3%	0%	0%
Theft II	2%	0%	8%	9%
MICS III & IV	3%	3%	1%	4%
Assault II & III	8%	8%	9%	10%
All Offenses	8%	5%	6%	5%

* "--" means no cases in this category

Table 26 e

Trial Rate
All Filed Felony Cases 1984-1987
Bush

Alaska Judicial Council, 1990

Bush	1984	1985	1986	1987
Robbery I	[50%]	[30%]	[50%]	[0%]
Sex. Asslt. I	35%	18%	8%	15%
Sex. Abuse I	10%	8%	5%	12%
Sex. Abuse II	22%	9%	0%	16%
Burglary I	6%	3%	3%	3%
Burglary II	5%	3%	8%	3%
Theft II	0%	6%	6%	0%
MICS III & IV	15%	14%	3%	6%
Assault II & III	12%	6%	5%	6%
All Offenses	14%	10%	7%	6%

Table 26 f

Trial Rate
All Filed Felony Cases 1984-1987
Southcentral, Southwest

Alaska Judicial Council, 1990

Southcentral, SW	1984	1985	1986	1987
Robbery I	[14%]	[17%]	[11%]	[25%]
Sex. Asslt. I	36%	33%	[0%]	[0%]
Sex. Abuse I	6%	14%	18%	8%
Sex. Abuse II	4%	17%	0%	0%
Burglary I	0%	0%	0%	3%
Burglary II	0%	2%	0%	0%
Theft II	9%	4%	2%	0%
MICS III & IV	2%	7%	7%	4%
Assault II & III	15%	10%	7%	2%
All Offenses	8%	8%	5%	6%

Table 26 g

Trial Rate
All Filed Felony Cases 1984-1987

By Offense and Location

Alaska Judicial Council, 1990

Offense	1984	19.	1986	1987
Robbery I				
Anchorage	13%	21%	23%	9%
Fairbanks	9%	50%	25%	[0%]
Southeast	--	[33%]	[0%]	[0%]
Bush	[50%]	[30%]	[50%]	[0%]
Southcentral	[14%]	[17%]	[11%]	[25%]
Statewide	13%	28%	22%	11%
Sex Abuse I				
Anchorage	15%	22%	20%	29%
Fairbanks	17%	25%	[13%]	15%
Southeast	[11%]	0%	[22%]	0%
Bush	10%	8%	5%	12%
Southcentral	6%	14%	18%	8%
Statewide	12%	16%	15%	15%
MICS III & IV				
Anchorage	8%	8%	8%	4%
Fairbanks	3%	3%	10%	27%
Southeast	3%	3%	1%	4%
Bush	15%	14%	3%	6%
Southcentral	2%	7%	7%	4%
Statewide	5%	7%	6%	6%

Table 28

Active Prison Rate by Type of Offense

Convicted Offenders, 1984-1987
Percentage Distributions

Alaska Judicial Council, 1990

% Active Prison	1984	1985	1986	1987
Statewide				
Violent	73%	75%	78%	80%
Property	66%	62%	60%	58%
Sex	82%	83%	83%	85%
Drugs	68%	54%	55%	54%
All Offenses	71%	69%	68%	67%
Anchorage				
Violent	78%	70%	80%	83%
Property	68%	63%	58%	54%
Sex	84%	84%	84%	86%
Drugs	77%	56%	59%	67%
All Offenses	75%	67%	67%	66%
Fairbanks				
Violent	51%	63%	66%	74%
Property	60%	40%	39%	49%
Sex	68%	62%	60%	68%
Drugs	48%	26%	27%	50%
All Offenses	59%	50%	48%	56%
Southeast				
Violent	61%	78%	73%	80%
Property	63%	57%	60%	65%
Sex	84%	92%	74%	97%
Drugs	65%	50%	59%	48%
All Offenses	67%	68%	63%	68%
Bush				
Violent	79%	87%	83%	81%
Property	72%	77%	72%	76%
Sex	89%	86%	90%	91%
Drugs	59%	71%	52%	52%
All Offenses	77%	82%	78%	79%
Southcentral, SW				
Violent	76%	76%	80%	75%
Property	70%	67%	79%	62%
Sex	79%	86%	85%	71%
Drugs	73%	62%	71%	45%
All Offenses	73%	74%	78%	65%

Table 34

Mean Sentence Length in Months
Convicted Offenders with Active Time

Most Serious Offense, 1984 - 1987 By Offense and Location

Alaska Judicial Council, 1990

Statewide	1984	1985	1986	1987
Robbery I Class A (Pres. is 60 or 84 months*)	63	92	121	62
Sex Assault I Unclass (Pres. is 96 or 120 months*)	107	83	97	165
Sex Abuse Minor I unclass. (Pres. is 96 or 120 months*)	88	107	96	83
Sex Abuse Minor II Class B (No pres. for 1st offense)	31	27	26	35
Burglary I Class B (No pres. for 1st offense)	26	26	31	29
Burglary II Class C (No pres. for 1st offense)	18	17	19	19
Theft II Class C (No pres. for 1st offense)	18	14	13	16
MICS III & IV Classes B & C (No pres. for 1st offense)	15	22	18	17
Assault II and III Classes B & C (No pres. for 1st offense)	18	16	19	18

* Notes on this table regarding presumptive sentences apply only to first felony offenders. Variations in mean sentence by year are affected by variations in the prior records of offenders, as well as by aggravating and mitigating factors, and other sentencing criteria.

HB 491

924 Kellum, #205
Fairbanks, AK 99701
February 10, 1990

Rep. Max Gruenberg, Jr.
Co-Chairman, Judiciary Committee
Post Office Box V
Juneau, AK 99811

Dear Rep. Gruenberg:

I am strongly in favor of immediate introduction of a bill concerning the presumptive sentencing laws. I believe presumptive sentencing should be done away with as it has not accomplished what was originally intended.

There are many alternatives to presumptive sentencing which would allow the prisoner to become a productive member of the community and in doing so reduce the Dept. of Corrections budget and alleviate the overcrowding.

If it's not feasible to do away with presumptive sentencing, one answer would be not to apply it to a first offender. Another answer would be to allow parole within presumptive sentencing upon successful completion of a rehabilitation program. There is also the program whereby the offender is placed under very strict supervision by a probation officer for a first offense. Although this would increase the number of probation officers needed, it would be more than offset by eliminating the cost of housing the prisoners.

I have seen offenders who have successfully completed rehabilitation programs become very discouraged because after completion they still have several years to serve and no hope of a parole. Some offenders refuse to take the programs as they see no incentive for doing so.

I urge early introduction of legislation as I am finding that many people will not express their views on this touchy subject by writing letters, however once a bill is introduced they would be willing to send a short "yea" or "nay" message.

Last year I wrote to many of the legislators urging some action on this subject. There seems to be more interest this year and I am hopeful that some action will be taken regardless of the fact that this is an election year. If there should be hearings on this subject I would like this letter introduced as part of the testimony.

Sincerely,

Jane Pryor

(Mrs.) Jane Pryor

GOVERNING

The States and Localities

A Publication of Congressional Quarterly Inc.

Politicians and the Press

Sentencing Reform, Round Two

Risking Pension Funds

Secrets of a Fiscal Spin Doctor

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

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

By Fred Strasser

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

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

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

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

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

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

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

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

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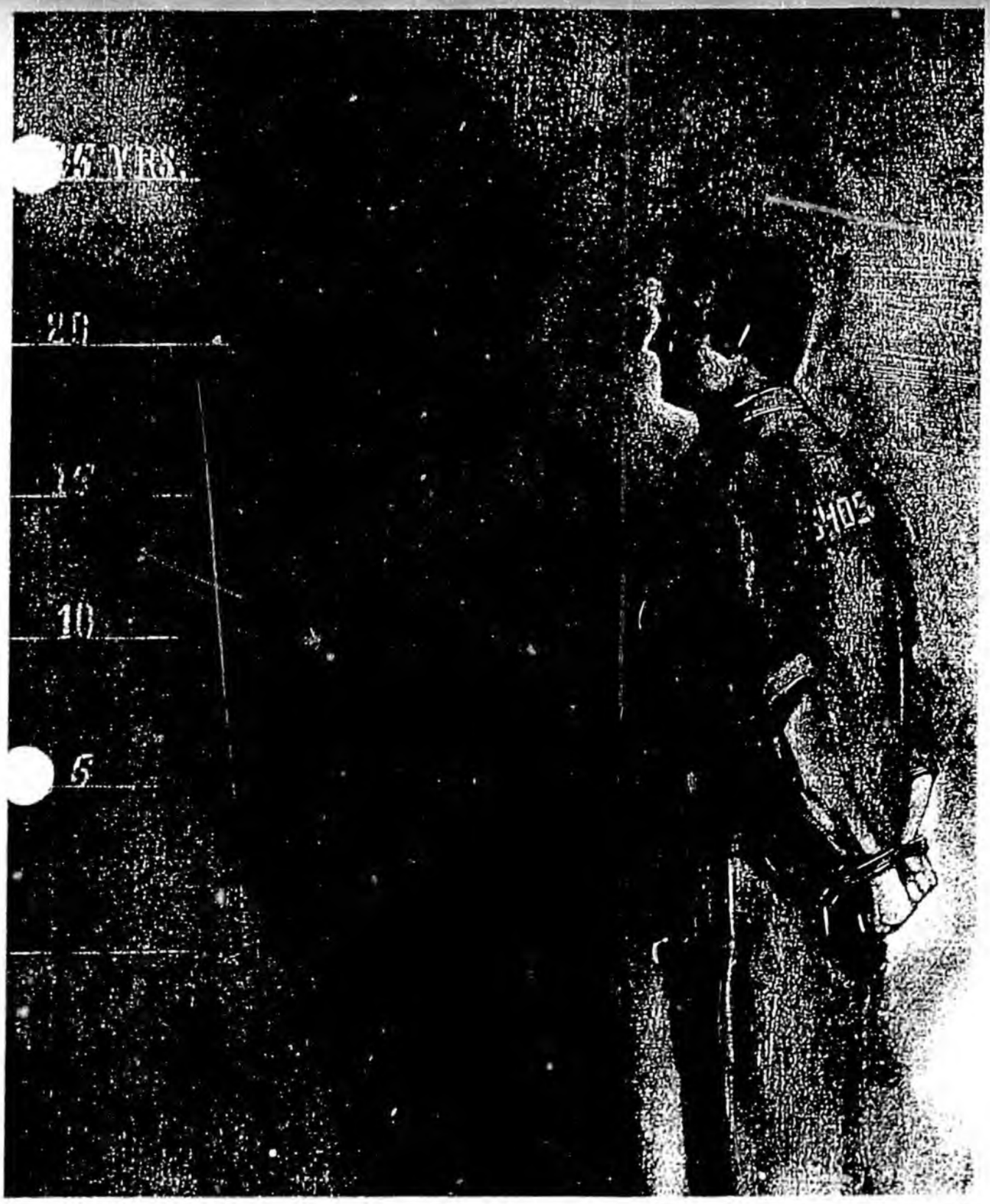
Fred Strasser is the Washington bureau chief of the National Law Journal



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

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

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

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

latest year for which detailed figures are available, state and local governments increased their per capita spending on law enforcement by 73 percent while corrections budgets leaped 218 percent, according to the U.S. Bureau of Justice Statistics. Increasingly these days, prison beds are viewed as a scarce resource that policy makers must allocate carefully to achieve clearly understood goals.

"Tough times bring progress," Jackson says wryly. "Louisiana can't afford its correctional system. That's something some very tough, very practical guys in our statehouse have reluctantly come to understand."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In 1978 lawmakers increased sentences across the board for 43 major felonies. Later came "enhancements" for prior convictions and crimes involving violence. Mandatory sentences, such as for use of a gun, were added. A major impact came from requiring prison time for some burglaries that historically had brought only probation. As a result, 50 percent of the inmates in California prisons today are serving time for non-violent offenses, compared with a national average of about 40 percent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"We're the sump," laments Corrections Czar Jackson. "I get the drug abusers and the child abusers, children. I get the mentally ill and illiterates, all the repeats and retreads no one else knew what to do with."

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

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

The Complex Case of Costly Corrections

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

By Julie Lays

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

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

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

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

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

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

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

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

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

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

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

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

Ways to Cut Costs Are Already in Motion

• *Intensive Probation.*

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

• *House Arrest.*

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

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

• *Sentencing Guidelines.*

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

• *Prison Industries.*

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

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

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

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

—*Julie L.*

Annual Cost of Sentencing Options

(Exclusive of Construction Costs)

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

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

prison for life."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LONG RANGE PLANNING

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

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

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

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

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

Nationally, on January 1, 1988, 60.0 percent were on probation, 28.3 percent were in custody, and 11.6 percent were on parole. Alaska 49.4% Probation; 42.5% custody 11.6% Parole. 1988 Corrections Yearbook Pub. by Criminal Justice Institute

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

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

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

Ak. Corrections Masterplan 1979

6. "Cost Considerations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CORRECTIONS

Introduction: Stiffer criminal penalties continue to be the policy preference of the public and elected officials at all levels for dealing with problems such as drunken driving, drug abuse, and abuse of spouses, children, and the elderly. This attitude is being reflected in state laws on criminal penalties, the devotion of resources to prosecution and courts, and in the attitudes of judges, juries, and parole commissions. A predictable result has been a sharp and continuing increase in the number of people in jails and state and federal prisons, despite little change in the crime rate. The impact on state and local government is compounded by the continuing escalation of standards for correctional institutions being imposed by litigation and state acceptance of federal court consent decrees.

The results add up to double-digit increases in state corrections budgets and are felt indirectly in pressures for states to increase aid to local governments and local taxing authority to deal with their financial pressures. Along with parallel double-digit increases in Medicaid, the results explain why state executive branch officials are having difficulties in producing balanced budgets for FY 1991 without recommending tax increases.

There is nothing politically exotic about expanding correctional systems. The costs create penalties in what can be allocated to more popular causes such as education and tax relief. Construction of new capacity often triggers local "not-in-my-backyard" opposition. Neither prisoners and their families nor prison employees are noticeably grateful to state officials for building additional prison capacity. Having a larger population in prison tends to frustrate achievement of other social policies, such as reducing dependency in single parent families and providing a workforce for economic development. And it hasn't produced a noticeable decline in crime rates.

As a result, there is some backlash against proposals to add to prison capacity. This has delayed prison construction programs in some states, but not generally derailed them. It has encouraged adoption of programs designed to limit prison population by alternatives such as community corrections, alternative sentencing, and early release. Officials of many states have been reluctant to dip very far into these alternatives, but comparative state statistics on incarceration rates and increases in prisoners suggest that some states are much more successful at limiting prison populations than others.

Demands for Correctional Space Strain Capacity and Budgets: The states are continuing to experience an explosion of the number of

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bonding, but the calculation excludes the annualization of operating costs incurred for only a part of the year this year and the new debt service costs appearing from past decisions to bond prison construction.) Combined with sharp increases in Medicaid and the costs of meeting inflation in other programs, the corrections increases are a large part of the cause of inflexibility in choices confronting state budget officials for FY 1991.

Prison Population Growth By State: The states vary considerably in the prisoner growth they experienced in the past year. The data are shown as Table 1.

TABLE 1: PERCENTAGE CHANGE IN PRISON POPULATION, JULY OF 1988 AND 1989

RANK	STATE	PCT.	RANK	STATE	PCT.	RANK	STATE	PCT.
1	RHODE ISLAND	38.0%	18	FLORIDA	13.0%	34	ARIZONA	7.7%
2	SOUTH DAKOTA	26.9	19	VIRGINIA	12.8	35	ARKANSAS	7.1
3	WEST VIRGINIA	25.3	20	MISSOURI	12.7	36	WASHINGTON	7.1
4	COLORADO	22.6	21	PENNSYLVANIA	12.2	37	VERMONT	7.0
5	CONNECTICUT	19.6	22	MONTANA	11.7	38	NEW MEXICO	6.6
6	SOUTH CAROLINA	15.8	23	INDIANA	11.6	39	NEBRASKA	5.8
7	MISSISSIPPI	15.6		NAT'L. AVG.	11.4	40	HAWAII	5.6
8	IDAHO	15.4	24	OKLAHOMA	11.3	41	LOUISIANA	5.6
9	NEW YORK	15.1	25	ALABAMA	11.2	42	WYOMING	5.5
10	KENTUCKY	15.0	26	OREGON	11.2	43	GEORGIA	5.4
11	CALIFORNIA	14.9	27	DELAWARE	10.9	44	MAINE	4.8
12	IOWA	14.9	28	NEW JERSEY*	10.8	45	ALASKA	4.0
13	MICHIGAN	14.9	29	MASSACHUSETTS	10.0	46	KANSAS	2.6
14	UTAH	14.9	30	ILLINOIS	9.8	47	TEXAS	2.0
15	NEVADA	14.5	31	MINNESOTA	9.1	48	NORTH CAROLINA	0.3
16	NEW HAMPSHIRE	13.1	32	MARYLAND	8.4	49	NORTH DAKOTA	-0.4
17	OHIO	13.1	33	WISCONSIN	8.1	50	TENNESSEE	-1.5

*PARTIALLY ESTIMATED

There is no obvious explanation for the rankings shown on the table. Prosperous and less prosperous states, agricultural and industrial states, states with rapid population growth and with stagnant populations, and states within regions are scattered throughout the rankings. The lack of an obvious demographic or economic explanation suggests that state policy choices may be causing the differences.

The diversity among states in one-year growth is mirrored by diversity in the percent of state population in prison, shown on Table 2. Eleven states are more than 50% different from the national average. In Nevada, there is a potential explanation in residents of other states who come to the state to gamble, but no obvious explanation for South Carolina's position. The nine states 50% or more below the national average are predominantly Northeastern states, where a lesser number of persons in prime crime-committing ages helps explain the diversity. But some regional patterns are apparent. Former Confederate states are in the top half, excepting Tennessee which is 36th. Agricultural and Northeastern states tend to dominate the bottom half.

Besides adult corrections, states face the growing costs for probation and parole. From the end of 1986 to the end of 1987, there was an increase of 6% in probationers and an 11% increase in adults on parole. There has also been a double-digit increase in juvenile offenders in custody by state and local officials.

Crime and Corrections: Despite considerable research, the relationship betweer crime experienced by citizens and imprisonment remains a mystery. At one point, many believed that prisons would be the site for "rehabilitation," so that time in prison would cure crime because prisoners would learn how to live better -- to be honest, to perform in regular jobs, etc. Another theory more prominent in some circles is that the exposure to correctional institutions and those who live there actually encourages criminal behavior, so that sanctions short of prison are to be preferred.

The relationship between crime and corrections is so tenuous that what to expect from the two tables on crime incidence which follow isn't obvious. One alternative is that incarceration rates should be highest where the crime rates are highest and that growth in prison populations should be found in the same states where crime is growing most rapidly. Another alternative is the reverse -- that the states that are demonstrably the toughest on crime, as indicated by willingness and ability to put people in prison, would be those with the lowest crime rate.

Table 3 compares the states in crime rates -- the number of major crimes reported to police related to total population.

TABLE 3: TOTAL FBI INDEX CRIMES REPORTED TO POLICE PER 100,000 POPULATION, 1988

RANK	STATE	NO.	RANK	STATE	NO.	RANK	STATE	NO.
1	FLORIDA	8,938	17	OKLAHOMA	5,589	34	VERMONT	4,240
2	TEXAS	8,018	18	UTAH	5,578	35	ARKANSAS	4,220
3	ARIZONA	7,471	19	SOUTH CAROLINA	5,412	36	VIRGINIA	4,177
4	WASHINGTON	7,113	20	NEW JERSEY	5,295	37	INDIANA	4,150
5	OREGON	7,059	21	RHODE ISLAND	5,204	38	NEBRASKA	4,140
6	CALIFORNIA	6,636	22	CONNECTICUT	5,098	39	IOWA	4,077
7	NEW MEXICO	6,606	23	MASSACHUSETTS	4,991	40	IDAHO	3,973
8	NEVADA	6,453	24	ALASKA	4,922	41	WISCONSIN	3,972
9	GEORGIA	6,327	25	KANSAS	4,880	42	WYOMING	3,967
10	NEW YORK	6,310	26	NORTH CAROLINA	4,862	43	MISSISSIPPI	3,593
11	COLORADO	6,178	27	MISSOURI	4,845	44	MAINE	3,578
12	MICHIGAN	6,084	28	DELAWARE	4,799	45	NEW HAMPSHIRE	3,334
13	HAWAII	5,989	29	OHIO	4,645	46	PENNSYLVANIA	3,176
14	LOUISIANA	5,761	30	ALABAMA	4,562	47	KENTUCKY	3,135
15	MARYLAND	5,705	31	TENNESSEE	4,469	48	NORTH DAKOTA	2,728
	NAT'L. AVG.	5,664	32	MINNESOTA	4,315	49	SOUTH DAKOTA	2,581
16	ILLINOIS	5,621	33	MONTANA	4,267	50	WEST VIRGINIA	2,239

Nationally, there were 5,664 such reported crimes per 100,000 population or almost six major crimes in 1988 for each 100 people in the

Virginia being the best example. These states tend to have low and decreasing crime rates and low incarceration rates that are increasing more slowly than the national average. Table 5 suggests the absence of relationships in other states by showing the rankings for selected states.

TABLE 5: RANKINGS OF SELECTED STATES ON CRIME AND INCARCERATION MEASURES MOST RECENT YEARS AVAILABLE

	AMOUNTS		CHANGE	
STATE	CRIME	INCARCERATION	CRIME	INCARCERATION
FLORIDA	1	12	5	18
NEVADA	8	1	22	15
GEORGIA	9	13	1	43
RHODE ISLAND	21	38	34	1
TEXAS	2	22	11	47
SOUTH CAROLINA	19	2	6	6
ARIZONA	3	7	10	34
WASHINGTON	4	41	20	36
CALIFORNIA	6	14	17	11
NEW YORK	10	15	2	9
ILLINOIS	16	28	12	30
NEW JERSEY	20	23	26	28
MASSACHUSETTS	23	43	4	29
NORTH CAROLINA	26	18	7	48
PENNSYLVANIA	46	35	27	21

The table denies many potentially expected relationships. Crime increases are associated with sharp increases in people in prison in New York and South Carolina, but Rhode Island led the nation in adding prisoners but was 34th in increasing crime. The states with the four highest crime rates have incarceration rates ranging from seventh to 41st. The two states with the highest incarceration rates are eighth and 19th in crime rates. While much more refined statistical techniques could be applied to these data to produce more sophisticated results, the bottom line is apparent -- the relationship between crime and punishment among the states isn't close.

Causes of the Correctional Explosion: One clear reason for the sharp increase in correctional populations is the increase in commitments to prison for crimes which aren't even included in the traditional crimes (e.g., murder, burglary, and robbery) that are included in the crime index. Chief among these is drugs. For example, 31% of the people expected to be sent to prison in Massachusetts this year are headed there for drug charges, up from 5% ten years ago. Part of this may be related to an underlying phenomenon of incidence of drug offenses and the extent offenders are successfully prosecuted. But part is what the corrections commissioner calls "a more conservative philosophy by the judiciary in dealing with those who are charged with drugs."

operating costs associated with opening new prisons, becomes what Oregon's Governor Goldschmidt has called "the gorilla that will eat the budget." A less picturesque perspective is provided by Florida's governor, who is trying to maintain a no-new-tax posture, a strong law and order stance, and a major concern with improving education in the face of rising enrollments. He has publicly expressed the concern that Florida simply can't be building both prisons and schools in large numbers.

The Alternatives: The pressure of higher costs has focused attention on whether it might be possible to use alternatives short of, and cheaper than, imprisonment in state institutions for some offenders and whether some sentences might be shorter. This is the focus of approaches developed by the National Conference of State Legislatures ("The Complex Case of Costly Corrections," State Legislatures, February 1989 and the study cited below), and the Council of State Governments (e.g., entire issue of The Journal of State Government, March/April 1989).

Minnesota and Washington are worthy of attention because they both rank relatively low in incarceration rates -- lower than would be expected from examining their crime rates, their demographic and economic circumstances, or the rates of neighboring states with similar characteristics. Both place more emphasis than most states in keeping non-violent offenders out of the state prison system. Minnesota, since 1973, has had a policy that encourages, and helps pay for, keeping minor offenders in county jails and community service jobs and sentencing guidelines that mandate local handling of people convicted of property crimes. Washington pursues similar policies, including a strong emphasis on psychological treatment and relatively short jail sentences, rather than prison, for sex offenders. The National Conference of State Legislatures (1050 17th St., #2100, Denver CO 80265) in State Legislatures and Corrections Policies: An Overview (1989) gives these two states credit for "a more efficient use of limited resources, a better ability to foresee and plan for problems in the system, and a reduction in sentencing disparities, while still heeding the public's demand for public safety and appropriate punishments."

"Community corrections" offers a comprehensive collection of alternatives. Examples are bills passed in Texas this year and in Michigan last year. These are designed to target groups of offenders for local punishment in lieu of state corrections, with an emphasis on reducing the strong incentives for local officials simply to shift prisoners, and their costs, to state penitentiaries. This typically involves increasing state support of the local alternatives, as discussed in detail with state-by-state statistics in NCSL's State Aid to Local Governments for Corrections Programs, but the approach is totally inapplicable in the smaller states, such as Delaware and Hawaii, that already pay essentially all corrections costs at the state level. Nationally, about 65% of those costs are defrayed by state governments, with percentages as low as 57% in Florida and Texas, 54% in Oregon, 53% in California, 51% in Pennsylvania, and 47% in Nevada.

Whether approached through an emphasis on community decisions or on state ones, such as length of sentences and early-release programs,

system. The obvious options are reducing or eliminating mandatory sentences (e.g., for residential burglary) or an early release program. But legislators who voted for such measures in the past have had those votes used against them in campaigns and are reluctant to appear soft on crime and interested in increasing criminal penalties as a way to deal with drug problems.

In Kansas, legislation reducing sentence length for many offenses helped lead to a one-time 7% decrease in inmates this summer, but the population is expected to resume its rise. Meanwhile, the system is trying to cope with about 6,000 prisoners and a court-imposed cap of 1,700 inmates at the state penitentiary which held as many as 2,400 this year. There is a comparable cap on another institution and a new cap of less than 1,300 to come into effect in 1991. The legislature has already taken many steps: (1) increased time off for good behavior, (2) a furlough program, (3) house arrests with electronic equipment, (4) boot camps, (5) a community corrections program in every county, (6) a state sentencing commission, which will presumably recommend shorter sentences for certain offenses, (7) several community residential centers for prisoners who have regular jobs, and (8) increased staffing for parole and probation. But Kansas legislators are reluctant to move too rapidly in these directions. In 1982, "Yorkie" Smith brutally murdered three local residents shortly after being paroled; last year, a paroled Kansas convict killed four persons; and some convicts have walked away from jobs they held while still under corrections custody. As the Senate President has commented: "If we have another Yorkie Smith, they are going to blame the Legislature for the actions we took to solve the problem, for the whole approach we've taken."

Savings Through Improved Planning And Management: Even if the number of prisoners is considered to be uncontrollable, there are many avenues of approach to reducing the costs of their incarceration. The most promising of these are based on taking a close look at the intensity, and thus cost, of supervision required of each type of inmate. The costs of prison construction and operations are considerably higher for persons held in maximum security facilities than those held in medium security facilities, which in turn are higher than those of confinement in minimum security facilities. There are substantial differences among states in how prisoners are classified, so moving prisoners to a lower classification is an alternative actively discussed in many states.

Just Paying The Bill As An Alternative: While budget pressures, if nothing else, have pushed state officials into consideration of the kinds of statistics presented in this issue, all of the discussion of alternatives to incarceration is built on the premise that there is something fundamentally wrong with what appears to be the prevailing public view.

There are substantial supporters of that view within state and federal governments. Their policy is that the criminal law system should be designed to work to protect citizens and prevent crime. From that perspective, the workload imposed on the correctional system is a by-product, but the basic policy should be to let the chips fall where they

overall situation is one of basic stability in the 1980s. Furthermore, demographic trends suggest that crime rates shouldn't be increasing. The percentage of the population that is in the prime crime-committing years is decreasing and is expected to continue to do so. But there are clearly other forces at work such as public attitudes on crime and punishment and the impact that the drug problem has had on the crime problem. The role of these factors in the past and extrapolation of past trends is leading corrections officials of many states to predict continuing increases in prison populations and to seek additional resources based on these projections.

In the context of setting state budgets, it is difficult to see situations that would cause a sharp turnaround in the growth of prison populations and the tendency to seek additional resources based on these projections. Such a turnaround might develop sooner or later. This possibility is being recognized in some states by decisions that permit the future contraction of prison capacity in the event that the prison population explosion abates. However, the possibility of turnaround is one factor, along with cost, that has encouraged "temporary" crowding of facilities in the past, without relief so far in the conditions presumed to be temporary.

ENVIRONMENTAL PROTECTION

State and Federal Roles: Efforts by individual states to adopt environmental protection measures more stringent than federal ones are collected into the theme, "Without Leadership From Washington, The States Set The Environmental Agenda For The Nation," in Newsweek (Nov. 13):

> A new age of environmental federalism has dawned. In a stunning switch, the states are no longer merely implementing federal standards but are setting the environmental agenda. Passing more -- and more -- stringent controls on pollution than Congress ever considered, states and cities are protecting ground water, recycling garbage, mandating "clean" fuels and reducing acid rain. Every state now regulates the emission of toxic chemicals into the air; the city of Philadelphia alone has set standards for 99 toxics, while the U.S. Environmental Protection Agency has issued only seven. The states are forging ahead on their own because Congress and the White House can't or won't champion meaningful environmental reform -- even on issues such as the greenhouse effect that have causes and consequences far beyond any state's borders.

The actions drawing the magazine's attention include: (1) tailpipe emission standards led by California, followed by Northeastern states, (2) low-volatility gasoline standards led by California and followed by federal rules, (3) mandatory recycling by local government with Minnesota and Oregon mentioned, (4) bans on chlorofluorocarbons by Vermont and municipalities in California and New Jersey, (5) acid rain limits by Wisconsin, Minnesota, and Massachusetts with federal legislation still pending, (6) requirements in Texas that publicly-owned vehicles convert

Alaska State Legislature

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January 31, 1990

MEMORANDUM

TO: Representative Peter Goll

FROM: Judy Brakel and Maria Gladziszewski
Legislative Analysts

RE: Incarceration and Alcohol Consumption Rates
Research Request 90.213

You asked this agency to obtain comparative statistics about incarceration and alcoholism (or alcohol consumption) rates in Alaska. Specifically, you were interested in comparing rates of incarceration and alcoholism/alcohol consumption in Alaska with other states and nations. Attached are five tables and four figures containing the information requested.

Incarceration Rates

Table 1 and Figure 1 show the number of prisoners serving sentences of more than one year per 100,000 residents as of December 31, 1987. Alaska ranks fourth among fifty states in the rate of sentenced prisoners. Table 2 and Figure 2 show the number of all prisoners in state and federal custody on December 31, 1987. Alaska ranks first among fifty states in the rate of prisoners in custody on December 31, 1987. Alaska data for this category, however, are inflated because the Alaska data include jail as well as prison inmates. Data from most other states do not include persons held in jails and, therefore, generally do not include those awaiting trial or serving short sentences.[1]

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[1]Table 1 provides a more accurate comparison across state prison systems by counting only those persons serving sentences of one year or more, rather than simply comparing the number of people in prison on a given day (as in Table 2). The National Council on Crime and Delinquency (NCCD) has attempted to correct for the same problem by distinguishing between imprisonment rate (the number of persons in prison on a given day) and incarceration rate (including persons in prison and in jail and juveniles in custody). See Attachment A, a short article from NCCD's *Focus*, that shows Alaska as first in imprisonment rate (as does Table 2) but third in incarceration rate (Table 1 ranks Alaska as fourth in number of sentenced prisoners).

Table 3 and Figure 3 include U.S. prisoners under state and federal jurisdiction on December 31, 1986 and the average number of prisoners in four European nations (Finland, Denmark, Sweden, and Norway) per 100,000 resident adults. Prisoners per 100,000 adults in the U.S. were obtained using numbers of persons over age 16; Denmark, Finland and Sweden rates were obtained using numbers of persons over age 15; Norway rates were obtained using numbers of persons over age 14. Figure 3 includes the top and bottom five states, the U.S. average, and the four European nations.

Alcohol Consumption Rates

Table 4 and Figure 4 show alcohol consumption rates for the U.S., Alaska and foreign countries. Table 5 shows state and U.S. total per capita alcohol consumption rates based on the population aged 14 and older. The per capita rates in Table 4 are based on total population and are, therefore, lower than those in Table 5. Per capita consumption rates can be misleading when used across cultures. In Ireland and Japan, for example, women traditionally abstain from drinking.

Alcoholism Rates

Estimates of the prevalence of alcoholism are based on different definitions of alcoholism and different methodologies from state to state. Thus there is no comparable data on a state-by-state or national basis.

The Alaska State Office of Alcoholism and Drug Abuse (SOADA), provided the following estimates of "problem drinkers" and "alcoholics." "Alcoholics" are a subset of "problem drinkers" (i.e. the numbers are not additive).

Alcoholics and Problem Drinkers in Alaska
Estimated numbers and % of population age 18 or older[2]

	1985	%	1987	%
Problem drinkers	40,837	11.0	40,391	10.9
Alcoholics	13,670	3.7	N/A	

The problem drinker statistics for Alaska were estimated based on the Marden formula; the alcoholic statistics were estimated using the Jellinek formula. Both formulas have disadvantages which are particularly severe in the Alaskan

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[2]Source: *The Impact of Alcohol and other Drug Abuse in Alaska*, State Office of Alcoholism and Drug Abuse, Juneau, Alaska 1989, p.3.

situation. The Marden formula is based on demographic data and established risk factors determined in 1972. National patterns of risk may not be characteristic of Alaska's culturally pluralistic population. The method also tends to systematically underenumerate racial and ethnic minorities.

The Jellinek formula is based on deaths due to liver cirrhosis. The limitations of this method are exacerbated when used on a population as small as Alaska's, which has only about 40 such deaths per year.

The data below are from a study by the National Institute of Alchohol Abuse & Alcoholism based on a 1979 national survey of adult drinking practices. They show that 5.79% of the U.S. population age 18 and older in 1985 were alcoholics. This is higher than the estimate of Alaska alcoholics shown above, and is more likely indicative of differences in estimating techniques than of true relative alcoholism rates for the U.S. and Alaska. Note that in these national statistics "alcoholics" should not be considered a subset of "problem drinkers."

Alcoholics and Alcohol Abusers in the United States
Number and % of the population 18 years or older[3]

	1985	%
Alcohol abusers	7,183,162	3.97
Alcoholics	10,459,153	5.79
Total	17,642,315	9.76

* * * * *

We hope you find this information useful. If you need additional information, please contact this agency.

Attachments

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[3]Source: Gerald D. Williams, D.Ed. et al, "Demographic Trends Alcohol Abuse and Alcoholism, 1985-1995," *Alcohol Health and Research World*, Vol. II, No.3, Spring 1987. pp.81.

TABLE 1: Rate (per 100,000 resident population) of Sentenced Prisoners in State and Federal Institutions on December 31, 1987

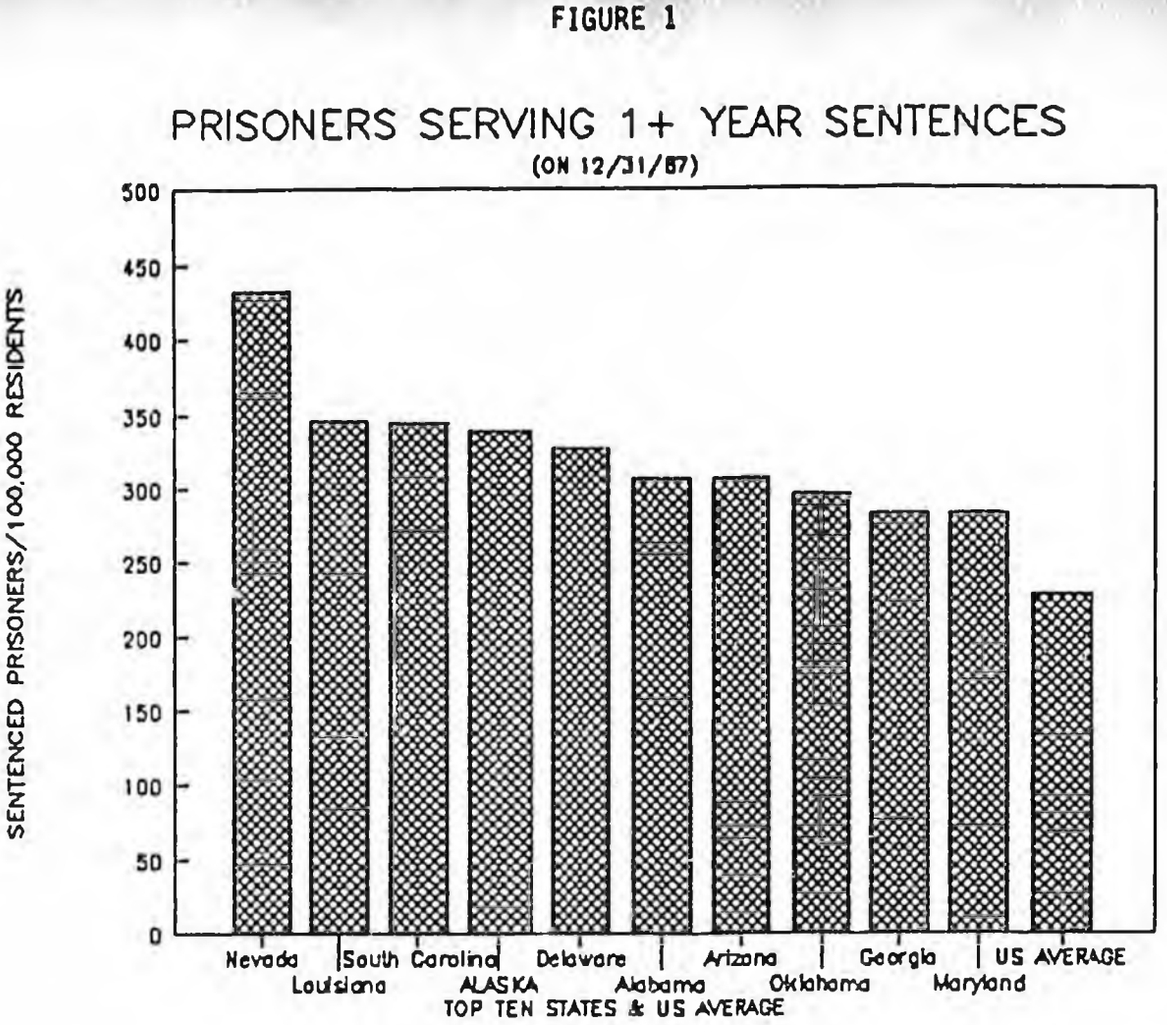
RANK	STATE	1987 POPULATION ESTIMATE	SENTENCED* PRISONERS PER 100,000
1	District of Columbia	622,000	905
2	Nevada	1,007,000	432
3	Louisiana	4,461,000	346
4	South Carolina	3,425,000	344
5	ALASKA	525,000	339
6	Delaware	644,000	326
7	Alabama	4,083,000	307
8	Arizona	3,386,000	307
9	Oklahoma	3,272,000	296
10	Georgia	6,222,000	282
11	Maryland	4,535,000	282
12	Florida	12,023,000	265
13	Michigan	9,200,000	259
14	Mississippi	2,625,000	256
15	North Carolina	6,413,000	250
16	Kansas	2,476,000	233
17	California	27,663,000	231
18	Texas	16,789,000	231
19	New York	17,825,000	229
	UNITED STATES AVERAGE	220,843,000	228
20	Arkansas	2,388,000	227
21	Ohio	10,784,000	219
22	Missouri	5,103,000	218
23	Virginia	5,904,000	217
24	Oregon	2,724,000	200
25	Indiana	5,531,000	192
26	Wyoming	490,000	190
27	New Jersey	7,672,000	177
28	New Mexico	1,500,000	174
29	Illinois	11,582,000	171
30	South Dakota	709,000	160
31	Tennessee	4,855,000	156
32	Kentucky	3,727,000	147
33	Montana	809,000	147
34	Colorado	3,296,000	145
35	Connecticut	3,211,000	144
36	Idaho	998,000	144
37	Hawaii	1,083,000	141
38	Pennsylvania	11,936,000	136
39	Washington	4,538,000	134
40	Wisconsin	4,807,000	126
41	Nebraska	1,594,000	123
42	Utah	1,680,000	110
43	Maine	1,187,000	106
44	Massachusetts	5,855,000	102
45	Iowa	2,834,000	101
46	Rhode Island	986,000	100
47	Vermont	548,000	91
48	New Hampshire	1,057,000	81
49	West Virginia	1,897,000	77
50	Minnesota	4,246,000	60
51	North Dakota	672,000	57

* NOTE: Sentenced prisoners are those serving sentences of more than one year.

Source: U.S. Department of Justice, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics--1988 (Tables 3.117 and 6.32).

Prepared by the Legislative Research Agency, January 1990 (90.213A)

FIGURE 1



Source: U.S. Department of Justice, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics--1988 (Tables 3.117 and 6.32)

Prepared by the Legislative Research Agency, January 1990 (90.213A)

Table 2: Rate (per 100,000 resident population) of Prisoners Under Jurisdiction of State and Federal Correctional Authorities on December 31, 1987

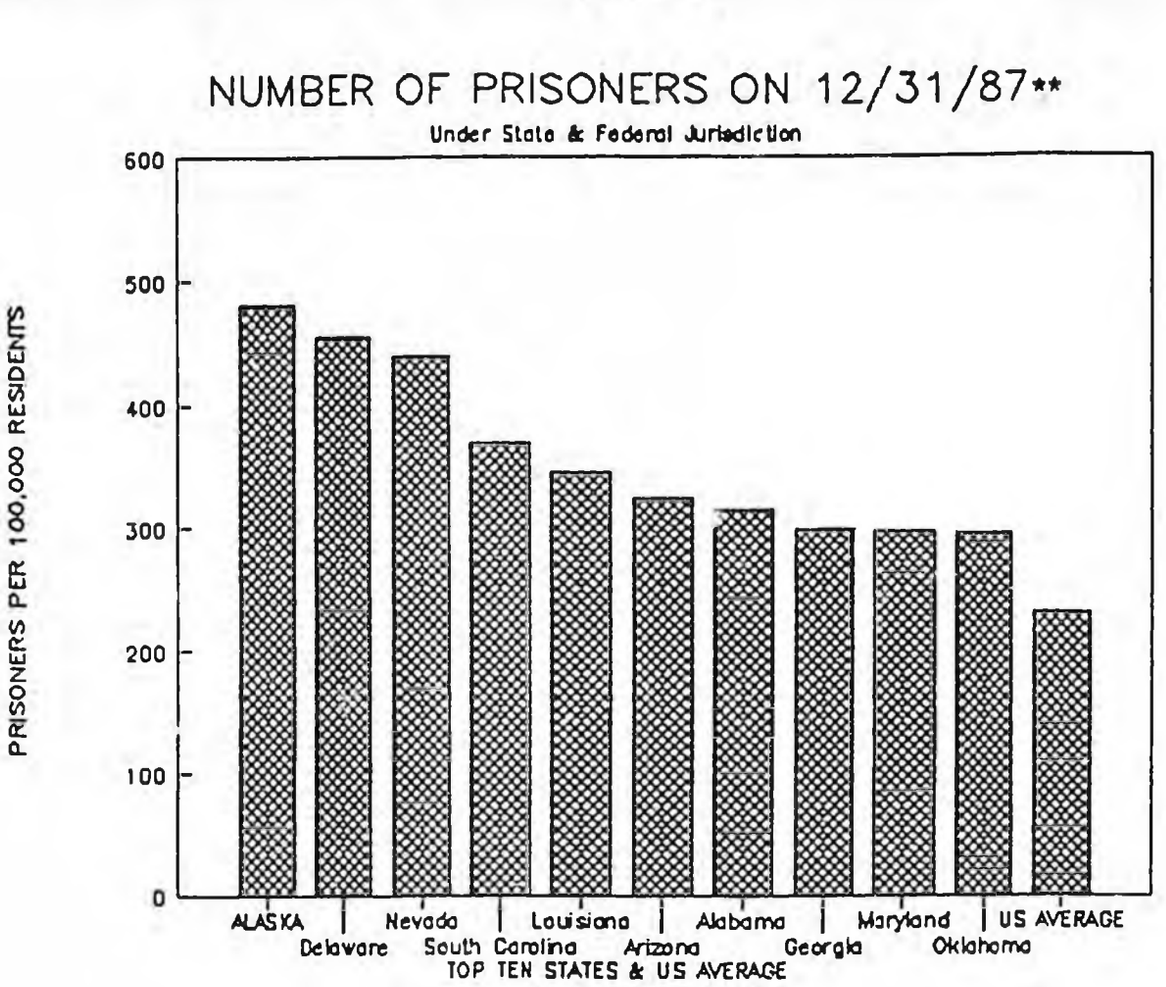
RANK	STATE	1987 POPULATION ESTIMATE	NUMBER OF PRISONERS UNDER STATE & FEDERAL JURISDICTION	RATE PER 100,000 RESIDENTS
1	District of Columbia	622,000	7,645	1,229
2	ALASKA*	525,000	2,528	482
3	Delaware*	644,000	2,939	456
4	Nevada	1,007,000	4,434	440
5	South Carolina	3,425,000	12,664	370
6	Louisiana	4,461,000	15,375	345
7	Arizona	3,386,000	10,948	323
8	Alabama	4,083,000	12,827	314
9	Georgia	6,222,000	18,575	299
10	Maryland	4,535,000	13,467	297
11	Oklahoma	3,272,000	9,639	295
12	Florida	12,023,000	32,445	270
13	North Carolina	6,413,000	17,218	268
14	Mississippi	2,625,000	6,880	262
15	Michigan	9,200,000	23,879	260
16	California	27,663,000	66,975	242
17	Connecticut*	3,211,000	7,511	234
18	Kansas	2,476,000	5,781	233
19	Texas	16,789,000	38,821	231
	UNITED STATES AVERAGE	220,843,000	510,822	231
20	New York	17,825,000	40,842	229
21	Arkansas	2,388,000	5,441	228
22	Virginia	5,904,000	13,321	226
23	Ohio	10,784,000	23,653	219
24	Missouri	5,103,000	11,146	218
25	Hawaii*	1,083,000	2,268	209
26	Oregon	2,724,000	5,482	201
27	Indiana	5,531,000	10,827	196
28	Wyoming	490,000	916	187
29	New Mexico	1,500,000	2,710	181
30	New Jersey	7,672,000	13,662	178
31	Illinois	11,582,000	19,850	171
32	South Dakota	709,000	1,133	160
33	Tennessee	4,855,000	7,624	157
34	Kentucky	3,727,000	5,471	147
35	Montana	809,000	1,187	147
36	Colorado	3,296,000	4,808	146
37	Rhode Island*	986,000	1,428	145
38	Idaho	998,000	1,435	144
39	Vermont*	548,000	759	139
40	Pennsylvania	11,936,000	16,267	136
41	Washington	4,538,000	6,131	135
42	Nebraska	1,594,000	2,086	131
43	Wisconsin	4,807,000	6,097	127
44	Maine	1,187,000	1,320	112
45	Utah	1,680,000	1,874	112
46	Massachusetts	5,855,000	6,268	107
47	Iowa	2,834,000	2,851	101
48	New Hampshire	1,057,000	867	82
49	West Virginia	1,897,000	1,461	77
50	North Dakota	672,000	430	64
51	Minnesota	4,246,000	2,546	60

* Data for Alaska, Connecticut, Delaware, Hawaii, Rhode Island and Vermont include jail and prison inmates (including persons awaiting trial or serving short sentences).

Source: U.S. Department of Justice, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics--1988 (Tables 3.117 and 6.35)

Prepared by the Legislative Research Agency, January 1990 (90.2138)

FIGURE 2



* Data for Alaska, Connecticut, Delaware, Hawaii, Rhode Island and Vermont include jail and prison inmates (including persons awaiting trial or serving short sentences).

Source: U.S. Department of Justice, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics--1988 (Tables 3.117 and 6.35)

Prepared by the Legislative Research Agency, January 1990 (90.213B)

TABLE 3: Rate (per 100,000 adult population) of Prisoners in Fifty States and Four European Nations

RANK	STATE	1986 POPULATION OVER 16	PRISONERS UNDER THE JURISDICTION OF STATE & FEDERAL AUTHORITIES (12/31/86)	PRISONERS PER 100,000 ADULTS*
1	District of Columbia	504,000	6,618	1,313
2	ALASKA**	378,000	2,460	651
3	Nevada	750,000	4,551	607
4	Delaware**	492,000	2,833	576
5	South Carolina	2,550,000	11,676	458
6	Louisiana	3,302,000	14,300	433
7	Oklahoma	2,506,000	9,708	387
8	Maryland	3,493,000	13,326	382
9	Alabama	3,071,000	11,710	381
10	Arizona	2,507,000	9,434	376
11	Georgia	4,594,000	16,992	370
12	North Carolina	4,913,000	17,698	360
13	Mississippi	1,916,000	6,747	352
14	Florida	9,359,000	32,237	344
15	Texas	12,287,000	38,534	314
16	Michigan	6,982,000	20,742	297
17	California	20,647,000	59,484	288
18	Virginia	4,527,000	12,930	286
19	Kansas	1,885,000	5,345	284
20	New York	13,946,000	38,449	276
21	Connecticut**	2,532,000	6,905	273
22	Ohio	8,243,000	22,463	273
23	UNITED STATES AVERAGE	185,249,000	500,564	270
24	Hawaii**	807,000	2,180	270
25	Missouri	3,910,000	10,309	264
26	Arkansas	1,803,000	4,701	261
27	Indiana	4,203,000	10,175	242
28	Wyoming	368,000	861	234
29	Oregon	2,093,000	4,770	228
30	New Mexico	1,084,000	2,416	223
31	Illinois	8,849,000	19,456	220
32	Tennessee	3,705,000	7,591	205
33	South Dakota	531,000	1,081	204
34	Idaho	724,000	1,448	200
35	New Jersey	6,030,000	12,020	199
36	Washington	3,442,000	6,603	192
37	Kentucky	2,840,000	5,288	186
38	Montana	613,000	1,111	181
39	Rhode Island**	777,000	1,358	175
40	Nebraska	1,217,000	2,044	168
41	Vermont*	418,000	697	167
42	Pennsylvania	9,400,000	15,201	162
43	Utah	1,100,000	1,776	161
44	Wisconsin	3,665,000	5,736	157
45	Colorado	2,499,000	3,804	152
46	Maine	908,000	1,316	145
47	Iowa	2,191,000	2,777	127
48	FINLAND***			122
49	Massachusetts	4,668,000	5,636	121
50	West Virginia	1,477,000	1,472	100
51	New Hampshire	799,000	782	98
52	DENMARK***			96
53	North Dakota	510,000	421	83
54	Minnesota	3,234,000	2,462	76
55	SWEDEN***			75
56	NORWAY***			70

NOTES:

* "Adults" for U.S. data are persons over age 16; "adults" in Denmark, Finland, and Sweden are persons over age 15; "adults" in Norway are persons over age 14.

** Data for Alaska, Delaware, Hawaii, Rhode Island and Vermont include jail and prison inmates (including persons awaiting trial or serving short sentences).

*** Data from Denmark, Finland, Norway and Sweden are average number of prisoners (not prisoners in custody on 12/31/86).

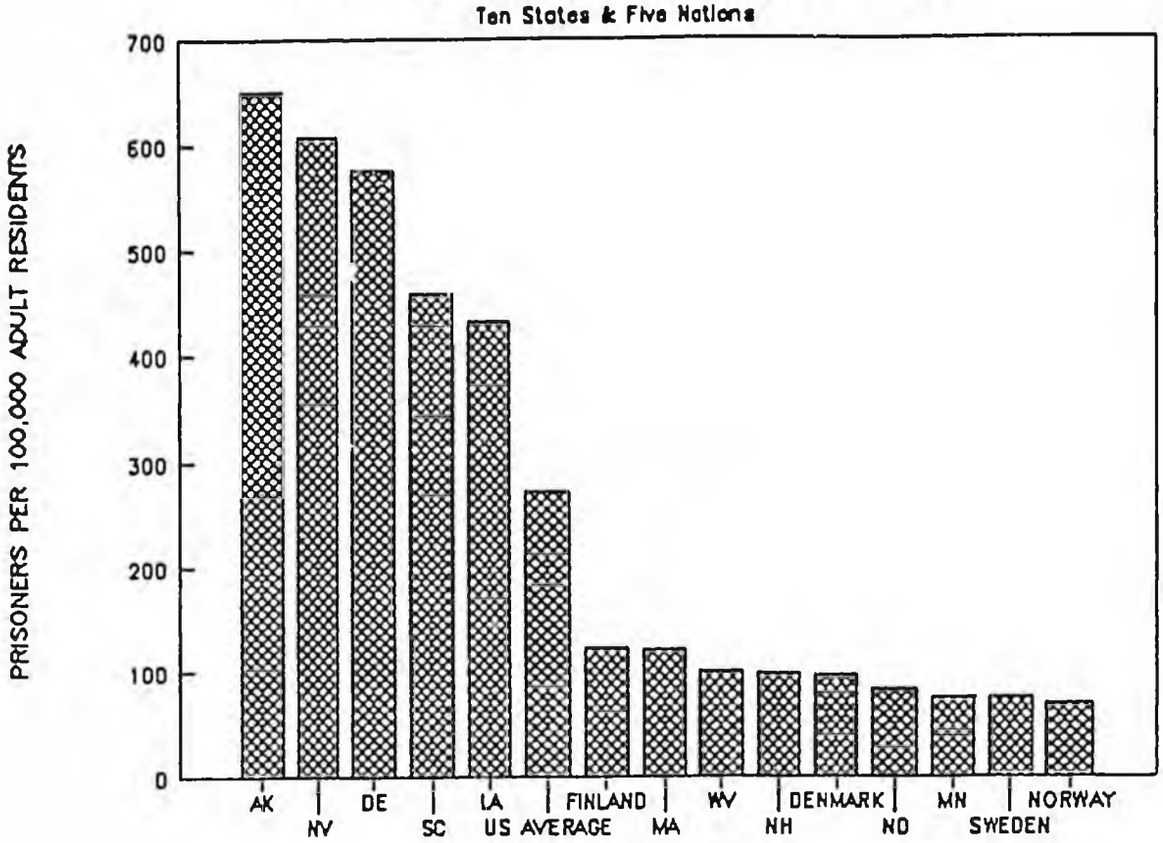
Sources: U.S. Bureau of the Census, Statistical Abstract of the United States--1988 (Table No. 26)
U.S. Department of Justice, Bureau of Justice Statistics,
Sourcebook of Criminal Justice Statistics--1988 (Table 6.34).
Yearbook of Nordic Statistics--1988 (Edited by the Nordic Statistical Secretariat)

Prepared by the Legislative Research Agency, January 1990 (90.213C).

FIGURE 3

NUMBER OF PRISONERS IN 1986

Ten States & Five Nations



NOTES:

* "Adults" for U.S. data are persons over age 16; "adults" in Denmark, Finland, and Sweden are persons over age 15; "adults" in Norway are persons over age 14.

** Data for Alaska, Delaware, Hawaii, Rhode Island and Vermont include jail and prison inmates (including persons awaiting trial or serving short sentences).

*** Data from Denmark, Finland, Norway and Sweden are average number of prisoners (not prisoners in custody on 12/31/86).

Sources: U.S. Bureau of the Census, Statistical Abstract of the United States--1988 (Table No. 26)
U.S. Department of Justice, Bureau of Justice Statistics,
Sourcebook of Criminal Justice Statistics--1988 (Table 6.34).
Yearbook of Nordic Statistics--1988 (Edited by the Nordic Statistical Secretariat)

Prepared by the Legislative Research Agency, January 1990 (90.213C).

TABLE 4: 1985 PER CAPITA ALCOHOL CONSUMPTION

RANK	LOCATION	PER CAPITA ETHANOL CONSUMED (gallons)
1	France	3.5
2	Portugal	3.4
3	Luxemburg	3.4
4	Spain	3.1
5	Italy	3.0
6	Hungary	3.0
7	Switzerland	2.9
8	East Germany	2.8
9	ALASKA	2.8
10	Belgium	2.7
11	West Germany	2.7
12	Austria	2.6
13	Denmark	2.6
14	Czechoslovakia	2.4
15	New Zealand	2.4
16	Australia	2.3
17	Argentina	2.3
18	Bulgaria	2.3
19	Netherlands	2.2
20	UNITED STATES	2.1
21	Canada	2.1
22	Romania	2.1
23	United Kingdom	1.8
24	Poland	1.8
25	Finland	1.7
26	Yugoslavia	1.6
27	Ireland	1.6
28	Greece	1.6
29	Russia	1.5
30	Japan	1.5
31	Chili	1.5
32	Cyprus	1.5
33	Sweden	1.4
34	South Africa	1.1
35	Norway	1.1
36	Iceland	1.0
37	Uruguay	1.0
38	Venezuela	0.8
39	Columbia	0.7
40	Peru	0.4
41	Brazil	0.4

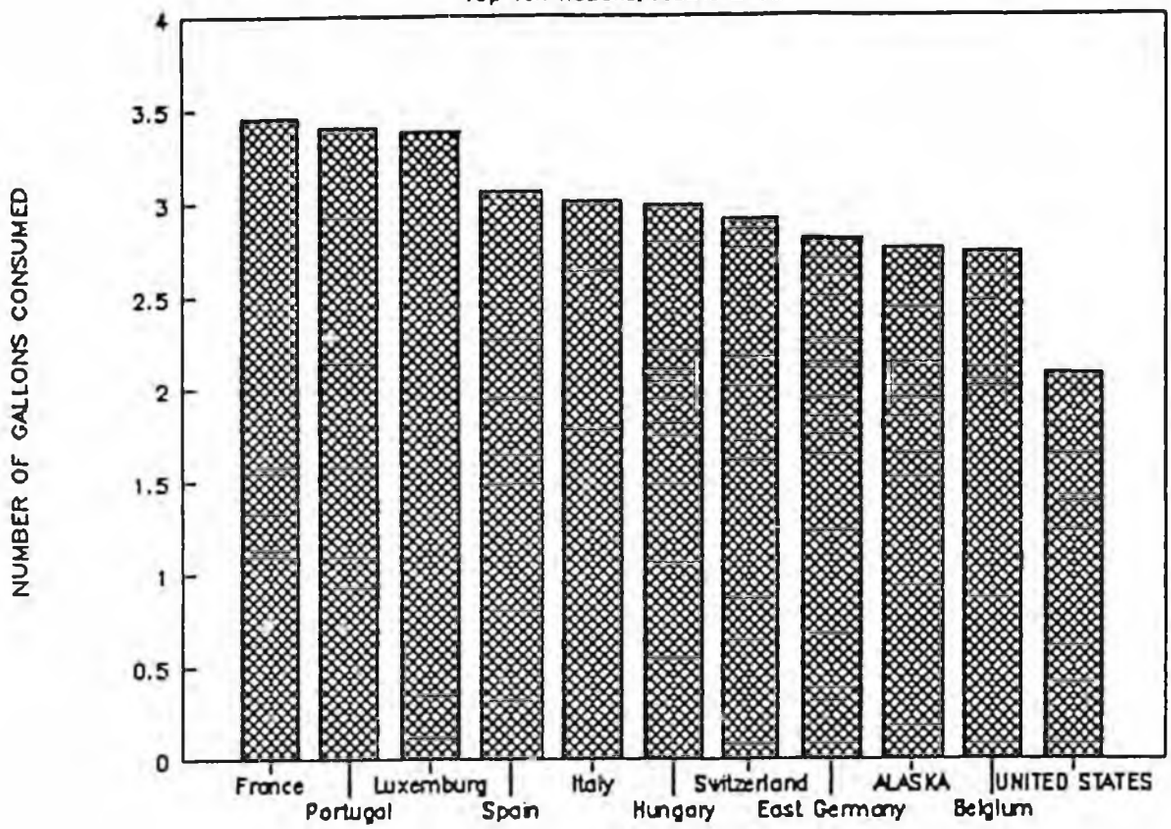
Sources: The Bottom Line on Alcohol in Society, Vol. 9, No. 1, October 1988 (from data provided by Produktschap voor Gedistilleerde Dranken)
Alaska per capita data calculated from Apparent Per Capita Alcohol Consumption: National, State and Regional Trends, 1977-85 (U.S. Department of Health and Human Services, Alcohol, Drug Abuse, and Mental Health Administration

Prepared by the Legislative Research Agency, January 1990 (90.213)

FIGURE 4

1985 PER CAPITA ALCOHOL CONSUMPTION

Top Ten Nations, Alaska & US



Sources: The Bottom Line on Alcohol in Society, Vol. 9, No. 1, October 1988 (from data provided by Produktschap voor Gedistilleerde Dranken)
Alaska per capita data calculated from Apparent Per Capita Alcohol Consumption: National, State and Regional Trends, 1977-85 (U.S. Department of Health and Human Services, Alcohol, Drug Abuse, and Mental Health Administration

Prepared by the Legislative Research Agency, January 1990 (90.213)

Table 5.

Apparent Alcohol Consumption for States, Census Regions and United States, 1985

[Volume and ethanol in thousands of gallons, per capita consumption in gallons, based on population age 14 and older.]

	Beer			Wine			Spirits			All Beverages		
	Volume	Ethanol	Per Capita	Volume	Ethanol	Per Capita	Volume	Ethanol	Per Capita	Ethanol	Per Capita	U.S. Decile
AL	74,669	3,360	1.06	4,241	547	.17	5,161	2,121	.67	6,028	1.90	9
AK	14,316	644	1.68	1,719	222	.58	1,426	586	1.53	1,452	3.78	1
AZ	92,902	4,181	1.67	8,836	1,140	.46	6,071	2,495	1.00	7,816	3.12	2
AR	42,775	1,925	1.03	1,902	245	.13	2,635	1,083	.58	3,253	1.75	10
CA	618,879	27,850	1.32	127,454	16,442	.78	52,198	21,543	1.02	65,745	3.12	2
CO	83,760	3,769	1.47	9,931	1,281	.50	7,330	3,013	1.18	8,063	3.15	2
CT	66,089	2,974	1.14	10,219	1,318	.50	7,634	3,138	1.20	7,430	2.84	4
DE	16,324	735	1.46	1,591	205	.41	1,585	652	1.30	1,591	3.16	2
DC	17,295	778	1.49	4,184	540	1.03	3,087	1,269	2.42	2,587	4.94	1
FL	309,001	13,905	1.47	29,720	3,834	.41	26,710	10,978	1.16	28,717	3.04	3
GA	122,507	5,513	1.17	9,276	1,197	.25	11,602	4,768	1.01	10,378	2.43	7
HI	29,195	1,314	1.59	2,638	340	.41	1,762	724	.88	2,378	2.88	3
ID	22,479	1,012	1.35	2,091	270	.36	1,287	529	.71	1,810	2.42	7
IL	280,361	12,616	1.38	26,351	3,399	.37	21,759	8,943	.98	24,658	2.72	5
IN	120,742	5,433	1.25	7,399	954	.22	7,645	3,142	.72	9,530	2.19	8
IA	66,596	2,997	1.31	2,516	325	.14	3,192	1,312	.57	4,633	2.02	9
KS	50,287	2,263	1.17	2,291	295	.15	2,982	1,225	.64	3,784	1.96	9
KY	70,041	3,152	1.07	3,077	397	.13	4,723	1,941	.66	5,490	1.86	10
LA	103,059	4,638	1.35	7,240	934	.27	7,188	2,954	.86	8,526	2.49	6
ME	26,786	1,205	1.29	2,399	310	.33	2,135	877	.94	2,392	2.56	6
MD	104,036	4,682	1.31	10,073	1,299	.36	9,926	4,080	1.14	10,061	2.81	4
MA	139,030	6,256	1.30	18,922	2,441	.51	14,150	5,816	1.21	14,513	3.01	3
MI	209,576	9,431	1.30	17,922	2,312	.32	16,758	6,888	.95	18,630	2.58	5
MN	96,422	4,339	1.31	8,088	1,043	.31	8,561	3,519	1.06	8,901	2.68	5
MS	53,805	2,421	1.21	1,583	204	.10	3,557	1,462	.73	4,087	2.04	9
MO	118,877	5,349	1.33	8,120	1,047	.26	7,461	3,066	.76	9,463	2.36	7
MT	22,933	1,032	1.60	1,633	211	.33	1,377	566	.88	1,809	2.81	4
NE	39,110	1,760	1.40	2,100	271	.22	2,298	944	.75	2,975	2.37	7
NV	33,439	1,505	1.96	5,008	646	.84	4,070	1,673	2.18	3,824	4.99	1
NH	35,661	1,605	1.99	3,307	427	.53	4,354	1,789	2.21	3,821	4.73	1
NJ	161,540	7,269	1.18	26,510	3,420	.55	16,224	6,668	1.08	17,357	2.81	4
NM	41,621	1,873	1.70	3,043	393	.36	2,065	849	.77	3,114	2.83	4
NY	369,214	16,615	1.14	55,483	7,157	.49	34,515	14,186	.98	37,958	2.62	5
NC	123,214	5,545	1.09	10,671	1,377	.27	9,397	3,862	.76	10,783	2.13	8
ND	15,687	706	1.33	773	100	.19	1,233	507	.96	1,312	2.48	7
OH	259,933	11,697	1.37	16,855	2,174	.25	12,206	5,017	.59	18,888	2.20	8
OK	59,596	2,682	1.04	3,031	391	.15	4,242	1,744	.68	4,816	1.87	10
OR	59,293	2,668	1.25	9,159	1,181	.55	4,017	1,651	.77	5,501	2.57	6
PA	294,804	13,266	1.37	15,449	1,993	.21	15,250	6,268	.65	21,527	2.22	8
RI	24,880	1,120	1.40	3,161	408	.51	2,006	825	1.03	2,352	2.94	3
SC	73,966	3,328	1.26	5,098	658	.25	6,341	2,606	.99	6,592	2.49	6
SD	14,800	666	1.22	744	96	.18	1,244	511	.94	1,273	2.34	8
TN	94,415	4,249	1.11	4,819	622	.16	6,269	2,577	.67	7,447	1.94	9
TX	470,081	21,154	1.68	29,132	3,758	.30	22,383	9,200	.73	34,111	2.70	5
UT	22,656	1,020	.90	1,335	172	.15	1,467	603	.53	1,795	1.58	10
VT	14,217	640	1.49	1,837	237	.55	1,138	468	1.09	1,344	3.13	2
VA	149,715	6,737	1.46	10,646	1,373	.30	8,880	3,650	.79	11,760	2.55	6
WA	94,676	4,260	1.22	16,097	2,076	.59	7,419	3,049	.87	9,386	2.68	5
WV	38,080	1,714	1.11	1,585	204	.13	1,570	645	.42	2,563	1.66	10
WI	153,493	6,907	1.82	9,338	1,205	.32	9,718	3,994	1.05	12,106	3.19	1
WY	13,221	595	1.56	725	94	.25	958	394	1.03	1,082	2.84	3
Regions												
N. East	1,132,221	50,950	1.25	137,286	17,710	.43	97,406	40,034	.98	108,694	2.66	
N. Cent	1,425,883	64,165	1.37	102,494	13,222	.28	95,057	39,068	.83	116,455	2.48	
South	1,922,580	86,516	1.33	137,869	17,785	.27	135,256	55,590	.85	159,891	2.46	
West	1,149,369	51,722	1.37	189,669	24,467	.65	91,446	37,584	1.00	113,773	3.02	
U.S. Total	5,630,054	253,352	1.33	567,318	73,184	.38	419,165	172,277	.90	498,813	2.62	

Source: Robert Laforge, et al, Surveillance Report #7, Apparent Per Capita Alcohol Consumption: National, State and Regional Trends, 1977-85, U.S. Dept. of H&SS, Alcohol, Drug Abuse and Mental Health Admin., Wash.D.C., 1987, p. 12.

N C C D

FOCUS

THE NATIONAL COUNCIL ON CRIME AND DELINQUENCY

JULY 198

Ranking the Nation's Most Punitive and Costly States

By James Austin, Ph D and Marci Bro

HIGHLIGHTS

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

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

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

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

The major findings of this report are

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

IMPRISONMENT VS. TOTAL INCARCERATION RATES

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

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

Overall, state rankings for imprisonment varied little from last year's report, which used 1986 data However, a few states showed significant increases or decreases in their imprisonment rate between 1986 and 1987 Interestingly, Washington, D C , which has the highest imprisonment rate in the nation, increased its imprisonment rate from 1,078.4 in 1986 to 1,197 4 per 100,000 in 1987. Alaska is second with a rate of 481 5 per 100,000 and replaces

Table 1: Imprisonment vs. Incarceration Rates

Rank	State	1987 Population*	1987 Prisoners	Imprisonment Rate***
1	D.C.	[illegible]	[illegible]	[illegible]
2	Alaska	[illegible]	[illegible]	[illegible]
3	Delaware	[illegible]	[illegible]	[illegible]
4	Nevada	[illegible]	[illegible]	[illegible]
5	South Carolina	[illegible]	[illegible]	[illegible]
6	Louisiana	[illegible]	[illegible]	[illegible]
7	Arizona	[illegible]	[illegible]	[illegible]
8	Alabama	[illegible]	[illegible]	[illegible]
9	Georgia	[illegible]	[illegible]	[illegible]
10	Maryland	[illegible]	[illegible]	[illegible]
11	Oklahoma	[illegible]	[illegible]	[illegible]
12	Florida	[illegible]	[illegible]	[illegible]
13	North Carolina	[illegible]	[illegible]	[illegible]
14	Mississippi	[illegible]	[illegible]	[illegible]
15	Michigan	[illegible]	[illegible]	[illegible]
16	California	[illegible]	[illegible]	[illegible]
17	Kansas	[illegible]	[illegible]	[illegible]
18	Connecticut	[illegible]	[illegible]	[illegible]
19	Texas	[illegible]	[illegible]	[illegible]
20	New York	[illegible]	[illegible]	[illegible]
21	Arkansas	[illegible]	[illegible]	[illegible]
22	Virginia	[illegible]	[illegible]	[illegible]
23	Ohio	[illegible]	[illegible]	[illegible]
24	Missouri	[illegible]	[illegible]	[illegible]
25	Hawaii	[illegible]	[illegible]	[illegible]
26	Oregon	[illegible]	[illegible]	[illegible]
27	Indiana	[illegible]	[illegible]	[illegible]
28	Wyoming	[illegible]	[illegible]	[illegible]
29	New Jersey	[illegible]	[illegible]	[illegible]
30	New Mexico	[illegible]	[illegible]	[illegible]
31	Illinois	[illegible]	[illegible]	[illegible]
32	South Dakota	[illegible]	[illegible]	[illegible]
33	Tennessee	[illegible]	[illegible]	[illegible]
34	Idaho	[illegible]	[illegible]	[illegible]
35	Kentucky	[illegible]	[illegible]	[illegible]
36	Montana	[illegible]	[illegible]	[illegible]
37	Colorado	[illegible]	[illegible]	[illegible]
38	Rhode Island	[illegible]	[illegible]	[illegible]
39	Vermont	[illegible]	[illegible]	[illegible]
40	Pennsylvania	[illegible]	[illegible]	[illegible]
41	Washington	[illegible]	[illegible]	[illegible]
42	Nebraska	[illegible]	[illegible]	[illegible]
43	Wisconsin	[illegible]	[illegible]	[illegible]
44	Utah	[illegible]	[illegible]	[illegible]
45	Maine	[illegible]	[illegible]	[illegible]
46	Massachusetts	[illegible]	[illegible]	[illegible]
47	Iowa	[illegible]	[illegible]	[illegible]
48	New Hampshire	[illegible]	[illegible]	[illegible]
49	West Virginia	[illegible]	[illegible]	[illegible]
50	North Dakota	[illegible]	[illegible]	[illegible]
51	Minnesota	[illegible]	[illegible]	[illegible]
REGION				
	SOUTH	[illegible]	[illegible]	[illegible]
	WEST	[illegible]	[illegible]	[illegible]
	MIDWEST	[illegible]	[illegible]	[illegible]
	NORTHEAST	[illegible]	[illegible]	[illegible]
TOTALS		[illegible]	[illegible]	[illegible]

Rank	State	1987 Persons in Jails**	Jail Rate***	1987 Juveniles in Custody	Total Incarceration Rate****
1	D.C.	[illegible]	[illegible]	[illegible]	[illegible]
2	Nevada	[illegible]	[illegible]	[illegible]	[illegible]
3	Louisiana	[illegible]	[illegible]	[illegible]	[illegible]
4	Alaska	0 •	0 •	[illegible]	[illegible]
5	California	[illegible]	[illegible]	[illegible]	[illegible]
6	Arizona	[illegible]	[illegible]	[illegible]	[illegible]
7	South Carolina	[illegible]	[illegible]	[illegible]	[illegible]
8	Florida	[illegible]	[illegible]	[illegible]	[illegible]
9	Delaware	0 •	0 •	[illegible]	[illegible]
10	Georgia	[illegible]	[illegible]	[illegible]	[illegible]
11	Alabama	[illegible]	[illegible]	[illegible]	[illegible]
12	Maryland	[illegible]	[illegible]	[illegible]	[illegible]
13	Tennessee	[illegible]	[illegible]	[illegible]	[illegible]
14	Oklahoma	[illegible]	[illegible]	[illegible]	[illegible]
15	Texas	[illegible]	[illegible]	[illegible]	[illegible]
16	Virginia	[illegible]	[illegible]	[illegible]	[illegible]
17	New Jersey	[illegible]	[illegible]	[illegible]	[illegible]
18	New York	[illegible]	[illegible]	[illegible]	[illegible]
19	Michigan	[illegible]	[illegible]	[illegible]	[illegible]
20	North Carolina	[illegible]	[illegible]	[illegible]	[illegible]
21	Kansas	[illegible]	[illegible]	[illegible]	[illegible]
22	Ohio	[illegible]	[illegible]	[illegible]	[illegible]
23	Arkansas	[illegible]	[illegible]	[illegible]	[illegible]
24	Oregon	[illegible]	[illegible]	[illegible]	[illegible]
25	Mississippi	[illegible]	[illegible]	[illegible]	[illegible]
26	Indiana	[illegible]	[illegible]	[illegible]	[illegible]
27	New Mexico	[illegible]	[illegible]	[illegible]	[illegible]
28	Wyoming	[illegible]	[illegible]	[illegible]	[illegible]
29	Illinois	[illegible]	[illegible]	[illegible]	[illegible]
30	Missouri	[illegible]	[illegible]	[illegible]	[illegible]
31	Kentucky	[illegible]	[illegible]	[illegible]	[illegible]
32	Washington	[illegible]	[illegible]	[illegible]	[illegible]
33	Colorado	[illegible]	[illegible]	[illegible]	[illegible]
34	Wisconsin	[illegible]	[illegible]	[illegible]	[illegible]
35	Pennsylvania	[illegible]	[illegible]	[illegible]	[illegible]
36	Connecticut	0 •	0 •	[illegible]	[illegible]
37	South Dakota	[illegible]	[illegible]	[illegible]	[illegible]
38	Montana	[illegible]	[illegible]	[illegible]	[illegible]
39	Idaho	[illegible]	[illegible]	[illegible]	[illegible]
40	Hawaii	0 •	0 •	[illegible]	[illegible]
41	Nebraska	[illegible]	[illegible]	[illegible]	[illegible]
42	Iowa	[illegible]	[illegible]	[illegible]	[illegible]
43	Massachusetts	[illegible]	[illegible]	[illegible]	[illegible]
44	Utah	[illegible]	[illegible]	[illegible]	[illegible]
45	Maine	[illegible]	[illegible]	[illegible]	[illegible]
46	New Hampshire	[illegible]	[illegible]	[illegible]	[illegible]
47	Rhode Island	0 •	0 •	[illegible]	[illegible]
48	Minnesota	[illegible]	[illegible]	[illegible]	[illegible]
49	West Virginia	[illegible]	[illegible]	[illegible]	[illegible]
50	Vermont	0 •	0 •	[illegible]	[illegible]
51	North Dakota	[illegible]	[illegible]	[illegible]	[illegible]
REGION					
	WEST	[illegible]	[illegible]	[illegible]	[illegible]
	SOUTH	[illegible]	[illegible]	[illegible]	[illegible]
	NORTHEAST	[illegible]	[illegible]	[illegible]	[illegible]
	MIDWEST	[illegible]	[illegible]	[illegible]	[illegible]
TOTALS		[illegible]	[illegible]	[illegible]	[illegible]

* Total population in thousands

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

*** Per 100,000 total population (1987), as reported in the 1987 [illegible]

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

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

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

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

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

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

Table 1: Imprisonment vs. Incarceration Rates

Rank	State	1987 Population*	1987 Prisoners	Imprisonment Rate**	Rank	State	1987 Persons in Jail	Jail Rate**	1987 Juveniles in Custody	Total Incarceration Rate**
1	D.C.	622	7,448	197.6	1	D.C.	1,676	269.1	613	533.6
2	Alaska	525	2,328	461.5	2	Nevada	1,935	191.1	681	679.1
3	Delaware	644	2,931	455.1	3	Louisiana	10,300	230.8	1,838	598.6
4	Nevada	1,007	4,434	440.1	4	Alaska	0 *	0 *	178	515.6
5	South Carolina	3,425	12,866	389.8	5	California	60,802	219.7	14,712	315.1
6	Louisiana	4,461	15,375	344.7	6	Arizona	5,137	151.7	1,019	305.1
7	Arizona	3,366	10,968	323.3	7	South Carolina	3,675	107.3	715	487.9
8	Alabama	4,083	12,827	314.2	8	Florida	24,602	204.6	2,931	693.7
9	Georgia	6,222	18,575	298.5	9	Delaware	0 *	0 *	149	461.4
10	Maryland	4,535	13,463	297.0	10	Georgia	9,564	152.7	1,338	472.8
11	Oklahoma	3,272	9,639	294.6	11	Alabama	4,326	105.9	804	419.8
12	Florida	12,023	32,445	269.9	12	Maryland	4,985	109.9	1,032	429.6
13	North Carolina	6,413	17,269	269.3	13	Tennessee	10,516	216.5	1,038	395.8
14	Mississippi	2,625	6,831	260.2	14	Oklahoma	2,734	85.55	446	391.8
15	Michigan	9,200	23,879	259.6	15	Texas	23,653	139.4	2,421	365.3
16	California	27,663	66,935	242.1	16	Virginia	7,716	131.0	1,656	361.4
17	Kansas	2,476	5,881	237.5	17	New Jersey	15,187	170.8	1,997	374.9
18	Connecticut	3,211	7,111	233.9	18	New York	25,696	132.8	2,228	374.5
19	Texas	16,789	38,821	231.2	19	Michigan	8,567	92.98	1,816	372.2
20	New York	17,825	40,842	229.1	20	North Carolina	5,180	83.89	812	365.3
21	Arkansas	2,388	5,161	227.9	21	Kansas	1,916	77.30	676	342.1
22	Virginia	5,904	13,321	225.6	22	Ohio	8,729	80.94	1,126	334.7
23	Ohio	10,781	24,240	224.8	23	Arkansas	1,962	82.98	269	321.4
24	Missouri	5,103	11,357	222.6	24	Oregon	2,469	80.63	592	313.6
25	Hawaii	1,083	2,268	209.4	25	Mississippi	1,018	38.78	355	312.3
26	Oregon	2,726	5,682	201.2	26	Indiana	4,710	85.15	1,320	304.8
27	Indiana	5,531	10,827	195.8	27	New Mexico	1,428	95.2	401	304.5
28	Wyoming	490	960	195.8	28	Wyoming	377	76.91	173	304.1
29	New Jersey	7,672	13,842	178.1	29	Illinois	12,616	108.9	1,938	297.8
30	New Mexico	1,500	2,616	174.5	30	Missouri	2,856	55.92	815	294.5
31	Illinois	11,462	19,850	171.4	31	Kentucky	4,686	123.9	687	289.1
32	South Dakota	709	1,133	160.1	32	Washington	5,281	116.3	1,134	276.5
33	Tennessee	4,833	8,424	157.0	33	Colorado	3,793	115.0	961	276.2
34	Idaho	998	1,682	168.5	34	Wisconsin	5,750	119.6	684	258.7
35	Kentucky	3,727	5,671	152.8	35	Pennsylvania	13,195	110.5	1,103	256.1
36	Montana	809	1,187	146.7	36	Connecticut	0 *	0 *	227	241.8
37	Colorado	3,294	4,606	139.9	37	South Dakota	294	41.46	228	233.7
38	Rhode Island	986	1,419	144.0	38	Montana	412	50.92	228	225.8
39	Vermont	548	759	138.5	39	Idaho	630	63.12	117	223.2
40	Pennsylvania	11,934	16,267	136.3	40	Hawaii	0 *	0 *	169	221.7
41	Washington	4,538	6,131	135.1	41	Nebraska	1,376	73.85	276	212.6
42	Nebraska	1,594	2,084	130.7	42	Iowa	2,736	94.54	427	191.1
43	Wisconsin	4,887	6,081	124.4	43	Massachusetts	4,240	80.95	212	188.8
44	Utah	1,660	1,888	113.7	44	Utah	1,064	63.43	217	178.1
45	Maine	1,187	1,328	111.9	45	Maine	372	68.18	214	170.1
46	Massachusetts	5,835	6,238	106.9	46	New Hampshire	869	94.34	126	170.1
47	Iowa	2,834	2,863	101.0	47	Rhode Island	0 *	0 *	105	155.8
48	New Hampshire	1,057	867	82.8	48	Minnesota	3,106	73.15	381	146.8
49	West Virginia	1,897	1,441	77.8	49	West Virginia	1,134	60.83	141	145.3
50	North Dakota	672	430	64.8	50	Vermont	0 *	0 *	13	101.2
51	Minnesota	4,246	2,546	60.0	51	North Dakota	265	16.43	69	110.7
REGION					**REGION**					
SOUTH		83,885	221,592	264.2	WEST		83,320	167.6	19,995	632.7
WEST		69,698	181,719	224.8	SOUTH		117,735	160.4	15,333	422.8
MIDWEST		58,336	124,295	86.6	NORTHEAST		56,115	111.4	6,225	300.8
NORTHEAST		33,277	84,903	176.8	MIDWEST		52,475	88.5	11,918	295.1
TOTALS		241,399	533,309	219.1	TOTALS		309,845	127.2	53,563	168.6

* Total population in thousands

MEMORANDUM

State of Alaska

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

DATE: February 12, 1990

FILE NO:

TELEPHONE NO:

SUBJECT: HB 411 and Sentencing Commission (HB 491)

THRU

FROM: John B. Salemi
Public Defender

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

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

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

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

JBS:sh

January 22, 1990

Office of the Governor
P.O. Box A
Juneau, Alaska 99811

Attn: Shari Kochman
Legislative Staff Assistant

Dear Ms. Kochman:

As we discussed at the Criminal Justice Working Group meeting, I propose the following changes to the draft bill to insure that persons with policy-making authority sit on the commission:

Sec 44.19.535(a)(2): The commissioner of corrections or a designee [OF THE] deputy commissioner of corrections;

(a)(3): the commissioner of public safety or a designee [OF THE] deputy commissioner of public safety;

(a)(7): the chief justice or his designee;

(a)(8): a [THE CHIEF] judge of the court of appeals designated by the chief justice;

(a)(9): one superior court judge [APPOINTED BY THE GOVERNOR] designated by the chief justice;

(a)(10): the senate president or designee senator of the senate president;

Shari Kochman
January 22, 1990

(a)(11): the speaker of the house of representatives or the representative designee of the speaker of the house of representatives.

Thank you for the opportunity to review and comment on this bill in its draft form. If you have any questions about my proposed changes, please call me or my staff counsel, Jan Strandberg.

Finally, I sincerely apologize for not remembering your name at last week's meeting.

Sincerely,

Arthur H. Snowden, II
Administrative Director

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

Sentences That Make Sense

Making the punishment fit the crime

by James Bennet

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

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

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

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

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

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

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

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

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

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

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

James Bennet is an editor of The Washington Monthly. *Research assistance was provided by Ethan Feinsilver and Ned Martel.*

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

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

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

Robojudge

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

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

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

Restitution: Real Fine For Criminals

by Karen Lehrman

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

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

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

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

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

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

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

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

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

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

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

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

He's going to come out of jail a middle-aged hoodlum."

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

Stars and bars

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

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

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

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

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

North by North's desk

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

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

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

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

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

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

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

Abuse by 'Best Use'

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

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

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

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

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

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

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

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

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

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

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

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

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

Cool and unusual punishment

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

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

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

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

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

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

VERA smart

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

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

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

Original sponsor(s): Rules/Governor

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 491 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

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

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

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

ARTICLE 16. SENTENCING COMMISSION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) base recommendations on the following factors:

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

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

(C) the need to rehabilitate criminal offenders;

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

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

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

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

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

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

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

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