

**SENTENCING AND CORRECTIONS IN THE 21ST CENTURY:
SETTING THE STAGE FOR THE FUTURE**

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BY

DORIS LAYTON MACKENZIE, DIRECTOR

EVALUATION RESEARCH GROUP AND PROFESSOR

DEPARTMENT OF CRIMINOLOGY AND CRIMINAL JUSTICE

UNIVERSITY OF MARYLAND

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SENTENCING AND CORRECTIONS IN THE 21ST CENTURY:

SETTING THE STAGE FOR THE FUTURE¹

In the past thirty years there have been enormous changes in the philosophy and practice of sentencing and corrections. The strong emphasis on rehabilitation that had existed for the first seven decades of the 20th century gave way to a focus on fairness and justice where sentences would reflect just deserts and not some utilitarian motive. Subsequently, sentencing practices moved to a crime control model with an emphasis on the use of incarceration to reduce crime in the community. During the 1980s and 1990s the crime control model became increasingly popular. Discussion of the future of sentencing and corrections in the 21st century must begin with knowledge of the changes that have occurred and the impact these changes have had on the criminal justice system.

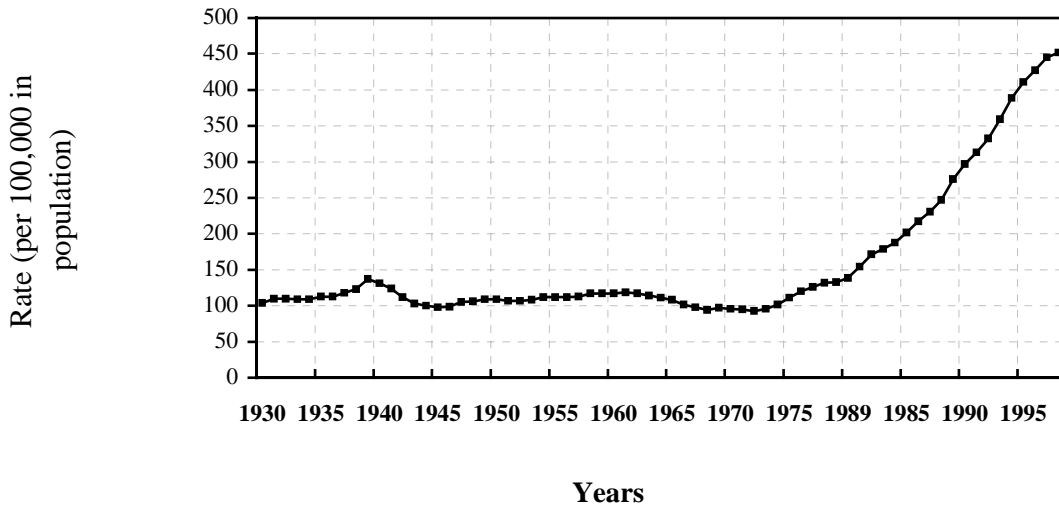
The historical changes in sentencing and corrections policies and practices can be characterized, in part, by the emphasis placed on different goals. Four major goals are usually attributed to the sentencing process: retribution, rehabilitation, deterrence and incapacitation. Retribution refers to just deserts; people who do certain things deserve to be punished. The three other goals are utilitarian in purpose, emphasizing methods to protect the public. They differ, however, in the mechanism expected to provide public safety. Deterrence emphasizes the onerous-ness of punishment; offenders will be deterred from committing crimes because of a rational calculation that the costs of punishment are too great. The punishment is so repugnant that neither the punished offender (specific deterrence) nor others (general deterrence) will commit the crime in the future. Incapacitation deprives a person of the capacity to commit crimes because they are physically detained in prison; when offenders are in prison they cannot commit crimes in the community. Rehabilitation is directed toward changing offenders so they will not continue to commit crime in the future. While sentences frequently address several of these goals in practice, emphasis on these different goals has changed dramatically in the last thirty years.

At the same time that there have been changes in the goals of punishment, there has been an enormous increase in the number of people in the United States who are under some form of correctional supervision. Changes in the practice and philosophy of sentencing and corrections have clearly had a major impact on the rates. However, there is no consensus on what specifically has caused the changes, the impact of the changes, and the intended and unintended consequences. This paper is designed in part to explore these issues.

1. GROWTH OF CORRECTIONAL POPULATIONS

It is valuable to begin this discussion of sentencing and corrections by examining the dramatic increase in offender populations that accompanied changes in sentencing and correctional philosophy. The increase in incarceration rates was unprecedented and followed a period of relative stability in incarceration rates (Figure 1). For example, from 1930 until 1975 the average incarceration rate was 106 inmates for every 100,000 individuals in the population. The rate fluctuated only slightly, from a low of 93 inmates per 100,000 to a maximum rate of 137.² This was the age of indeterminate sentencing and rehabilitation.

Figure 1. U.S. Incarceration Rate in State and Federal Institutions (1930-1998)



Sourcebook, 1998

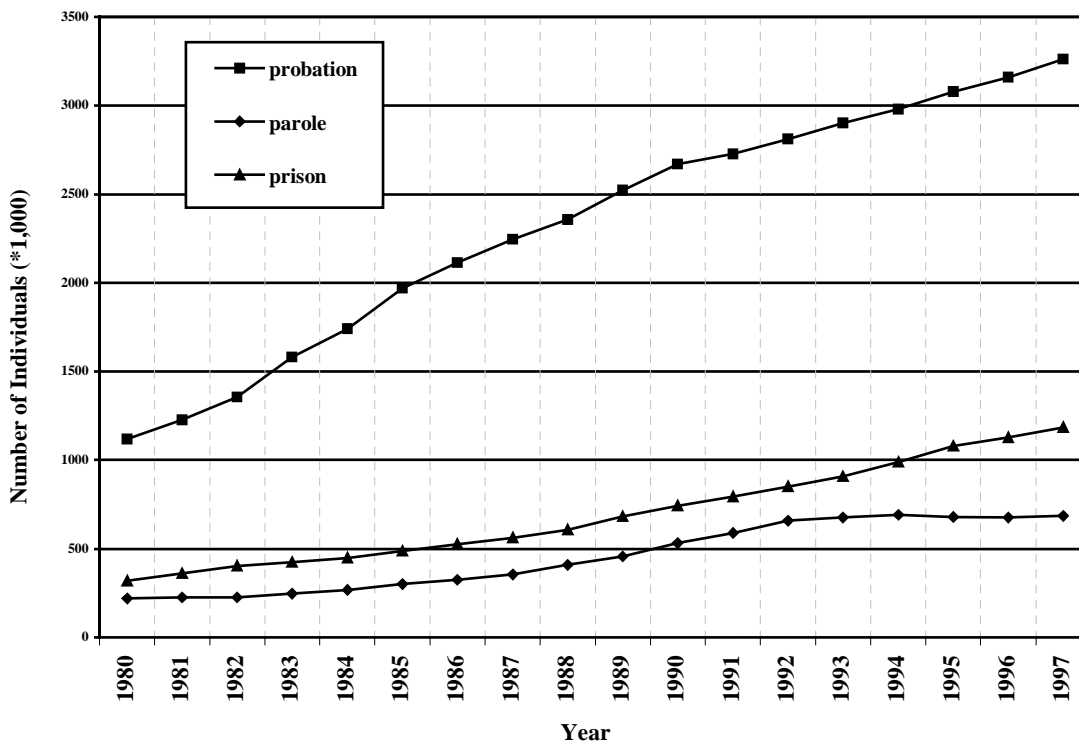
After 1975, incarceration rates grew tremendously; by 1985, the incarceration rate for individuals in state or federal prisons was 202 per 100,000 adults in the population, and this continued to grow to 411 in 1995, and 445 in 1997. If jail populations are considered as well, the incarceration rate was 652 in 1997. By the end of 1998, more than 1.3 million prisoners were under federal or state jurisdiction; over 1.8 million were in either jail or prison.³

Nationally, the increases in the correctional populations were not limited to prison. The number of individuals on probation and parole also grew substantially (Figure 2).⁴ Since 1980, the total correctional population rose from 1.8 million in 1980 to 5.7 million in 1997. From 1980 until 1997, probation grew 191 percent, parole grew 213 percent and prisons grew 271 percent.⁵ By 1998, over 4.1 million adult men and women

were on probation or parole; there were 1,705 probationers and 352 parolees for every 100,000 adults in the population.⁶

The adult correctional population in Federal, State, and local adult correctional populations reached an all-time high of approximately 5.9 million in 1998.⁷ One in 34 adults, or 2.9 percent of the population, were either incarcerated or on probation or parole at the end of the year.⁸ The majority of these adults (69.1 percent) were on probation or parole.⁹

Figure 2. Adults on Probation, Parole or in Prison (1980-1997)



Sourcebook, 1998

1.1 Differences Among States

The expansion of the prison population involved every one of the fifty states and federal prisons. However, it is important to note that the number of individuals in prison or in the community on probation or parole and the changes over time in these numbers differ greatly by the jurisdiction being examined, as the following table shows for incarceration rates.

Table 1. Rate (per 100,000 resident population) of sentenced prisoners in selected states (Sourcebook, 1998).

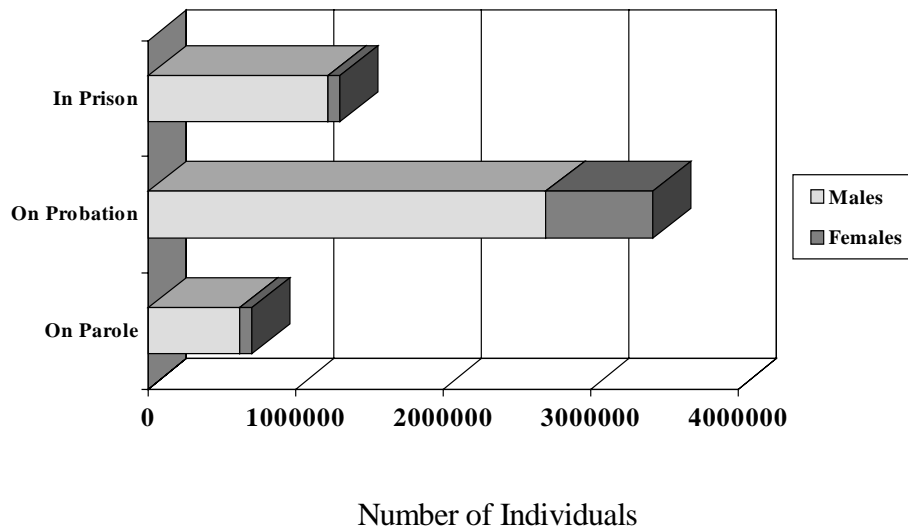
STATES	1980	1990	1997
California	98	375	484
Georgia	219	327	492
Illinois	94	234	353
Louisiana	211	427	709
Minnesota	49	72	117
New York	123	304	384
Texas	210	290	700
Washington	106	162	243

While incarceration rates in all jurisdictions have increased, the rates for the different jurisdictions vary substantially by: the amount of increase, when changes occurred, and the rate in 1997. Also, some significant and relatively stable regional differences exist in incarceration rates.

1.2 Race, Ethnicity and Gender

Overall, women made up a small percent of the total correctional population as shown in Figure 3. However, the rates for women have grown faster than the rates for men. For example, in 1980 the incarceration rate for females was 11 per 100,000 U.S. residents compared to a rate of 275 for males. By 1996, the rate for women had grown to 51 per 100,000 U.S. residents, a 364% increase.¹⁰

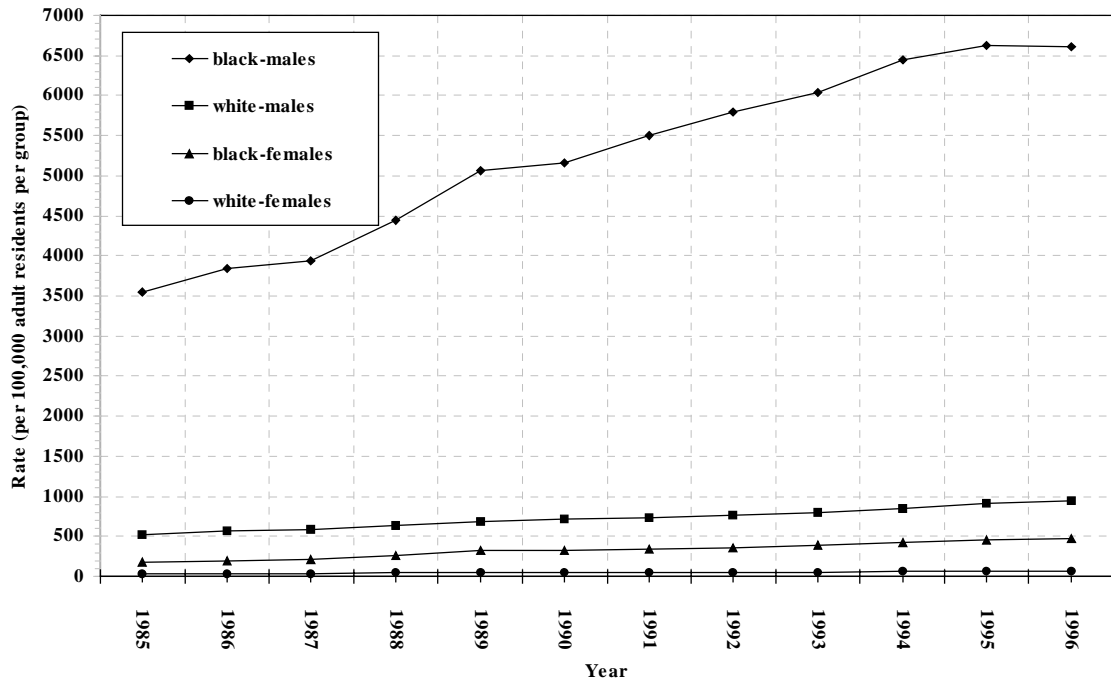
Figure 3. Number of Individuals in Prison, on Probation and on Parole Showing Gender Distribution, 1998



Beck and Mumola, 1999; Bonczar and Glaze, 1999

Minority males had the greatest overall rate of incarceration as well as the greatest increases in rates. From 1980 until 1996 the incarceration rate for African-American prisoners in state or federal prisons grew from 554 to 1,574 (a 184 percent increase).¹¹ During this time, incarceration rates for Hispanics increased from 206 to 609 (a 196 percent increase); rates for whites went from 73 to 193 (a 164 percent increase).¹² If both prison and jail are considered, in 1996, the rates for African-Americans were 6,607 and 474 (per 1000,000 adult residents) for males and females, respectively; for whites the rates were 944 for males and 73 for females.¹³ The rates for different gender and racial groups, and the dramatic increase from 1985 until 1996 for African-American males are shown in Figure 4.

Figure 4. Incarceration Rates in Prison and Jail by Race and Sex (1985-1996)



Sourcebook, 1998

1.3 Correctional Expenditures

In response to this enormous growth in correctional populations, expenditures for corrections grew as well. Direct expenditures for correctional activities by state governments grew from \$4.26 billion in 1980 to \$21.27 billion in 1994.¹⁴ The majority of the expenditures were for institutions rather than other correctional programs (probation, parole, community corrections, etc.). Furthermore, despite the fact that the number of probationers grew more rapidly than the number of prisoners, the proportion of the funds given to institutions continued to grow during this period. In 1980, institutions accounted for 80.1% of the total correctional expenditures; this grew to 83.4 in 1994; expenditures for other correctional programs were reduced from 19.9% in 1980 to 16.6 in 1994.

The cost to keep inmates in institutions is much greater than the cost of community supervision. For example, in 1996, the average annual operating expenditure

per inmate in state prisons was \$20,100. The costs of regular probation and parole supervision are estimated to be about \$200 per year per offender for probation, and \$975 for parole.¹⁵

As an annual cost per U.S. resident, total state correctional spending rose from \$53 in 1985 to \$103 in 1996.¹⁶ While the per year spending for prisons increased at a greater rate than other areas of state budgets, corrections' relative share of the total outlay remained small. For example, the annual per capita costs for state spending for education, public welfare and health in FY 1996 were \$994, \$738 and \$123, respectively.¹⁷ However, there is some concern that the area of the state budgets that is being most strongly impacted by the increased cost of corrections is higher education. It has been widely alleged that university and college budgets are the most likely areas of the total budget that are being reduced to fund the increased cost of corrections.

2. FROM INDETERMINACY TO CRIME CONTROL

2.1 The Age of Indeterminate Sentencing and Rehabilitation

Thirty years ago all states, the Federal government and the District of Columbia had indeterminate sentencing systems. There was a strong emphasis on the rehabilitation of juvenile delinquents and adults offenders. Legislatures set maximum authorized sentences; judges sentenced offenders to imprisonment, probation, and fines and set maximum sentences; correctional officials had power over granting good time, earned-time and furloughs¹⁸; and parole boards set release dates.¹⁹ In some states the indeterminacy of the sentences permitted sufficient leeway to permit courts to sentence offenders to prison for time periods from one day to life. Professionals, typically the parole board, were assigned the task of determining when the offender had made sufficient progress to be awarded supervised release in the community. After the sentence was imposed, decision-making was almost totally the prerogative of correctional authorities or parole boards.

The idea behind indeterminate sentencing was individualization of sentences. Judges gave sentences with a wide range between the minimum and maximum length of time (e.g., 0 to 20 years) the offender had to serve in prison. Offenders were supposed to be released when they were rehabilitated. Decisions about release were the responsibility of prison authorities and the parole board. Officials were given broad authority to tailor dispositions to the treatment needs of individual offenders. The goals were to prevent new crimes, to promote the correction and rehabilitation of the offenders, and to safeguard offenders against excessive, disproportionate or arbitrary punishment.

Theoretically, two underlying beliefs appear to explain the philosophy behind indeterminate sentences – one environmental and the other psychological.²⁰ Environmental explanations focused on the wretchedness of the inner city slum environments and questioned how an individual growing up in these environments could

be held responsible for later criminal behavior. Fairness dictated that offenders be treated as individuals; anything else was vengeful. The psychological perspective considered offenders ill and, therefore, in need of treatment as a cure for the illness. In either case, the criminal justice system was responsible for changing law-breakers into law-abiders or rehabilitating them. In his 1965 address to the U.S. Congress, President Lyndon Johnson “called for the establishment of a blue ribbon panel to probe fully and deeply into the problems of crime in our Nation.”

The strong rehabilitative perspective of the times is reflected in the recommendations this panel made for changes in the courts and corrections. Prominent among their recommendations was an emphasis on probation and parole:

- Caseloads should be reduced to an average ratio of 35 offenders per probation or parole officer;
- All releasees from institutions should receive adequate supervision;
- All jurisdictions should provide services for “felons, juveniles and adult misdemeanants who need or can profit from community treatment”;
- “Probation and parole officials should develop new methods and skills to aid in reintegrating offenders through active intervention on their behalf with community institutions.”²¹

A review of some of the panel’s recommendations for institutions similarly reflect the emphasis on rehabilitation, services and reintegration:

- “Model, small-unit correctional institutions for flexible, community-oriented treatment” should be established;
- “Educational and vocational training programs should be upgraded and extended to all inmates who could profit from them”;
- Modern correctional industries aimed at the rehabilitation of offenders should be instituted;
- Graduated release and furlough programs should be expanded and coordinated with community treatment services.²²

Prosecutors were urged to make discriminating charge decisions by “assuring that offenders who merit criminal sanctions are not released and that other offenders are either released or diverted to non-criminal methods of treatment” such as diversion to community treatment. Out of these recommendations grew the Law Enforcement Assistance Act of 1965 and the Omnibus Crime Control and Safe Streets Act of 1968.

These recommendations, as well as the indeterminate sentencing structure, clearly demonstrate that the emphasis at that time was on rehabilitation with a focus on community treatment, diversion, reintegration and education and employment programs. Despite the philosophical emphasis on rehabilitation, it should be noted that, in actual practice these programs were often poorly implemented and funded.

2.2 A Time of Change: 1970-2000

The decade of the 1960s had begun with great optimism about the promises that a new frontier would be created and a more equitable order achieved. By the end of the decade, belief in “The Great Society” had given way to a despairing distrust of the state. The fallout from this thinking for correctional policy was immense because inherent in the rehabilitative ideal was a trust in criminal justice officials to reform offenders. Some questioned the unbridled discretion available to criminal justice decision makers that gave preferential sentences to the advantaged, and coerced inmates into conformity. Others wished to return to earlier times when “law and order” reigned in our country and they called for a “war on crime” to preserve the social order. In either case, the times were ripe for major changes in the criminal justice system. A virtual revolution occurred in sentencing and corrections policies and practices in the seventies and thereafter.

One of the most visible influences on this change was Martinson’s 1974 summary of a more elaborate report by Lipton, Martinson, and Wilks.²³ Martinson’s essay described the results of the research team’s assessment of 231 evaluations of treatment programs conducted between 1945 and 1967. From this research, he concluded “With few and isolated exceptions the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism.”²⁴ This report was widely interpreted as demonstrating that “nothing works” in the rehabilitation of offenders. Subsequently, a National Academy of Science panel reviewed the results and agreed with Martinson.²⁵

Critics argued Martinson’s conclusion was flawed for two major reasons. First, the research methodology that was available was so inadequate that only a few studies warranted any unequivocal interpretations, and, second, the majority of studies examined programs that were so poorly implemented they would hardly be expected to have an impact on future criminal activities. Despite the concern that the research did not support such a conclusion, the phrase “Nothing Works” became an instant cliché and exerted a powerful influence on both popular and professional thinking.

Several factors may explain why at that point in time Martinson’s conclusion became so widely accepted. However, some argue, the historical times were ripe for a full-scale attack on rehabilitation and the indeterminate sentencing model.²⁶ The decade of social turbulence preceding the publication of Martinson’s article profoundly affected many Americans. Inequities based on gender, race and class had been exposed and challenged. Protests, riots and bombings over issues such as civil rights and the war in Vietnam were common occurrences. Within the criminal justice system the 1971 riot

and slaughter of inmates and guards at Attica demonstrated the extent to which government officials would go to suppress offender protests over prison conditions. Could judges and correctional officials be trusted to exercise the extreme discretion permitted by the rehabilitative ideal?

For many, the answer to this question was “no” but liberals and conservatives differed in why they wanted to limit discretion. Conservatives argued that the judges and parole boards were too lenient; they used their discretion to release predatory criminals who continued to victimize innocent citizens. Liberals argued that the discretion given to officials was coercive and ineffective. Since officials could not really tell when offenders were rehabilitated, why should they have the power to decide when the individual should be released? If the professionals who were responsible for rehabilitation could not demonstrate that they could effectively change offenders, then their authority and autonomy in establishing the length of sentences should be severely restricted so they would have less control over people’s lives. Furthermore, they argued, the wide discretion often results in disparity and unfair sentences that are not remedied through the parole release system. As a result of the wide discretion allotted to officials in the criminal justice system, offenders with similar past histories convicted of similar crimes often served widely disparate sentences while those with disparate histories and crimes served similar sentences. Critics of the indeterminate sentencing system argued that poor and minority offenders were discriminated against; imprisoned offenders were coerced into programs; and offenders who challenged prison conditions were denied parole.

2.3 The Justice Model of Sentencing and Corrections

The proposed solution to the problems of sentencing and corrections was to return to a Justice Model of sentencing and corrections.²⁷ Sentences should be decided on the basis of fair and just sentencing policies. The model is based on retributive notions of deserved punishment; the sentence should fit the crime. Offenders would receive their just deserts -- the deserved punishment -- nothing more, nothing less. Advocates argued that prisons should not be used to achieve any public end. In their opinion, it is not morally justified to use people in particular ways to achieve public goals. Punishment should be proportionate to the crime but not be designed to achieve some utilitarian motive like rehabilitation or crime control. The only relevant factors to consider in sentencing are the crime or crimes of conviction and the offender’s past history of criminal activity. Under this model, individualized treatment and discretion would be eliminated. Thus, all offenders would be treated similarly by the criminal justice system.

The Justice Model carried with it direct implications for public policy. Offenders should be given substantial procedural protections throughout all stages of criminal justice system processing. Thus, legal rights of inmates became of great importance for the courts and corrections. Rehabilitation, if used, should be voluntary and not coerced. The largest policy impact was the need to change from an indeterminate sentencing model to determinate or “flat” sentencing. Under this sentencing method, a specific

crime would carry a clearly identified sentence length, not a broad minimum and maximum. Parole release would be eliminated. Sentence lengths would be determined by guidelines that considered only the past history of criminal activity and the current crime of conviction.

2.4 Crime Control: Incapacitation and Deterrence

While proponents of the Justice Model were arguing in favor of this change away from a rehabilitation model, others began to argue for changes that would increase the crime control aspects of sentencing and corrections through incapacitation and deterrence. The decade from 1965 until 1975 was a period of escalating crime rates (see Figure 6 below). “Law and order” advocates attacked rehabilitation as coddling criminals. They wanted to implement policies that would limit the ability of judges and correctional officials to mitigate the harshness of criminal sanctions. They advocated “get tough” proposals for mandatory minimum sentences and lengthy determinate sentences as methods for reducing criminal activities through incapacitation and deterrence.

The concept of incapacitation is simple – for as long as offenders are incarcerated they clearly cannot commit crimes outside of prison. Crime is reduced because the incarcerated offenders, while in prison, are prevented from committing crimes in the community. During the mid-1970s, interest in incapacitation as a crime prevention strategy grew, in part due to concerns about the efficacy of rehabilitation raised by the Martinson report, rising crime rates and public fear of crime. Incapacitation strategies were supported because of what seemed to be the logical utility of keeping offenders in prison so they could not commit crimes.

Most people accept the notion that crime prevention through incapacitation is one primary justification of imprisonment.²⁸ Generally accepted, also, is the fact that some individuals should be incarcerated for long periods of time as retribution for the seriousness of their offenses and because they pose a threat if released. However, questions arise over how broadly the incapacitation strategy should be used and whether it is a cost-efficient and -effective crime prevention strategy. Some ask that prison space be reserved for only a small, carefully, selected group of dangerous repeat offenders. Others advocate a general incapacitation strategy that would incarcerate a substantial number of felons. The success of incapacitation in reducing crime in the community remains a controversial subject.

Increases in prison populations and the research findings of the large differences in the crime rates of individual offenders moved societal attention towards a more selective strategy of incapacitating a small group of offenders. Encouragement for this selective incapacitation as a crime control strategy also came from research that revealed that a small number of very active offenders (six percent of the cohort) accounted for a disproportionately large number of the arrests (52 percent) in a Philadelphia birth

cohort.²⁹ Incapacitation advocates argued that crime could be reduced if these “career criminals” were identified and incapacitated.³⁰ This “selective incapacitation” strategy would identify offenders who are most likely to commit serious crimes at a higher frequency so that they could be incarcerated for longer periods of time. Further support for the benefits of incapacitation as a correctional strategy came from the proposal that, although there were enormous costs to incarcerating large numbers of felons, there were also substantial costs if they were released, and continued to commit crimes in terms of such factors as criminal processing, loss to victims, etc.³¹ Some of the practices that can be attributed to these incapacitation strategies are habitual offender laws,³² abolishing parole, mandatory sentences and the more recent three-strikes laws.

War on Drugs. The “War on Drugs” was another major factor that affected sentencing and corrections. The expansion of criminal sanctions for drug crimes began in the 1970s but picked up speed in the 1980s with the declaration of “War on Drugs,” and the passage of the Anti-Drug Abuse Acts of 1986 and 1988. From the perspective of the crime control strategy, it was thought that increasing arrests and punishment for drug offenses would be effective in reducing illegal drug use and sales. As described subsequently, this “War” had and continues to have a profound impact on correctional populations and minorities.

Intermediate Sanctions. As a result of disillusionment with the effectiveness of rehabilitation and the focus on justice and incapacitation, intermediate sanctions were proposed as an ideal way to provide a range of sanctions between probation and parole.³³ Theoretically, these sanctions could be scaled in severity so as to be proportionate to the seriousness of the crimes committed. Furthermore, the additional control and threat of sanctions were expected to either deter offenders from future criminal acts or restrict them (in a sense incapacitate them) so they would not have the opportunity to reoffend.

Most jurisdictions in the U.S. have some type of intermediate sanctions programs. These programs have been variously called correctional alternatives, intermediate sanctions, community corrections or, more recently, correctional options. Intensive supervised probation or parole (ISP), house arrest, boot camp prisons, and day reporting centers are some of the more common intermediate sanctions. Frequently, they are used in conjunction with other tools of supervision such as urine testing or electronic monitoring. The sanctions are used as either “front-end” options for probationers or as “back-end” options for those released on parole or community supervision.

Prior to the 1970s, intermediate sanctions were referred to as community corrections; at that time the focus was on providing services and rehabilitation. In contrast, the intermediate sanctions of the 1980s and 1990s involved increased control over offenders. Typical requirements for offenders in ISP programs were more frequent meetings with correctional agents, periodic urine tests, substance abuse treatment and verification of employment. The focus was on increasing control over offenders and making community supervision more onerous so the punishment was retributive. In part, this was in response to the attitude that probation was nothing more than a slap on the

wrist and, therefore, did not provide either a deserved punishment or a method to reduce the criminal activities of offenders while they were supervised in the community.

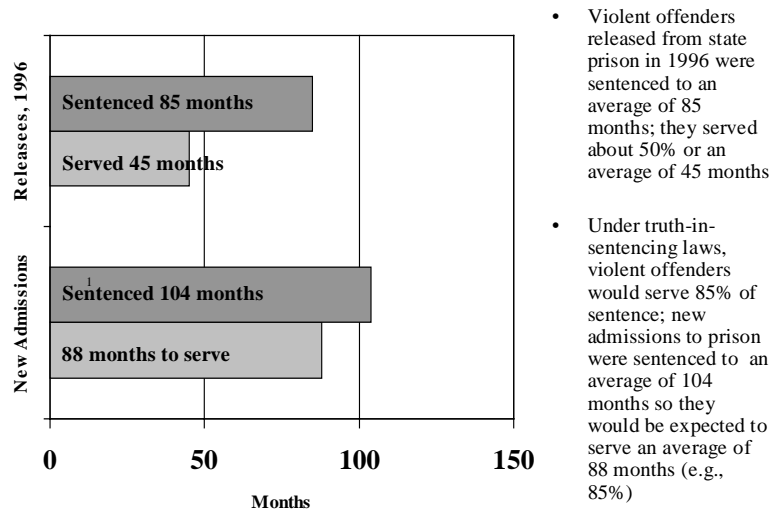
Truth-In-Sentencing. “The amount of time offenders serve in prison is almost always shorter than the time they are sentenced to serve by the court. For example, prisoners released in 1996 served an average of 30 months in prison and jail, or 44 percent of their 85-month sentences.”³⁴ Under indeterminate sentencing, decisions are made by professionals in low-visibility settings with high discretion, unlikely to be influenced by public sentiment and passion. In the past three decades, sentencing requirements and release policies became more restrictive; pressure for longer sentences and uniform punishment led to mandatory minimums and sentencing guidelines. However, prison crowding, good-time reductions and earned-time incentives continued to result in early release of prisoners. In response, many states increased the severity of sentencing laws by enacting restrictions on the possibility of early release; these laws became known as “truth-in-sentencing.” The truth-in-sentencing laws require offenders to serve a substantial portion of the prison sentence imposed by the court before being eligible for release. The laws are premised on the notion that juries, victims, and the public are entitled to know what punishments offenders will suffer at the time judges order it.

Truth-in sentencing gained momentum in the 1990s. To provide incentives to states to pass truth-in-sentencing laws, the U.S. Congress authorized incentive grants to build or expand correctional facilities through the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants Program in the 1994 Crime Act. To qualify for the grants, states had to require persons convicted of violent crimes to serve not less than 85 percent of their prison sentences.

Two-thirds of the states established truth-in-sentencing laws under the 85 percent test. In part, to satisfy the 85 percent test (to qualify for federal funds for prison construction), states limited the powers of parole boards to set release dates, or of prison managers to award good-time or earned-time, or both. The laws reduced the discrepancy between the sentence imposed and actual time served in prison (as shown in Figure 5 below).

Most states target violent offenders under truth-in-sentencing laws. However, the definition of truth-in-sentencing varies among the states, as does the percent of the sentence required to be served and the crimes covered by the law. “A few states, such as Florida, Mississippi and Ohio require all offenders to serve a substantial portion of the sentence before being eligible for release.”³⁵ The percent of the sentence required to be served in most states varies from 50 to 100 percent of a minimum sentence.

Figure 5. Discrepancy between sentence and time served comparing state prisoners released from prison in 1996 to the expected time served for new admissions.



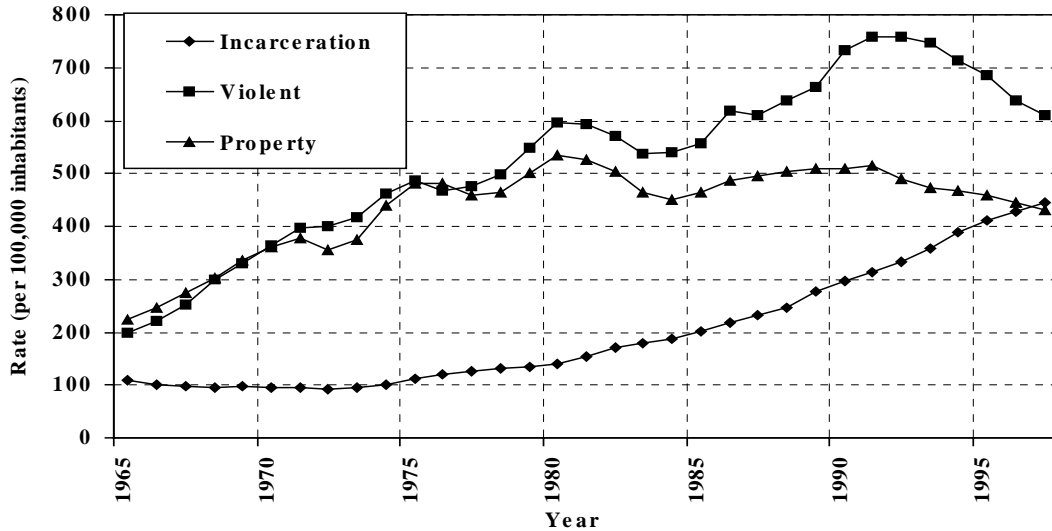
Ditton and Wilson, 1999

3. CHANGES IN CRIME RATES

One of the first questions many people ask after seeing the rising incarceration rate is what impact this has had on public safety. “Is the dramatic increase in correctional populations associated with a drop in the crime rate?” They want to know if the recent focus on crime control through incapacitation and deterrence has been effective in reducing crime in the community, preventing crimes, or increasing public safety. The answer is not clear. There are other factors that may be the cause of changes in one or both of the rates. Furthermore, there is no simple association between the two, as the graph below shows.

Figure 6 shows the rate of serious property and violent crimes (Index crimes³⁶) known to the police and the rate of convicted offenders confined in state and federal prisons from 1965 until 1997. The relationship between crime and incarceration rates is not simple and varies greatly by the period examined. The incarceration rate was stable from 1965 until approximately 1972; after which it moved steadily upward.

Figure 6. U.S. Crime Rate (offenses known to the police) and Incarceration Rate (1965-1997)



Note: Property crime rates are divided by 10 in order to include them in the graph with the violent crime rates.
Sourcebook, 1998

Crime rates for adults fluctuated during this period. Violent crime rose from 1971 until 1981, fell from 1981 until 1985, rose again until 1991 and has been declining ever since. As shown in the figure, property crime rates (divided by 10 in the figure) fluctuated approximately the same as the violent crimes. Since approximately 1991, crime rates for both property and violent index crimes have been declining.

Victim surveys are another way of measuring crime that do not depend on victims reporting crime to the police. The National Crime Victimization Survey (NCVS), conducted by the U. S. Bureau of the Census for the U.S. Bureau of Justice Statistics, obtains data from interviews with individuals in households selected so as to be representative of the U. S. population. Changes in crime victimization rates over the past twenty-five years for both property and violent crime are very similar to the changes in official rates obtained through the UCR.³⁷ From the 1970s until 1980 crime rates increased to a peak in 1980, after 1980 the rates drop sharply and then fluctuate until 1990 when there is a substantial decline. Victimization rates in 1996 were lower than victimization rates in 1973.

Crime rates and incarceration rates may both be caused by some other factors at play during the time studied such as changes in demographics, labor markets or other economic, social, cultural, or normative factors. Any apparent relationship may be spurious. Researchers have attempted to study the relationships with complex statistical models. While almost everyone acknowledges that the increased incarceration rates have had some effect on crime rates, a great deal of controversy exists about the size of the impact. Researchers who have studied the effects of incapacitation and deterrence in reducing crime have generally concluded that these policies have had a modest impact on reducing crime in the community (see below).

The results from investigations of crime and incarceration rates in individual states are consistent with the above discussion. There is no simple and direct relationship between the two.

4. FACTORS ACCOUNTING FOR THE GROWTH IN THE INCARCERATION RATE

Blumstein and Beck asked a somewhat different question: “What accounts for the growth in the incarceration rates?”³⁸ They wanted to know whether the growth in incarceration is due to an increase in crimes committed or the policies and procedures of the criminal justice system. If the latter, then what specifically has changed to cause the growth? They investigated the sources of growth in the incarceration rate from 1980 to 1996 focusing on the six crimes that account for three-quarters of the state prison populations: murder, robbery, aggravated assault, burglary, drugs, and sexual assaults. For each of the crime types, they examined whether the growth in incarceration occurred as a result of increases in: offending rates; arrests per offense; commitments to prison per arrest; or time served in prison (including time served by parole recommitments).

They found only a small percentage 12 percent, of the increases in incarceration rates resulted from an increased number of offenses being committed.³⁹ Aggravated assault was the only one of the offenses examined that displayed an upward trend. Blumstein and Beck attribute this to an increase in the recording of domestic assaults. Eighty-eight percent of the growth in incarceration was attributed to increases in the imposition of sanctions, incarcerating more, and for a longer time.

Incarceration of drug offenders is the major component of the overall growth in incarceration rates. In 1980, the incarceration rates for state and federal prisons for drug offenses were approximately 15 inmates for every 100,000 adults. By 1996, the drug incarceration rate had grown to 148 inmates. Drug offenders make up 60 percent of the federal prison population and 23 percent of state prison populations.

Another way to examine the increase by crime type is to compare the percent of the total increase across crime types. As the following table demonstrates, drug offenses accounted for 29 percent of the total increase, much more than any other crime type.

However, if violent offenses (murder, sexual assault, robbery, assault, and other violent crimes) are combined into a single category, then this category would be more significant than drug offenses (a 43 percent growth).

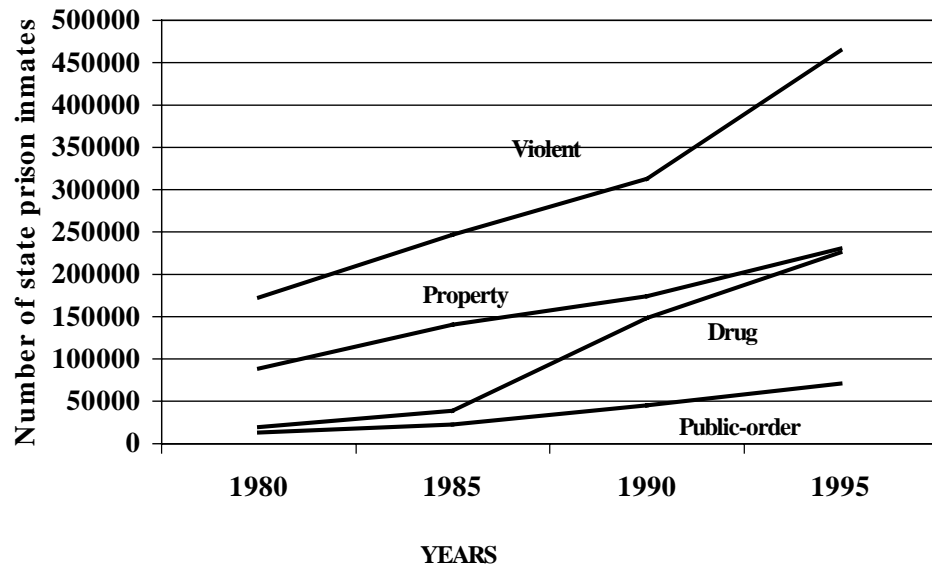
Table 2. Increases in the state prison populations from 1980 until 1996 showing differences by offenses.

	Increase, 1980-1996	Percent of Total
All Offenses	736,621	100%
Six Selected Offenses		
Drugs	215,100	29%
Murder	76,300	10%
Sexual assault	80,400	11%
Robbery	64,900	9%
Assault	73,900	10%
Burglary	59,200	8%
Other Offenses		
Other violent	19,300	3%
Other property	88,000	12%
Public order	57,800	8%

Blumstein and Beck, 1999.

As shown in Figure 7, the number of inmates serving time for drug and violent offenses has grown dramatically since 1980. There was a steady upward trend for property and public order offenses but of a much smaller magnitude. In 1980, violent offenders made up 58.6 percent of the prison population; in 1995 they made up only 46.9 percent. In comparison, drug offenders grew from 6.4 percent of the prison population to 22.7 percent during the same period.

Figure 7. Number of prisoners in custody of state correctional authorities showing most serious crime (1980 to 1995)



Beck and Gilliard,
1995; Beck and
Mumola, 1999.

According to Blumstein and Beck, for non-drug crimes, the growth in the prison population was due first to increases in time served (60 percent of the growth) and, second, to increases in the number of arrests that led to prison sentences. The new sentencing laws (e.g., mandatory-minimum, sentencing enhancements and “three-strikes”) and longer delays until initial release (“truth-in sentencing”) are most likely contributing to the increase in time served.

The factors contributing to the increase in drug offenders in prison were different than those that were associated with increases in the other crime types. In contrast to the other offenses, the increased number of drug offenders in prison is predominantly attributable to a growth in the number of adult drug arrests. The second factor influencing the increase in drug offenders is the conversion of drug arrests into prison sentences. This increase in the use of prison may reflect the tendency to use incarceration as a principal weapon in the war on drugs. Thus, two factors account for the increased incarceration rates for drug offenses: more drug offenders were arrested, and after arrest, more were given prison sentences. Between 1980 and 1998 there were large changes in

the percent of sentenced offenders entering prisons convicted of drug offenses. With regard to the most serious offense, fewer than 10 percent of the entrants to prison in 1980 were convicted of drug offenses; by 1998, 30 percent of the entrants were convicted of drug offenses. Of the incoming prisoners in 1998, the most serious offense of approximately 30 percent was a drug offense, 30 percent was a violent offense, 30 percent a property offense and 10 percent a public order offense.

As noted previously, the growth in incarceration was greater for minorities and women. When Blumstein and Beck partitioned the growth in incarceration rates from 1980 to 1996 by gender, race and ethnicity, they found that drug offenders accounted for a far greater share of the total growth: (1) among females (43 percent of growth) compared to males (28 percent of growth); and among minorities (36 percent African-Americans and 32 percent Hispanic, respectively) compared to whites (17 percent).

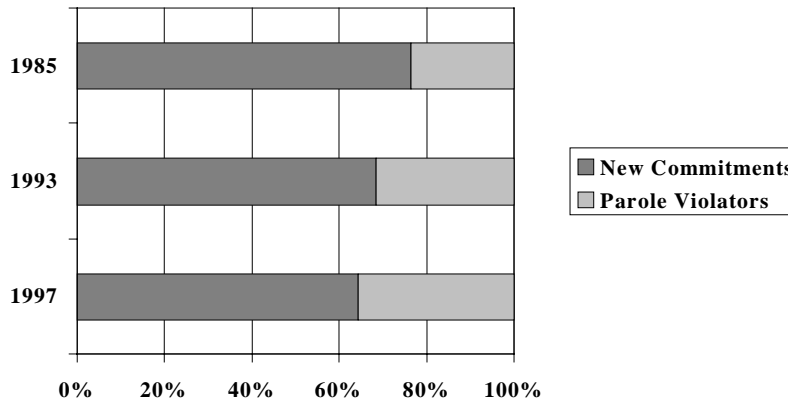
4.1 Community Supervision and Revocations

Approximately, 69 percent of the adults under correctional supervision are in the community on probation or parole. Many of these individuals will fail supervision and be sent to prison or jail. For example, 18 percent of those who left probation in 1998 were incarcerated for a new sentence (9 percent) or some other type of failure (9 percent); the others successfully completed (59 percent), absconded (3 percent), or left in some other way (11 percent).⁴⁰

In comparison to probationers, even more parolees failed community supervision; 42 percent were returned to jail or prison with a new sentence (13 percent) or were revoked for technical violations or some other reason (29 percent); the remainder successfully completed parole (45 percent), absconded (9 percent) or left for some other reason (4 percent).^{41 42}

Parole violation has been an increasing factor contributing to the growth in time served. An increasing percentage of prison admissions are parole violators (see Figure 8). Additionally, the percent of parole violators admitted to prison differs enormously by state. In some states a majority of those entering prison are parole violators. For example, in California, 64.7 percent of the admitted prisoners in 1997 were parole violators.

**Figure 8. Percent of admissions to state prison
(including technical and new crime violators)**



Beck and Mumola,
1999; Cohen, 1995

5. IMPACT OF THE CHANGES

The changes in the philosophy of sentencing and corrections have had an enormous impact on the criminal justice system. Sentencing, release decisions and correctional populations have all been transformed.

5.1 Structured Sentencing

In contrast to the widespread use of the indeterminate model of thirty years ago, there is no standard approach to sentencing and corrections today. Some jurisdictions have parole; some have abolished it. Most still use some type of good time release but of more limited scope than in the past. A minority of states have adopted some form of structured sentencing, but more than 30 retain some form of indeterminate sentencing.

Early attempts to enact structured sentencing were designed to reduce sentencing disparities, to limit the possibility of gender or racial bias, and to achieve a form of “truth in policymaking” by linking sentencing policies to corrections spending policies. Neither increasing sentencing severity nor reducing crime rates were primary goals under the Justice Model. Later, guidelines were developed expressly based on the premise of incapacitation as a goal, enhancing the likelihood that judges will impose harsher sentences that could not be mitigated through early release on parole.

By 1990, substantial differences existed in sentencing and corrections in the United States. In the 1960s under indeterminate sentencing structures, there was a consistency among jurisdictions in the use of parole boards for release decisions, indeterminate sentences with wide minimum and maximum sentence ranges and release to parole. In contrast, current sentencing and corrections policies in different jurisdictions are characterized by widely different policies and practices. Thirty-six states and the District of Columbia continue with indeterminate sentencing systems. The remaining 14 states have eliminated parole release, but not necessarily parole supervision.⁴³ According to the Bureau of Justice Assistance, sentencing structures can be characterized by the classification system shown in Table 3.⁴⁴

Table 3. State sentencing structures in 1997 (Tonry, 1999).

Number of States	Type of Sentence	Description
5	Statutory determinate sentencing	No parole release, sentencing standards in legislation
30	Indeterminate sentencing jurisdictions	Parole release, no guidelines
6	Voluntary/advisory sentencing guidelines	Voluntary guidelines, with or without parole
10	Presumptive sentencing guidelines states	With or without parole release, presumptive guidelines

5.2 Mandatory Sentences

Although many states did not change to a determinate sentencing structure, they did make other changes that limited the individualization of sentences and court and correctional discretion. Particularly popular were statutes eliminating parole for certain offenses or requiring mandatory minimums. For example, some states passed laws specifying that the penalty for aggravated murder must be a life term in prison without the possibility of parole. Mandatory minimum statutes eliminate discretion to choose a sentence below, but not above, the state minimum. For instance, a law might require a mandatory minimum sentence of ten years for a specific drug offense. Upon conviction, the judge must impose a prison term of not less than ten years but may impose a longer term. The penalty cannot be reduced even if, in the opinion of the judge, the individual case warrants it.

In the 1980s and 1990s, every state in the nation adopted some type of mandatory minimum sentencing law. Most of these “mandatories” applied to crimes involving serious violence, drugs or firearms. Another type of mandatory sentencing was tied to an

individual's criminal record. These "habitual offenders" laws had long been used to require heavier-than-normal sentences for criminals considered habitual or career because of the number and severity of their prior convictions.

5.3 Three-Strikes Laws

Variants of the habitual-offender laws that emerged in the 1990s were the "three strikes" laws. The "three-strikes and you're out" baseball metaphor is used throughout the country to refer to criminal sanctions that become increasingly severe for each conviction an offender receives until he or she is considered to be "out" or in prison for life. Under these laws, each conviction for a felony is considered another strike; penalties are increasingly severe; at the "third" strike the offender is "out" or in prison for life. The focus on tougher sentencing laws led to increasingly rigid sentencing statutes and these had a particular impact on repeat offenders. By 1994, 30 states had introduced "three-strikes" legislation and ten had passed tougher sentencing for repeat offenders. Twenty-four states had enacted three-strikes laws by 1997.⁴⁵

Just as with other changes in the criminal justice system, the impact of these laws has differed greatly in their implementation. For example, the third strike is defined as "any felony" in some jurisdictions. This means that a conviction for stealing something can result in a sentence of life in prison without the possibility of parole. In such states, the impact on prison populations could be dramatic. Other jurisdictions define the third strike as a serious violent felony. Since many of these convictions would have resulted in a lengthy prison sentence even without the three-strikes law, the impact on the prison population is minimal.

In actuality, most three-strike laws have had minimal impact on states' prison systems because the laws were drafted to apply to only the most violent repeat offenders.⁴⁶ For example, in the state of Washington only 85 offenders have been admitted to the state prison system three years after the law took effect. California was the only state where the three-strike law had a dramatic impact on the prison population. After the first year the numbers of strike offenders entering prison was not as great as originally predicted; however, the numbers have still had a major impact on the prisons. Most of those given lengthy sentences under the second or third strike provisions have been convicted of nonviolent property or drug crimes.

5.4 Parole Release

While many states continue to use parole boards, the use of boards for discretionary release has changed dramatically. In the late 1970s, approximately 70 percent of prison releases were discretionary parole releases entering the community because of a parole board decision. By 1997, only 28 percent of the releases from prison were as a result of discretionary parole; most (40 percent) of the release decisions were

mandatory and not decided by a parole board (including determinate sentences, good-time provisions, or emergency releases); 17 percent were expiration releases (inmate served maximum court sentence) and 10 percent were other conditional releases (commutations, pardons, deaths).⁴⁷

All states except Maine and Virginia have some requirement for post-prison or parole supervision despite the fact that they may call it by a different name (e.g., controlled release, community control, supervised release, community custody) to distance it from the negative image of “parole.” Nearly 80 percent of all released prisoners in 1997 were subject to some form of conditional community or supervised release.⁴⁸

5.5 Decision Making

Changes inside and outside the criminal justice system have had an impact on the relationship of symbolic and operational influences on societal responses to crime.⁴⁹ While politicians and decision makers have always been responsible symbolically for public safety and, therefore, have taken a “tough on crime” stance, they have not always been so involved in actual operational decisions. Thus, in the past politicians could and did argue for severe punishments for serious and violent crime. Today, however, they are involved more directly in decisions that have an impact on operations. According to Zimring, single issue lobbies (prison guards, victims rights advocates), distrust of criminal justice officials, single issue (crime) candidates for public office and new sentencing structures (determinate sentencing, mandatory sentences) have pushed the public and politicians into areas of operations where they can and do have a large impact.⁵⁰

Under the indeterminate system of sentencing, there was insulation between the symbolic politics of punishment and the actual operation of the criminal justice system. Judges, parole boards and correctional officials had the power to consider individual cases and mitigate the seriousness of sentences. They could also use their decisions to regulate prison populations by letting more offenders out on parole when prisons were crowded. Changes in the system have reduced or eliminated their power.

Legislatively mandated sentencing terms under sentencing guidelines and mandatory minimum sentencing laws have shifted punishment from criminal justice professionals to the public.⁵¹ Much of the power now resides in the prosecutors and legislatures. Some argue that prosecutors have “unchecked” power to decide whether to file charges under mandatory provisions or to bargain to lesser charges.⁵² Federal prosecutors have been selective in their use of mandatory laws and have brought charges in only a fraction of the cases in which such laws apply. Politicians have been forced to take responsibility for the decisions made by the criminal justice system officials. Whereas once the criminal justice system would have been blamed for releasing a dangerous criminal back into society, now politicians suffer public anger for releasing

criminals such as Willie Horton, who was furloughed and murdered someone. This has made politicians more sensitive to the operation of the criminal justice system.

5.6 Prison Crowding

The enormous increase in prison populations has led to severe prison overcrowding. Changes in sentencing have limited the ability of criminal justice professionals to use early release mechanisms to provide a release valve when crowding becomes a problem. In the past, early release from prison through good-time reductions, earned-time incentives and parole permitted officials to individualize the amount of punishment or leniency an offender received and also provided means to manage the prison population. Despite the fact that half of all prisons in the United States have been built within the past twenty years, in 1998, state prisons were still operating at 115 percent of capacity and the federal prisons were at 119 percent above capacity.⁵³

5.7 Behavioral, Cultural and Social Changes Impinge on Corrections

Changes in the larger society inevitably impinge on corrections. The most dramatic influence has been the growth in the use of illegal drugs. Three other changes impacting corrections are the aging of the population, diseases, particularly HIV/AIDS, and changes in the management of individuals with serious mental illness.

The fastest growing age group in the United States is those age 65 and older. This demographic change combined with correctional policies such as life without parole and increased prison terms have resulted in a growing number of older offenders in prison. Planning and programming for these older inmates have legal and fiscal implications. Some obvious examples are increased costs for medical care and necessary changes in prison cells and dormitories to accommodate physical disabilities and limitations of the elderly.

Diseases such as HIV/AIDS, sexually transmitted diseases and tuberculosis are disproportionately found among correctional populations, and these present serious challenges for correctional administrators and health service providers. In 1997, approximately 2.1% of all state and federal prison inmates were HIV positive, and 1 in 5 inmate deaths were attributed to AIDS-related causes.⁵⁴ In response to the increased numbers of terminally ill inmates, eleven jurisdictions and the Federal Bureau of Prisons have established formal prison hospice programs.

Correctional officials have had to manage an increasing number of individuals with serious mental illness.⁵⁵ Major changes in mental health policies in the United

States, such as de-institutionalization, have led to an increased number of persons with serious mental illness in the community. Where, they frequently receive inadequate care. Many of these individuals become involved with the criminal justice system. Correctional officials struggle to provide for the care and safety of these individuals. Limited funding for programs and for community services and treatment mean that many are not treated while they are under correctional supervision. Mentally ill inmates are more likely than others to be in prison for a violent offense and to have lived on the street or in a shelter in the year before arrest. There is a tremendous prevalence of drug abuse and dependence among those with serious mental illness, and this comorbidity presents additional management and treatment difficulties.

6. EXAMINING THE EFFECTIVENESS OF DIFFERENT STRATEGIES

6.1 Incapacitation and Deterrence

Understanding the relationship between sanctioning policy and crime rates has been the focus of considerable research in the areas of deterrence and incapacitation, requiring careful measurement and control for the numerous factors that may affect crime rates. Most reviews of the literature conclude that the effect of the policies on crime reduction has been modest. This was the conclusion of the most famous examination of the subject, the 1978 National Academy of Sciences Panel on Research on Deterrent and Incapacitative Effects.⁵⁶ Successive panels on Criminal Careers⁵⁷ and Understanding and Control of Violence⁵⁸ reached similar conclusions. However, there are many unresolved questions that have led to a debate about how large an effect incapacitation and deterrence strategies have had on the crime rate.

Most of the research uses complex statistical simulations to estimate the impact of incapacitation policies on crime in the community. While it is generally accepted that incapacitation policies prevent crime because offenders who are imprisoned do not have the opportunity to commit crimes, the estimates of the number of crimes prevented vary greatly.⁵⁹ Most researchers estimate crime savings of somewhere between 10 to 30 percent but this depends upon the policy being examined. True estimates of the crimes prevented are difficult to obtain because both the frequency of criminal participation and the duration of careers must be estimated. Large increases in the use of imprisonment may have limited returns because the additional offenders not now incarcerated may be lower frequency offenders who would not be committing many crimes in the community. Thus, every new incarceration would reduce the return on investment for every new dollar expended. There may also be limited returns because offenders who are finally incarcerated for lengthy periods of time may be at the end of their criminal careers and therefore would not be committing any crimes in the community even if they were free to do so.

A consistent finding in the literature is that there are a small number of offenders who commit a large number of crimes; if they could be incapacitated, a large number of crimes would be prevented. The problem that exists is that it is not yet possible to predict who will be the high frequency offenders in the future; therefore, targeting them for increased prison sentences is impossible. Increased use of incapacitation as a crime prevention strategy must also address the increases in imprisonment rates and the associated financial costs that accompany such strategies.

As a result of new sentencing structures like mandatory-minimum laws, sentencing enhancements and three-strikes laws, as well as longer delays until releases under truth-in-sentencing laws, those sentenced to prison are spending more time in prison. Time served in prison has been the major factor contributing to the growth in incarceration in state prisons. Research on whether certain criminal sanctions deter offenders raises some concerns about the benefits to be gained from extending the time served of incarcerated people. Indeed, increasing the probability of commitment to prison or the certainty of punishment has a stronger impact on reducing criminal activity than increasing the severity of the sanction such as time served.

Some of the research examining the impact of drug policies has also led to questions about the effectiveness of incapacitation and deterrence. As long as the drug market can continue to recruit new replacements for those scared out of the business or locked away in prison, it will continue to provide new offenders. Drug market trade provides a lucrative financial incentive for attracting new recruits. Therefore, a new recruit is always available to replace anyone who is arrested and confined to prison. On the other hand, if those who are locked up would have been committing serious and violent crimes in the community, their imprisonment could be contributing to an incapacitative effect of incarceration.

6.2 Controversy Over Costs

In the 1980s, as incarceration rates continued to climb, people began to complain about the rising costs of corrections. They questioned whether the high costs were worth the benefits gained by continually incarcerating such a large number of people. In response, Zedlewski pointed out that there were social costs to releasing offenders and these costs must be calculated and weighted against the costs of incarceration.⁶⁰ If an offender is released and continues to commit crimes there are additional costs for the criminal justice system such as the costs of arrests, revocation hearings and court proceedings; there are also costs for the victims such as loss or additional private security.

Zedlewski's argument that there are social costs to releasing offenders had direct policy implications. Policy makers could justify additional expenditures on prison construction as a means to keep offenders in prison and, thereby, save the social costs of

release. That is, if there were costs to releasing offenders, then the costs of operating and constructing prisons were worth the money because this would save the social costs that would be incurred if these offenders were in the community. This argument was used to support additional prison construction.

The idea that there are social costs if offenders are released from prison began a controversy that still rages. Some researchers continue to attempt to calculate the costs of crime and the controversy is over what numbers to use in calculations. These researchers differ in what costs they believe are legitimate for inclusion and how the elements should be calculated. For example, should the calculations include criminal justice system costs, monetary costs to victims, private security costs, health care expenses, pain and suffering of victims and/or risk of death? Should the costs include tangible and intangible costs to victims, cost to others (victim's family, insurance companies, businesses and society) and/or costs of preventing crime (theft insurance, guard dogs)?

Once decisions are made about what social costs to include, the actual number of crimes prevented by incarceration must be estimated. If each crime carries some social costs, the problem is to determine how many crimes offenders would commit if they were in the community and not in prison. All evidence suggests that official statistics do not provide adequate information for these estimates, so researchers have used self-report data for this purpose. Estimates vary across studies and recent findings suggest that the estimates of criminal activity will differ greatly if offenders are given a sentence to community supervision.⁶¹ Furthermore, these estimates become more difficult because offenders have criminal careers that span a certain number of years. They are more active at some points in their careers and usually as they get older their criminal activity declines; therefore, estimates of the number of crimes offenders would commit if they were in the community must take career length into consideration.

Once the estimates of the cost of crime to society and the average number of crimes committed are calculated, the yearly social costs of not imprisoning an offender can be determined. This figure is weighted against estimates of what it costs to keep an offender in prison; the result represents the benefit of imprisonment.

Instead of arguing about the specific calculations of the costs and benefits of incarceration, others reject the social costs calculations completely. They argue that the imputed costs of victim "pain and suffering" takes no account whatever of suffering by imprisoned offenders or by offenders' partners, children and communities. From their perspective, the cost-benefit assessments require weighing inherently incommensurable values and the attempts to do so have reached a dead end. They argue that it may be more productive to compare the cost and benefits of alternative crime prevention policies and not attempt to calculate the social costs of crime. Both groups in this debate include knowledgeable scientists who are aware of the complexity of the problems. At this time, there is no clear answer to the debate.

6.3 Intermediate Sanctions

Throughout the 1980s and 1990s, the National Institute of Justice funded a wide range of evaluations of different intermediate sanctions and correctional alternatives including intensive supervision and correctional boot camps as well as tools of supervision such as electronic monitoring and urine testing. There is now a body of research that permits us to draw some conclusions about the effectiveness of these programs.⁶² It is important to realize that the focus of most of the studies of intermediate sanctions have been on whether increased control and surveillance reduces recidivism. Few studies have focused on the rehabilitative aspects of the sanctions.

Intermediate sanctions were sold as methods to simultaneously divert offenders from incarceration, reduce recidivism rates, and save money while providing credible punishments that could be matched to the severity of offenders' crimes. While some jurisdictions may have achieved these goals, many did not. In particular, research provided little evidence that these intermediate sanctions successfully reduced recidivism. Studies show neither intensive supervision programs, electronic monitoring, correctional boot camps, home confinement/house arrest nor urine testing are effective in reducing the recidivism of offenders, if they are not combined with effective rehabilitation programs (see below). In fact, sanctions that increased the surveillance over offenders while they were in the community often resulted in higher levels of technical violations in comparison to less intensive sanctions. Offenders on community supervision are required to adhere to certain conditions of supervision, and, if they violate these conditions, even without committing a new crime, they can suffer consequences. Technical violations are violations of these conditions. These violations can result in a revocation and subsequent term in prison. There is little reason to believe that offenders receiving intermediate sanctions committed more actual crimes let alone more technical violations. Most likely, they were just caught more often for the violations they committed.

Nor were intermediate sanctions successful in diverting offenders from prison. Their use as diversions from prison was expected to achieve two goals. First, intermediate sanctions were expected to provide an intermediate range of punishments to provide for more fair and just sentences. Second, the sanctions would save money because some who would otherwise go to prison would be given an alternative punishment. Those who were convicted of crimes of intermediate severity could be given the intermediate sanctions. Since the intermediate sanctions were between probation and prison, they were expected to draw from both the populations of probationers and prisoners. Some who would otherwise be given probation would be given intermediate sanctions, others who would, in the past, be sent to prison would also be given intermediate sanctions. Thus, it was assumed that these sanctions would draw offenders from both the prison and the probation populations. The problem that arose was that few policy makers and correctional officials were willing to release higher risk offenders into the community. Thus, while policy makers supported the new intermediate sanctions, they took pains to limit the eligibility to low-risk offenders – those offenders who would otherwise be serving a sentence of probation. These

offenders were at lower risk for recidivism. Frequently, different intermediate sanctions in the same jurisdiction competed for participants from the same pool of offenders, and, as a consequence, there were a limited number of eligible candidates.

Intermediate sanctions are often criticized for increasing the costs of corrections and “widening the net.” In general, it costs more to keep offenders in prison than in the community, and increases in control and surveillance in the community cost more than standard probation. Since many of the offenders who were placed in these alternatives were drawn from the least costly option, probation, intermediate sanctions often increased the cost of corrections instead of achieving the goal of reducing costs.

Additionally, by drawing from the population of offenders who would otherwise be on probation, the alternatives “widened-the-net” of control over offenders. That is, alternatives increase the control over a larger number of offenders. Net-widening was also a problem because increased surveillance and control over offenders increased the probability of detection for technical violations. This is, most likely, one of the reasons for the increase in the proportion of offenders who are admitted to prison as probation or parole violators.

6.4 Rehabilitation: What Works in Corrections?

Rehabilitation strategies focus on changing individual offenders so they will not continue their criminal activities. In spite of the fact that there have been large changes in the philosophy and practice of corrections, many people continue to be interested in the rehabilitation of offenders. Correctional administrators struggle to continue to provide rehabilitation and treatment programs. Frequently they combine treatment with punitive intermediate sanctions such as boot camps in order to garner funds for the treatment.⁶³

Research attempts to identify and understand the individual differences that explain criminal behavior and how interventions can be used to change individuals so they will not continue to commit crimes. The work is based on psychological theories of learning, cognition and the general principles of human development applied to the analysis of illegal behavior.⁶⁴

While there is still some debate about the effectiveness of rehabilitation, recent literature reviews and meta-analyses demonstrate that rehabilitation can effectively change some offenders and reduce their criminal activities.⁶⁵ During the 1980s and 1990s, when many U.S. criminologists were studying the effectiveness of the impact of increases in surveillance and control over offenders, Canadian researchers, many of whom were trained in psychology, continued to study the effectiveness of rehabilitation programs.

Reviews of the research literature find 48 to 86 percent of the studies examined report positive evidence of treatment effectiveness. Based upon the available evidence, some approaches to treatment are clearly better than others. Psychological researchers emphasize that effective treatment programs must follow some basic principles. First, treatment must directly address characteristics that can be changed (dynamic factors) and that are directly associated with an individual's criminal behavior (criminogenic factors). There are numerous risk factors associated with criminal activity. Age, gender and early criminal involvement are some examples. In comparison to others, young males who began criminal activities at a young age are at higher risk for future criminal activities. But "static" characteristics such as age, gender and past history, while predictive of recidivism, cannot be changed in treatment. Instead, "dynamic" or changeable factors should be the target of treatment programs.

Equally as important is the distinction between factors that are criminogenic and those that are not. Criminogenic factors are those that are directly associated with criminal behavior. Research has revealed some dynamic factors that are also criminogenic, e.g., attitudes, cognitions, behavior regarding employment, education, peers, authority, substance abuse and interpersonal relationships that are directly related to an individual's criminal behavior. Treatment programs that target non-criminogenic factors will not be particularly successful in reducing recidivism. For example, less promising targets for reducing future criminal behavior include increasing self-esteem without touching antisocial propensity, or increasing the cohesiveness of antisocial peer groups. In order to be successful, treatment must address factors that can be changed (e.g. dynamic factors) and that are directly related to an individual's criminal behavior (criminogenic).

A second factor important in determining whether a treatment program will be effective is the therapeutic integrity of the program or the need for effective programs to be delivered as planned and designed. Poorly implemented programs, delivered by untrained personnel, where offenders spend only a minimal amount of time in the program, can hardly be expected to successfully reduce recidivism.

A third factor in effective programming is that programs must target offenders who are at sufficient risk for recidivism so that this reduction is measurable. Many offenders are at low risk for future recidivism. Treatment programs that provide intensive services for such offenders will show little reduction in future criminal activities because few of these offenders will recidivate anyway.

The final principle of effective treatment is the need to deliver treatment in a style and mode that address the learning styles and abilities of offenders. For example, more effective programs follow a cognitive behavioral and social learning approach rather than nondirective relationship-oriented counseling or psycho-dynamic, insight-oriented counseling.

Meta-analyses that have examined treatment studies have classified treatment programs as appropriate or inappropriate according to the above principles of effective treatment have found support for the importance of the proposed principles. In general, programs that follow the principles are found to reduce recidivism, although the extent of the reduction varies by study and principle being examined.⁶⁶

In summary, there is evidence that rehabilitation is effective in reducing the criminal behavior of at least some offenders. The evidence from the meta-analyses suggests that effective correctional treatment programs appear to follow some basic principles. In order to effectively reduce recidivism, treatment programs appear to need to:

- ! Be carefully designed to target the specific characteristics and problems of offenders that can be changed in treatment (dynamic characteristics) and those that are predictive of the individual's future criminal activities (criminogenic) such as antisocial attitudes and behavior, drug use, anger responses;
- ! Be implemented in a way that is appropriate for the participating offenders and utilizes therapeutic techniques that are known to work (e.g., designed by knowledgeable individuals, programming provided by appropriately educated and experienced staff, use of adequately evaluated programs) and require offenders to spend a reasonable length of time in the program considering the changes desired (deliver sufficient dosage);
- ! Give the most intensive programs to offenders who are at the highest risk of recidivism;
- ! Use cognitive and behavioral treatment methods based on theoretical models such as behaviorism, social learning or cognitive-behavioral theories of change that emphasize positive reinforcement contingencies for prosocial behavior and are individualized as much as possible.

More information is needed regarding: (1) how to ensure that treatment programs have adequate integrity; (2) what should be targeted in the treatment (antisocial attitudes, values, employment behavior, education, etc.); and (3) what method should be used to deliver the treatment (required staff training, outpatient, in-prison programs). In summary, there is relatively strong evidence that some treatment programs work for some offenders. At this point, we need more information about the specific characteristics of the effective programs and the most appropriate target populations.

Another method for drawing conclusions about the effectiveness of programs is an assessment technique developed by University of Maryland researchers.⁶⁷ Using this technique, MacKenzie and her colleagues assessed the effectiveness of various programs for reducing the criminal activities of known offenders.⁶⁸ For each study identified within a program area, the researchers rated the quality of the science used in the

research. Decisions about “What works, what doesn’t, what’s promising and what we don’t know” were made using clearly described decision making rules regarding the scientific merit, and the direction and significance of the results of the studies as well as literature reviews and meta-analyses.

Their conclusions regarding rehabilitation programs were:

What Works: The following are programs that can reasonably be expected to reduce recidivism in the kinds of social contexts in which they have been evaluated, and for which the findings should be generalizable to similar settings in other places and times.

- In-prison Therapeutic Communities (TC) and in-prison TCs with follow-up community treatment;
- Cognitive behavioral therapy: Moral Reconciliation Therapy and Reasoning and Rehabilitation;
- Non-prison based sex offender treatment programs;
- Vocational education programs;
- Multi-component correctional industry programs;
- Community employment programs.

What Doesn’t Work: The following are programs that are reasonably certain to fail to prevent recidivism in the kinds of social contexts in which they have been evaluated, and for which the findings should be generalizable to similar settings in other places and times.

- Increased referral, monitoring, and management in the community;
- Correctional programs that increase control and surveillance in the community;
- Programs emphasizing structure, discipline and challenge (boot camps using old-style military models, juvenile wilderness programs);
- Program emphasizing specific deterrence (shock probation and Scared Straight);
- Vague, nondirective, unstructured counseling.

What’s Promising: The following are programs for which the level of certainty available is too low to support generalizations, but for which there is some empirical basis for predicting that further research could support such conclusions.

- Prison-based sex offender treatment;
- Adult basic education;
- Transitional programs providing individualized employment preparation and services for high-risk offenders;
- Fines;
- Drug courts combining rehabilitation and control;
- Juvenile aftercare;
- Drug treatment combined with urine testing.

What's Unknown: Any program not coded in one of the three other categories is defined as having unknown effects.

- Intensity and integrity of substance abuse treatment programs receiving referred offenders;
- Anger/stress management programs;
- Victim awareness programs;
- Community vocational training programs
- Success of programs with different types of sex offenders;
- Life skills training programs;
- Work ethics training, in-prison work programs, halfway houses with enhanced services;
- Combinations of treatment with either control (ISP), (boot camps) or challenge (outward bound programs);

Rehabilitation programs that have specific characteristics are effective in reducing recidivism. Furthermore, research examining various types of programs can be used to determine which programs have been shown to be effective with specific types of offenders in particular contexts. In direct contrast to Martinson's earlier "Nothing Works" conclusion, most researchers in this field today agree that treatment programs can effectively reduce recidivism. However, similar to the earlier findings of Martinson, the quality of science is inadequate for drawing unambiguous conclusions about their effects because many of the programs are poorly implemented and funded.

7. UNINTENDED AND INTENDED CONSEQUENCES

7.1 Risk Management and the New Penology

According to Feeley and Simon, a new penology is emerging as a direct consequence of the changes in the philosophy and practice of corrections.⁶⁹ They do not believe that the shift is reducible to any one reigning idea (e.g., crime control or getting tough on criminals) but, instead, has multiple and independent origins. This new penology has a new language, new objectives and new techniques. It reflects a shift away from the traditional concerns of criminal law and criminology that focused on the individual and redirects it to calculating the risks posed by groups of people and managing them based on this risk assessment. The new focus on risk assessment has gained many adherents among criminal justice practitioners and the research community. According to Feeley and Simon, this new way of conceiving of the functions of criminal sanctions has contributed to the rise in prison populations.

Characteristic of the new penology is the replacement of moral or clinical descriptions of the individuals with actuarial discussions of the probabilities and statistical distributions. Improvement in statistics and the availability of computers have greatly facilitated this trend, as has the involvement of those interested in systems theory and operations research in public policy. However, even in the 1967 report, *The Challenge of Crime in a Free Society*, it is possible to see the beginnings of this change with the emphasis in the report on actuarial representation along with the commitment to rehabilitation.

The objective of the new penology is the identification and management of unruly people, not punishment or rehabilitation. While recidivism rates are still viewed as important, their significance has changed. Rather than focusing on recidivism rates as evidence of individual success or failure, the new penology views return to prison as evidence of the efficiency and effectiveness of parole officials to control people. The new penology perceives probation and parole as cost-effective ways of imposing long-term management and not as methods to reintegrate individuals into the community.

New techniques of more cost-effective forms of custody have been developed to manage offenders and to identify and classify risk. Management tools such as electronic monitoring or drug testing are not designed to rehabilitate, reintegrate, retrain or provide employment. They are justified as effective risk management. Incarceration is justified as a method to affect crime rates. Intermediate sanctions provide a “custodial continuum” for according groups differing control mechanisms based on their risk profiles.

Feeley and Simon provide many examples of the shift to the new penology in practice. Prisons are less apt to be classified according to specialized functions (rehabilitation for drug users or the mentally ill, vocational training, for young adults); now they are classified according to the level of security. Drug testing is used to classify probation and parole populations within a risk group.

The shift away from a concern for individuals to managing aggregates of dangerous populations has important implications for sentencing and corrections. Feeley and Simon’s most serious concern is how the new penology relates to the emergence of a new view of poverty in America. Some are beginning to view poverty as a problem with the “underclass,” a group permanently excluded from social mobility and economic integration. Most often this term is used to refer to those living in concentrated zones of poverty in central cities, separated physically and institutionally from the mainstream of American life. This is largely an African-American and Hispanic population. In contrast to other groups, the underclass is considered to be permanently marginal, without literacy, without skills and without hope. Other groups consider members of the underclass as different from themselves and dangerous.

If this is indeed a new view of poverty in United States, then the new penology may reflect, in part, these views and have implications about how this underclass should

be treated. From this perspective, the new penology will continue to focus on assessing risk and controlling behavior in lieu of attempts at rehabilitation, reintegration or education. Attempts at rehabilitation would be expected to fail for this population so the best that can be hoped for is management of risk. The “we versus them” philosophy will lead to neither sympathetic treatment by the criminal justice system nor a focus on rehabilitation. The impact on minority populations could be disastrous. Feeley and Simon are not suggesting that this is inevitable and permanent. They maintain the new penology changes the goals of corrections from rehabilitating individuals toward the, assumedly, more realistic task of monitoring and managing intractable groups. This change carries dangers that should be recognized.

7.2 Minority Populations

Nine percent of African-American adults were under some type of correctional supervision in 1996; only two percent of the white population was.⁷⁰ In comparison to white males, a much larger percent of the minority males were in prison in 1998. Expressed in terms of percentages, 8.6 percent of the African-American non-Hispanic males age 25 to 29 were in prison in 1997, compared to 2.7 percent of Hispanic males and 0.9 percent of white males in this age group.⁷¹

One of the original intents of sentencing reforms was to reduce racial disparity and discrimination. Whether this has been accomplished by the reforms is unclear. Evaluations of the effects of sentencing guidelines in both federal and state systems provide mixed results. The principal problem does not appear to be biased decision-making by criminal justice officials but rather the adoption of policies that disproportionately affect minority offenders.

African-Americans are over-represented in the U.S. prison system; this has been exacerbated by the rapid growth in prison populations in the past thirty years. The proportion of African-Americans in federal or state prisons or local jails has been increasing from approximately 30 percent in the 1970s to 40 percent in the 1980s and 50 percent in the 1990s.⁷² There are at least two reasons for this increase. First, the war on drugs has disproportionately affected African-Americans. The war was designed to be tough on crime and to assure the arrest, prosecution and imprisonment of street-level drug dealers. As reported above, the war has resulted in increased arrests of drug offenders; more of these arrests result in prison sentences than previously. In urban areas where such arrests are common, most dealers are poor and minorities. Thus, the increased incarceration of African-Americans is, in part, a by-product of deliberate strategies employed in the war on drugs.

Second, changes in sentences such as three-strikes laws, mandatory minimum sentences and truth-in-sentencing laws that abolish parole release and require inmates to serve longer sentences also disproportionately affect minority offenders. These laws increase the length of time offenders convicted of violent offenses must serve in prison.

African-Americans constitute a large percentage of the people arrested for violent crimes and, thus, they are disproportionately affected by these changes in laws. Whether these policies are a result of malign neglect⁷³ (failure to consider the impact of the policies) or attitudes towards the underclass (as suggested by the new penology) is debated. What is obvious is the fact that the increased incarceration rates have disproportionately affected African-Americans and, most likely Hispanics also.

7.3 Impact on Individual Offenders

The majority of offenders who are convicted of crimes spend their sentences in the community under supervision; the majority of those who are sent to prison will be released back to the community some day. Thus, there is a legitimate concern about how arrest, conviction and imprisonment affect individuals and whether these experiences have long-lasting effects on the lives of ex-offenders. There is evidence that such experiences with the criminal justice system reduce ex-offenders' subsequent incomes and employment. The reasons for these reductions are not always clear. Potential employment is limited through various state and federal laws that deny ex-offenders the right to vote or hold office in some places, engage in certain occupations, and the right to receive various public benefits and services. There also appear to be other non-legal influences that are less obvious. The stigma of prison may reduce the chances for employment or marriage prospects.

Imprisonment has some additional negative effects on offenders and their families. For example, imprisonment often leads to a breakup of family or other social relationships, and lessens parental involvement with children. Problems such as financial stability or single-parenting arise for family members who remain in the community. Prisons may affect an individual negatively by increasing ties to criminal compatriots or creating stress overwhelming an inmate's ability to cope. Inmates may learn antisocial and criminal attitudes from other inmates. These influences could lead to increased criminal activity upon release.

While there are many potential negative impacts of prison, the treatment literature demonstrates that rehabilitation programs in prison can have a positive impact by reducing recidivism. However, problems with overcrowding and finances frequently limit the number of offenders who receive treatment. Alternatively programs may be offered but so poorly implemented and of such limited duration that they could not be reasonably expected to have an impact on recidivism. This is particularly a concern when there is strong evidence that many of those who are arrested have used illegal drugs and would most likely benefit from drug treatment.

Drug-Involved Offenders. Some question the wisdom of changes in sentencing that have sent increased numbers of offenders to prison to serve longer periods of time, particularly in regard to the impact on specific types of offenders. They argue that the more structured sentences that eliminate discretion require prison sentences for some

offenders who do not appear to be best served with lengthy prison sentences. An increasing number of individuals are being sent to prison for drug offenses; many of them have substance abuse problems. Drug tests of arrestees provide statistical documentation of the large number who have used illegal drugs within a short time before their arrest. For years, the emphasis on incapacitation in prison and surveillance and control in the community meant that only a small percent of those with substance abuse problems actually received treatment. However, the growing research evidence that drug treatment is effective in reducing both drug use and criminal activities has led many correctional jurisdictions and the federal government to support treatment programs for drug-involved offenders.

Women Offenders. Many people also argue that the elimination of discretion in sentencing and release decisions is inappropriate for many women offenders. A high percent of women are serving time in prison for drug offenses or other nonviolent crimes. Many are not given treatment while they are in prison. Furthermore, the majority of the women are single mothers responsible for rearing their children. Yet, the limited number of women offenders means that they are sent to prisons far from their homes or they are shipped to other jurisdictions to serve time. This means that they do not see their children for long periods of time while they are incarcerated. The emphasis of community supervision on control and surveillance also presents problems for the women when they return to the community. Upon release from prison, they must return to their family responsibilities and also complete the requirements of supervision. For many these responsibilities present insurmountable challenges that they are unable to overcome.

7.4 Unintended Consequences for the Community

There is growing concern that the increased incarceration rates, especially the unprecedented rates in the U.S. today, may affect other institutions like families, communities or schools in a manner that increases crime and social disruption or that, at a minimum offsets any crime reduction effect of increased incarceration.⁷⁴ The argument is that social institutions like families, neighborhoods, communities, educational institutions and labor markets provide and enforce norms of behavior that keep most people from engaging in criminal activity. When the ties or bonds to these institutions are weakened or lost individuals become more marginalized, and such individuals have higher levels of violence and crime. Historical changes have occurred that have particularly impacted young African-American inner city males.⁷⁵ In the past twenty years, among African-Americans in inner cities, labor force participation declined dramatically and the percent of female-headed households increased. At the same time, participation in the drug trade increased. The violence attendant to the drug trade further weakened ties to the social institutions.

The high rate of incarceration is thought to have exacerbated the problems in the inner cities. In the past, when incarceration rates were low, members of some families

were imprisoned but this was sufficiently unlikely that it did not have a strong effect on communities. However, when the incarceration rates are so high that 10 percent of the adult males in a community are affected, and the majority of males have been in correctional institutions at some point in their lives, incarceration may adversely affect the community in ways that it did not in the past. Incarceration weakens families by removing men from families. The remaining family members may be less effective in supervising and controlling teenage children. Furthermore, incarceration reduces the supply of marriageable men, leaving more single mothers to support and raise the children. The very communities hit hardest by incarceration are those already negatively impacted by recent historical changes. These low-functioning neighborhoods are depleted and every available resource is needed.

From one perspective, the removal of criminal males may benefit a community because they are no longer committing crimes. On the other hand, this assumes that these offenders are solely a drain on the community. This may be a faulty assumption. Offenders, even while being involved in criminal activities, may provide important sources of support for the community or its individual members. Some ethnographic research demonstrates offenders represent both assets and liabilities to their communities. The point is not that they are model citizens but that they provide some resources to the community. If they are incarcerated these resources are withdrawn and they might not be restored even after the offender is released because ties are loosened or broken beyond repair. In any case, the importance of this discussion is the possibility that incarceration policies may have had negative effects on inner-city, underclass communities that exacerbated already existing problems. Thus as a direct consequence of correctional policies, these communities may experience more, not less, disorganization and crime.

8. EMERGING PARADIGMS

An examination of the state of corrections as we enter the 21st century reveals some emerging paradigms that may influence the future of corrections in the United States. The following is a short review of some of these new developments.

8.1 Restorative and Community Justice

In the past decade, simultaneously with tough-on-crime initiatives, restorative and community justice programs have been proliferating across the United States.⁷⁶ The programs provide new ways of viewing the justice system and how to respond to crime. The basic assumption is that crime damages individuals, communities, and relationships. Restorative justice includes all responses to crime aimed at doing justice by repairing the harm or healing the wounds that crime causes. Under this model, justice involves the victim, offender and the community in search for solutions. The solutions must promote repair, reconciliation and reassurance. From this perspective, justice requires more than

just punishing or treating those found guilty of lawbreaking. Crime harms the victim and the community so the primary goal should be to repair the harm and heal the victim and the community. Harmony should be restored between victims and offenders; victims should be repaid for tangible and emotional losses; offenders should take responsibility, recognize the shame and regain dignity.

Some examples of the types of programs included under the restorative justice model are:

- Victim-offender mediation. Offenders and victims meet with volunteer mediators to discuss the effects of the crime and to decide on restitution.
- Family group conferencing. Offenders, victims, families and other people significant in their lives meet to discuss the impact of the crime and restitution. These are usually organized and run by criminal justice officials or social service agencies.
- “Sentencing circles.” Decision-making involves the victim, the offender, their supporters, key community members and is open to everyone in the community.
- Reparative probation and other citizen boards. Offenders sentenced to probation are required to meet with a citizen board of volunteers, and together they draw up a contract that the offender must carry out.

Currently, except in a few locations, restorative programs are only used for a limited number of cases, and they are used more with juveniles than adults and for minor offenses rather than for serious crime. There is still a great deal of debate about how many of the restorative and community justice programs should be implemented and operated and by whom. Furthermore, it is often difficult to mobilize and involve the community, particularly in disadvantaged, inner-city environments where the need may be greatest.

Community justice has a less explicit definition and people mean many different things when they use the term. At the broadest level community justice includes any program, including restorative justice programs, involving or focusing on the community. Some use the term to describe a new community-corrections focus on problem solving, and community empowerment similar to how the term is used in the context of community policing. It is also used to describe strategies that focus on neighborhood locations that offer flexible working hours and services and close contact among supervising agents and various members of the community including offenders, victims, offenders’ families. Community service and payment of restitution by probationers or parolees are also included under the umbrella of the term community justice.

Community-corrections, variously called “neighborhood probation or parole,” “corrections of place” or “police-corrections partnerships,” is a new model of community

supervision involving engagement of the community in supervision similar to the way community policing has involved the community in policing. Some of the key components are: (1) strengthening the ties between law enforcement and the community; (2) offering a “full-service” model of supervision including both services and surveillance; and (3) attempting to change the lives of offenders through personal, family and neighborhood interventions. Rather than managing offenders in the conventional caseload model, agents are responsible for more actively supervising offenders, problem solving to initiate changes in offenders, and providing help for the offenders in obtaining employment, social support and needed treatment. Unlike earlier community corrections programs that focused on rehabilitation, the new community corrections focuses on involving the community (including law enforcement) to help with combinations of supervision, accountability, and rehabilitation, including coercing the offender into treatment. Thus, community corrections combines rehabilitation with strict control and uses the help of members of the community and technology to insure compliance.

Interest in police-corrections partnerships has been growing. The partnerships take various forms from enhancing supervision, to apprehending fugitives, sharing information and problem solving. Critics are concerned about due process rights of offenders because probation and parole agents have broad powers (such as to conduct warrantless searches) that officers do not have. Furthermore, some difficulties have arisen in the implementation of the partnerships related to coordinating activities, identifying goals and dealing with limited resources.

8.2 Reemerging Interest in Treatment

With the growing body of research demonstrating the effectiveness of treatment programs with some offenders, interest has returned to rehabilitation as a goal of sentencing and corrections. However, rather than accepting the rehabilitation model of the past, the new focus from researchers, practitioners, administrators and decision makers is on how rehabilitation can be combined with methods that either coerce offenders into treatment or demand accountability. The large number of drug-involved offenders in the criminal justice system and the mounting evidence that treatment can be effective for this group has encouraged many jurisdictions to initiate drug treatment programs in prison and require drug treatment during community supervision.

8.3 Specialized Courts

One response that has become particularly popular for managing and treating drug involved offenders is a specialized drug court. The wide acceptance of the drug courts as well as preliminary information about the effectiveness of the programs in reducing illegal drug use and other criminal behavior has led some jurisdictions to develop other types of specialized courts to address specific groups of offenders. Jurisdictions are

experimenting with specialized courts for: juveniles and families, probation violators, prisoner's re-entry from prison, and mental health clients.

Drug Courts were developed to manage correctional sentences given to low-level drug offenders. The courts stress rehabilitation, community integration and accountability. A judge manages a caseload of drug-involved offenders, requiring them to make regular appearances in court, requiring them to participate in some form of drug treatment, subjecting them to regular urine testing to determine drug use, and administering a predetermined set of graduated, parsimonious sanctions for violations of the contract with the drug court.

Juvenile and Family Courts. Many justice system practitioners have recognized that substance abuse problems are a problem with youth on juvenile, family or criminal dockets. To address the problems of the substance-abusing juveniles some jurisdictions have attempted to develop juvenile and family drug courts. However, the development of these court have proven to be a more complex task than the development of adult drug courts because juveniles may be less motivated to change, they are negatively influenced by peers, gangs and family members, and there are stringent confidentiality requirements for juvenile proceedings.

8.4 Reintegration and Re-entry.

How to facilitate the reintegration and re-entry of prisoners when they are released from prison is a critical issue for corrections today. Approximately 500,000 prisoners are released from state prisons each year.⁷⁷ According to one Bureau of Justice study, within three years of release, approximately 62 percent of these individuals will be rearrested for a felony or serious misdemeanor and 41 percent will be sent back to prison.⁷⁸ The risk of recidivism is highest during the first year after release.

The rapid growth in the numbers of parolees means that caseloads have grown correspondingly and supervising agents have limited time to spend with each individual. Caseloads on regular parole have grown from 30 parolees to 1 agent in the 1970s to 84 to 1 agent.⁷⁹

Frequently, serious offenders are released with little or no supervision because they have completed their sentence in prison. Many of those being supervised in the community are returned to prison for a new crime or violation of the conditions of supervision. As a consequence, a high percent of the people entering prison have failed community supervision. This revolving door has led many to rethink the processes of re-entry and to recognize the need to develop new concepts that will frame the mix of governmental, private, community, and individual responsibilities for the reintegration of prisoners into society. Various methods have been proposed for managing reentry including community corrections (described above), increased rehabilitation programs,

graduated sanctions that can be used before the parolee is returned to prison and re-entry courts.

Re-entry Courts. Modeled after the drug courts, the proposed re-entry courts would manage the return to the community of individuals being released from prison. The court would use its authority to apply graduated sanctions and positive reinforcement as well as to marshal resources to support the prisoner's reintegration to promote positive behavior by the returning prisoner. The goal would be to reduce the recidivism rate of returning prisoners and gather a broad-based coalition to support the successful reintegration of those released from prison. The court essentially performs a resource triage. Releasees who are the most dangerous are identified and they are given the most resources during supervision.

8.5 Technology

Perhaps the greatest impact on corrections in the 21st century will be new technology. One of the most immediate impacts is the use of computers to collect and share information. Theoretically, through the use of computer networks, information collected at one stage of criminal justice processing (e.g., arrest) can be shared as the offender progresses deeper into the criminal justice system. For example, risk and needs assessments, urine test results, or self-report substance-involvement determined pre or post sentencing can be shared with probation agents and prison administrators. Performance during probation and parole can be used to determine the management and treatment of those who are returned to prison. Information on releasees' performance during community supervision can be fed back to prisons and programs to give them information about what happens to people who leave (recidivism, employment, treatment, etc) and whether their programs are successful (in helping releasees get jobs, having an impact on recidivism). New software will permit correctional facilities to record and track inmate records, bed assignments, medical data, account information, etc. Barcode printing and scanning can be used to track inmate movements and perform cell checks. Information from the criminal justice system could be shared with other federal, state and local agencies (e.g., welfare, health, insurance, etc.) or with the public through the Internet (e.g., sex offender notification).

Technology will go far beyond computer networks. Surveillance techniques will benefit from the use of video, and new tracking technology such as cellular or satellite tracking. Prisons may be made safer through the use of digitized ID cards, hand held metal detectors, stab and slash resistant vests, and improved perimeter security systems. Drug use may be monitored more closely with hair testing instead of the more invasive urine testing. Problem solving and management will be facilitated by mapping techniques showing where most probationers and parolees reside. New medical techniques such as chemical castration or other drugs may be used to reduce sex offending or violent offending or to treat other behavior associated with criminal activity. Sex offenders or violent offenders' names and faces could be posted on the Internet. New trends in

medicine might cut correctional costs using telemedicine. DNA banks and profiles will help identify offenders and additional information provided by the Human Genome Project may have psychiatric and behavioral management applications.

Technology holds many promises. Despite its potential value in reducing crime and controlling criminals, technology also carries risks. These risks must be clearly identified and examined.

8.6 Evidence-Based Corrections

It is generally recognized that research is needed if we are to make reasonable, rational, cost-effective decisions regarding correctional policies. While many verbalized this interest in the past, it is only recently that corrections has been moving towards more research and research-based decision making. There is interest in using performance measures to hold departments of corrections accountable. Ideas such as Criminal Justice Extension Agents⁸⁰ and partnerships between state agencies and universities have been proposed as methods to encourage collaboration between researchers and criminal justice agencies. Criminal Justice Extension Agents, working with local, state and federal agencies and the community, would facilitate and promote the close exchange of information among these constituents. University research faculty would be informed of new developments in the community; practitioners, decision makers and others in the community would be informed about the latest research findings. The agents would work to facilitate the interaction between university researchers to increase the amount of research. They would be experts in effectively communicating research results to policymakers and citizens. Federal, state and local partnerships modeled after the Land-Grant University Agriculture Extension Agents (who provide a bridge between universities and the community) will insure adequate funding for long term continuing projects.

If we are to move ahead and not make the mistakes of the past, we must begin to use empirical knowledge to guide decision-making. For example, we should choose to implement programs that have been proven to work. A stronger relationship among universities and criminal justice agencies, community members, decision makers and others will be necessary as we enter the 21st century. When we want to win wars, walk on the moon or solve medical problems we use science. There is every reason to believe that scientific knowledge will be valuable in helping us to address the problems in sentencing and corrections.

9. SUMMARY

This paper has examined sentencing and corrections in the United States in the past thirty years – the goals, the policies and the impacts of the policies. As we begin the 21st Century, it is time reflect on the goals of sentencing and corrections. What are the goals? Have we achieved these goals? What can we do to achieve them? Perhaps most important is to begin to ask what society expects from corrections? Are these expectations feasible? If not, can we educate the public to understand the challenges of sentencing and corrections? If yes, how will we go about meeting the expectations?

¹ Numerical data given in this report and presented in tables and figures were taken from the following Bureau of Justice Statistics (Washington, DC: Bureau of Justice Statistics, U.S. Department of Justice) reports: Cohen, R.L. Probation and Parole Violators in State Prison, 1991; Beck, A.J. and D.K. Gilliard, Prisoners in 1994; Stephan, J.J. State Prison Expenditures, 1996; BJS, Correctional Populations in the United States, 1995; BJS, Correctional Populations in the United States, 1996; BJS, Prison and Jail Inmates at Midyear 1998; Ditton, P.M. and D.J. Wilson (1999) Truth in Sentencing in State Prisons; Bonczar, T.P.; and L.E. Glaze, Probation and Parole in the United States, 1998; Beck, A.J. and C.J. Mumola, Prisoners in 1998; Sourcebook of Criminal Justice Statistics, 1998. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.

² Blumstein, A. and A.J. Beck (1999) Population Growth in U.S. Prisons, 1980-1996. In Tonry, M. and J. Petersilia, (eds) *Prisons*. Chicago: University of Chicago Press.

³ State and federal prisons housed two-thirds of the incarcerated population. Jails, which are locally operated and typically hold persons awaiting trial and those with sentences of a year or less, held the other third.

⁴ Sourcebook, 1998.

⁵ Probationers include adult offenders whom courts place in community supervision instead of incarceration; parolees include those adults conditionally released to community supervision whether by parole board decision or by mandatory conditional release after serving a prison term.

⁶ Bonczar, T.P. and L.E. Glaze. 1999. Bureau of Justice Statistics.

⁷ Bonczar, T.P. and L.E. Glaze. 1999. Bureau of Justice Statistics.

⁸ Bonczar, T.P. and L.E. Glaze. 1999. Bureau of Justice Statistics.

⁹ Bonczar, T.P. and L.E. Glaze. 1999. Bureau of Justice Statistics.

¹⁰ Beck and Mumola, 1999. Bureau of Justice Statistics; Beck and Gilliard, 1995. Bureau of Justice Statistics.

¹¹ Blumstein and Beck, 1999.

¹² Blumstein and Beck, 1999.

¹³ Bureau of Justice Statistics, 1999. correctional Populations in the United States, 1996. Washington, DC: Bureau of Justice Statistics.

¹⁴ Sourcebook, 1998; Dollar comparisons are given in constant dollars.

¹⁵ Camp, G.M. and c. Camp. 1995. *The Corrections Yearbook 1995: Probation and Parole*. South Salem, NY: Criminal Justice Institute.

¹⁶ Stephan, J.J. 1999. State Prison Expenditures, 1996. Washington, DC: Bureau of Justice Statistics, U.S. Department of Justice.

¹⁷ Stephan, J.J. 1999.

¹⁸ Good-time and earned-time are reductions in the length of a prison sentence for satisfactory prison behavior (good time) or as incentives for participation in work or educational programs (earned-time).

¹⁹ Parole boards, in various forms, have the responsibility to set conditions of release for offenders under conditional or supervised release, the authority to return an offender to prison for violating the conditions of parole or supervised release, and the power to grant parole for medical reasons.

²⁰ Rothman, D.J. 1980. *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America*. Boston: Little, Brown.

²¹ President's Commission on Law Enforcement and Administration of Justice, 1967, p166-169.

²² Ibid. (President's Commission on Law Enforcement and Administration of Justice, 1967, p170-174)

²³ Martinson, R. 1974. "What Works? Questions and answers about prison reform. *Public Interest* 35(2):22-54; Lipton, D., R. Martinson, and J. Wilks. 1975. *The Effectiveness of Correctional Treatment: A Survey of Correctional Treatment Evaluations*. New York: Praeger.

²⁴ Martinson, R. 1974, p25.

²⁵ Sechrest, L., S. White, and E. Brown, 1979. *The Rehabilitation of Criminal Offenders: Problems and Prospects*. Washington, DC: The National Academy of Science.

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- ²⁶ Cullen, F. and P. Gendreau, 2000. *Assessing Correctional Rehabilitation: Policy, Practice, and Prospects*.
- ²⁷ American Friends Service Committee, 1971. *Struggle For Justice*.; Von Hirsch, A. 1976. *Doing Justice*. New York: Hill and Wang.
- ²⁸ Zimring, F.E., and G. Hawkins. 1995. *Incapacitation: Penal Confinement and the Restraint of Crime*. New York: Oxford University Press.
- ²⁹ Wolfgang, Figlio, and Sellin 1972. *Delinquency in a Birth Cohort*. Chicago, IL: University of Chicago Press.
- ³⁰ See below section on examining the effectiveness of incapacitation and deterrence for a discussion of the difficulties of identifying these career criminals.
- ³¹ Zedlewski, E. 1987. *Making Confinement Decisions*. Washington, DC: National Institute of Justice.
- ¹⁷ While habitual offender laws had been enacted by many states in the 1960, they became popular again during this time.
- ³³ Morris, N. and M. Tonry, 1990. *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System*. New York: Oxford University Press; Tonry, M. 1996. *Intermediate Sanctions*. In M. Tonry (Ed.) *The Handbook of Crime & Punishment*, New York: Oxford University Press.
- ³⁴ Ditton and Wilson, 1999. *Truth in Sentencing in State Prisons*, Washington, D.C. Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice.
- ³⁵ Ditton and Wilson, 1999.
- ³⁶ Index crimes are the crimes used by the FBI in the Uniform Crime Reports (UCR) as indices for recording changes in crime rates over time and consist of violent crime index offenses (murder, forcible rape, robbery and aggravated assault) and property crime index offenses (burglary, larceny-theft, motor vehicle theft, arson).
- ³⁷ Tonry, M. 1998. Introduction: Crime and Punishment in America. In M. Tonry (ed) *The Handbook of Crime & Punishment*. New York: Oxford University Press.
- ³⁸ Blumstein, A. and A.J. Beck, 1999. Population growth in U.S. prisons, 1980-1996. In M. Tonry and J. Petersilia (Eds) *Prisons*. Chicago: University of Chicago Press.
- ³⁹ To investigate this they used index offenses known to the police, since drug offenses are not one of the index crimes their research could not determine if drug offenses had increased during this time.
- ⁴⁰ Bonczar and Glaze, 1999.
- ⁴¹ Many of those who have violated parole have been rearrested for an new crime and therefore these are not just technical violations of conditions of parole.
- ⁴² Bonczar and Glaze, 1999.
- ⁴³ While discretionary release from prison by a parole board has been eliminated by these states, post-release supervision still exists and is generally referred to as community or supervised release.
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