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1622 Folsom Street
San Francisco, CA 94103
415/621-5661
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Collections

Nagin, Daniel. 1978. "General Deterrence: A Review of the Empirical Evidence." In A. Blumstein, K. Cohen, and D. Nagin (eds.), *Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates*. Washington, D.C.: National Academy of Sciences.

C. Ronald Huff (ed.). 1996. *Gangs in America* (2nd ed). Newbury Park, CA: Sage.

Legal

In re Baker. 71 Ill. 2d 480, 376 N.E. 2d 1005 (1978).

Internet

Book

Gonzalez, Rosalind. 1997. *The Town the Crime Forgot: Decriminalization in Dalton*. [Online]. Available: <http://www.flibilb.edu/bks/cr/gonzalez.html>.

Periodical

Daman, Terry. June 1995. "The Crime Management." *Coarse Criminologica* 13. [Online]. Available: <http://www.coarsecrim.cc/13/daman.html>. Accessed 6/10/97.

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Law of Rights. (No date) *United States Code*. Online, Title 24, P.71. Available: <http://www.law.cornell.edu/uscode/24/71.html>.

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Allocation of the California Drug War Costs: Direct Expenses, Externalities, Opportunity Costs, and Fiscal Losses

C. Daniel Vencill and Zagros Sadjadi*

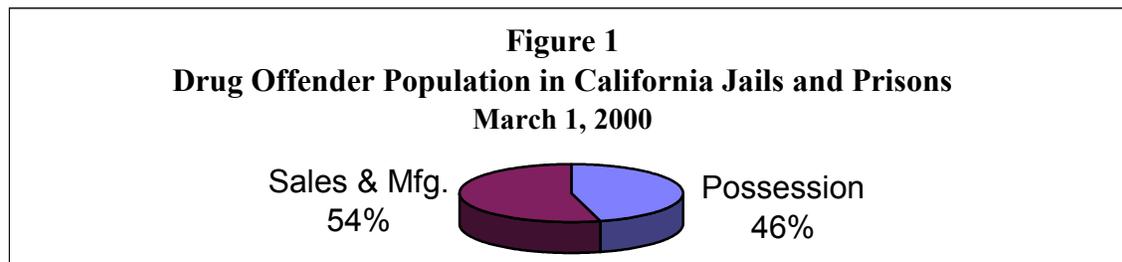
The public is worried about Willie Sutton, and we're locking up The Three Stooges.
- Franklin Zimring, Director of the Earl Warren Legal Institute, University of California, Berkeley

We have a failed social policy and it has to be re-evaluated. Otherwise, we're going to bankrupt ourselves. Because we can't incarcerate ourselves out of this [drug] problem.
- Retired General Barry R. McCaffrey, outgoing director of President Clinton's Office of National Drug Control Policy, New York Times, February 28, 2000.

I. INTRODUCTION

According to the U.S. Census Bureau (Summary, 2000), California residents in 1999 shouldered the eighth-highest per capita tax burden in the United States, paying \$2,183.96 per person. During that same year, California's income tax revenues grew 10.8 percent, from \$27.7 billion to \$30.7 billion (Franchise Tax Board [FTB], Report, 1999). Between 1977 and 1988, California's prison population quadrupled, increasing from 19,000 to 76,000. Over the next 11 years, this number would more than double: By the end of 1999 more than 160,000 people were in California's jails and prisons (California Department of Corrections [CDC], Prisoners, Table 8, 2000).

Drug control legislation in California has fueled a staggering increase in the number of drug offenders sentenced to prison: from about 1,000 in 1980 to more than 24,000 in 1999 (Males, Macallair, Rios, & Vargas, 2000). As a result of this incarceration boom, by 1999 nearly half of all drug offenders in state or federal custody in California were serving terms for possession of drugs, not for sale or manufacturing (CDC, Prisoners, Table 9, 2000). Figure 1 shows the primary offense of the drug population in California's prisons and jails on March 1, 2000.



Source: California Department of Corrections, California Prisoners and Parolees 2000 Preliminary, Table 9, 2000

* Authors are Professor of Economics and Lecturer in Economics, Department of Economics, San Francisco State University. Dr. Vencill is Director of the Criminal Justice Program. We would also like to acknowledge the valuable research assistance of Cheryl Rios and Betsy Teeter of the Justice Policy Institute; also, Mr. Ingmund Forberg, Dr. Vencill's Graduate Assistant, San Francisco State University. Michael Males, UC Santa Cruz, provided valuable data assistance.

By 2000, the CDC held 45,328 drug offenders, a record 28.3 percent of the entire prison population. Of these, 19,753 (12 percent of all prisoners) were in custody for possession of drugs that were entirely legal when the century began (CDC, Prisoners, Table 9, 2000). At 1,903 the number of marijuana offenders alone is near record high levels, having grown 12 percent since the passage of Proposition 215 (California's medical marijuana initiative), and having increased to nearly twenty times that of twenty years ago (Drug Sense Weekly, 1999).

California ranks first nationally in the rate of drug offenders sent to prison, regardless of race. This is the same California that has the fifth largest economy in the world (Liedtke, 2001).¹ Record rates of incarceration for nonviolent offenses seem somewhat archaic when viewed in the context of the state's historic achievements in innovation and productivity.

Supply-side policies aimed at eradicating drug traffic have been largely ineffective, as outgoing White House drug czar Barry McCaffrey recently admitted to *The New York Times* (Feb. 28, 2000). Retired General McCaffrey also suggests that a quarter of a million Americans in prison for drug offenses could be better dealt with in treatment programs, saving some \$5 billion a year in prison costs. Borders are increasingly porous as a result of globalization, and the resources and technology of organized crime have proved insurmountable obstacles to anti-drug warriors. Government prohibitionist policies have unintentionally increased black-market profits, luring a steady stream of new entrants into drug production and distribution. Some analysts have concluded that the drug war, dating back to President Nixon's administration, has already been lost. Technically, the drug war is at a stalemate, with no retreat, capitulation, or concessions offered by government. California's recent economic boom provided abundant tax revenues, bolstering the resolve of policy makers who continue to target drug supply chains.

Few Californians realize the enormous costs of drug law enforcement. Clearly, drug enforcement consumes a growing portion of state and federal tax revenues. Despite these growing expenditures, there have been few comprehensive attempts to estimate total policy costs. Obviously, quantifying intangible costs presents a challenge, but a more comprehensive effort must be forthcoming. The public and taxpayers are entitled to a full program accounting.

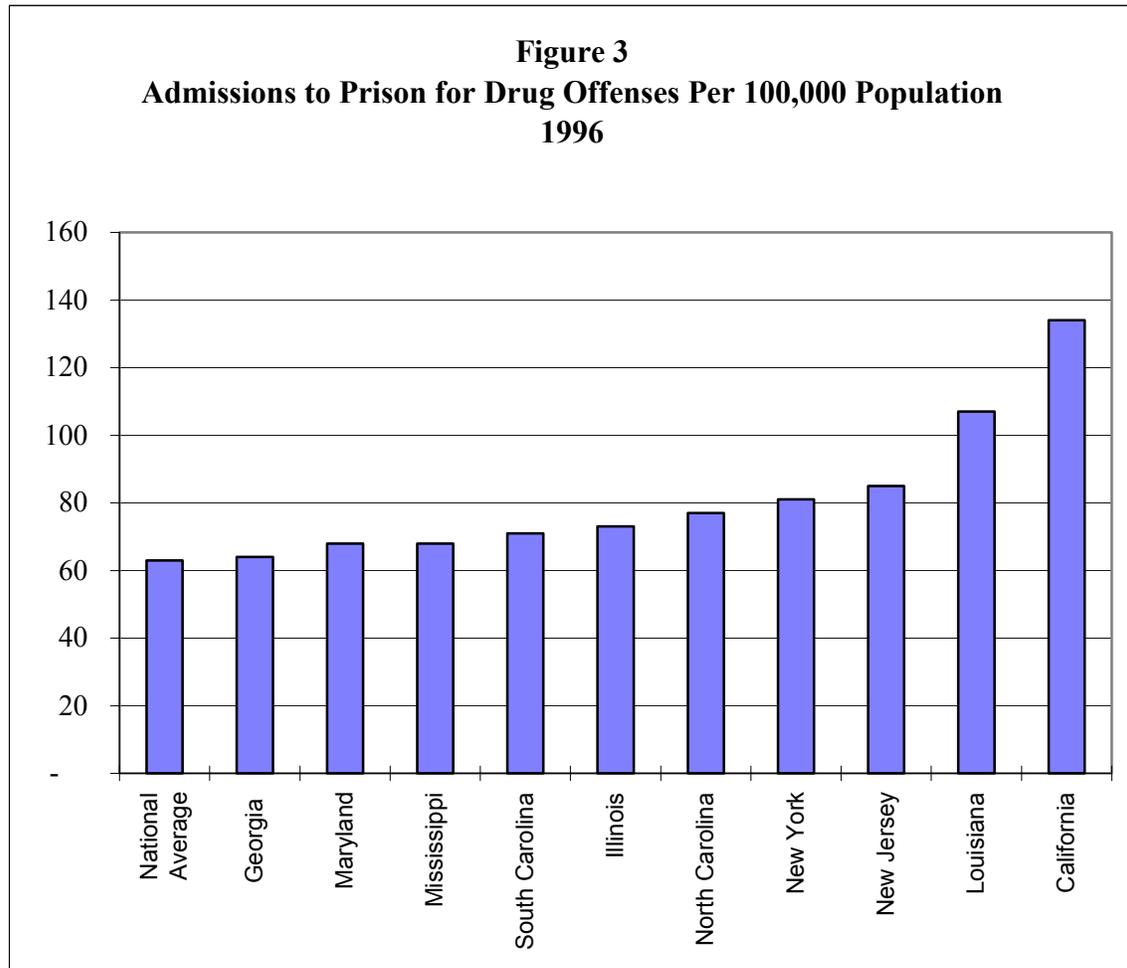
This study attempts to identify the total costs of California's drug war, based on expenditures by various federal, state, and local governments. Indirect costs are included: unintended consequences, opportunity costs, hidden costs, and spillover costs. The economic benefits of the drug war are also examined, including damages avoided by reducing crime committed by drug abusers. Benefits are viewed in the context of crime and incarceration costs avoided by adopting alternative approaches, like the harm reduction model. Finally, a cost-benefit summary quantifies the net costs of California's drug policy.

II. SUMMARY OF CALIFORNIA'S DRUG POLICY

In the past two decades, California policy makers have implemented an ambitious social experiment intended to control illicit drug use through law enforcement intervention. The unprecedented nature of this policy is evidenced by the escalating incarceration rates of drug law violators.

Escalation of drug policy enforcement in the 1990s involved a shift in California law enforcement strategy. Instead of targeting sellers and manufacturers, law enforcement agencies began shifting resources towards the arrest, prosecution, and imprisonment of drug users.

Drug law enforcement policies have earned California the dubious distinction of having the nation's highest incarceration rate for drug offenders: 134 per 100,000, compared to a national average of 63 per 100,000 (U.S. Dept. of Justice, Bureau of Justice Statistics, [BJS], 1999).



Source: U.S. Department of Justice Bureau of Statistics National Corrections Reporting Program, 1999

Felony Drug Arrests in California During the 1980s

The stringency of drug war enforcement in California has escalated steadily since the 1980s. Table 1 illustrates trends in the disposition of felony drug arrests in California between 1980 and 1990.

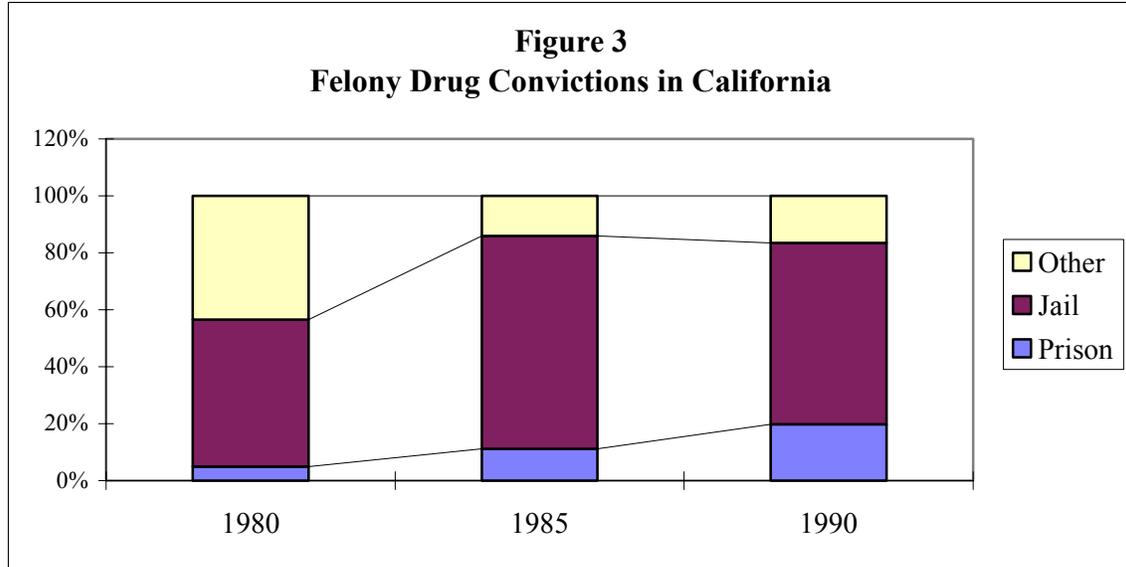
	<u>1980</u>	<u>1985</u>	<u>1990</u>
Number Convicted	18,800	30,100	53,200
% of Arrests Convicted	45%	48%	63%

Source: Reuter, 1992

The number of convictions increased by about 21,000 every five years between 1980 and 1990. Conviction rates (the proportion of arrests ending in convictions) climbed from 45 to 63 percent during the same period (Reuter, 1992). But the most dramatic change was in the disposition of felony drug convictions. The number of people sent to prison for drug offenses in California tripled between 1980 and 1985, and tripled again in the next five years (Table 2 and Figure 3).

	<u>1980</u>	<u>1985</u>	<u>1990</u>
State Prison	921	3,336	10,494
% of Convictions	5%	11%	20%
Jail	9,700	22,500	33,900
% of Convictions	52%	75%	64%
Other (Including Probation)	8,179	4,234	8,806
% of Convictions	44%	14%	17%

Source: Reuter, 1992 and authors' calculations



The number of adults convicted of drug offenses in California has almost tripled in recent years (Reuter, 1992). But focusing on arrest statistics alone fails to capture the full effects of increasingly stringent enforcement, a trend that has continued in California.

Table 3 shows that drug offenses accounted for about 1 in 3 adult felony arrests in California during 1998, and 1 in 3 convictions (California Attorney General, Crime and Delinquency, Table 40, 2000). Conviction rates of 65 to 70 percent were similar for drug and nondrug offenses. Although similar proportions of drug arrests and nondrug offenses enter California's criminal justice system, their respective sentences differ enormously, largely as the result of get-tough-on-crime legislation.

	<u>Arrests</u>	<u>%</u>	<u>Convictions</u>	<u>%</u>
Drug Offenses	94,118	33%	62,769	33%
Nondrug Offenses	187,199	67%	130,045	67%
Totals	281,317		192,814	

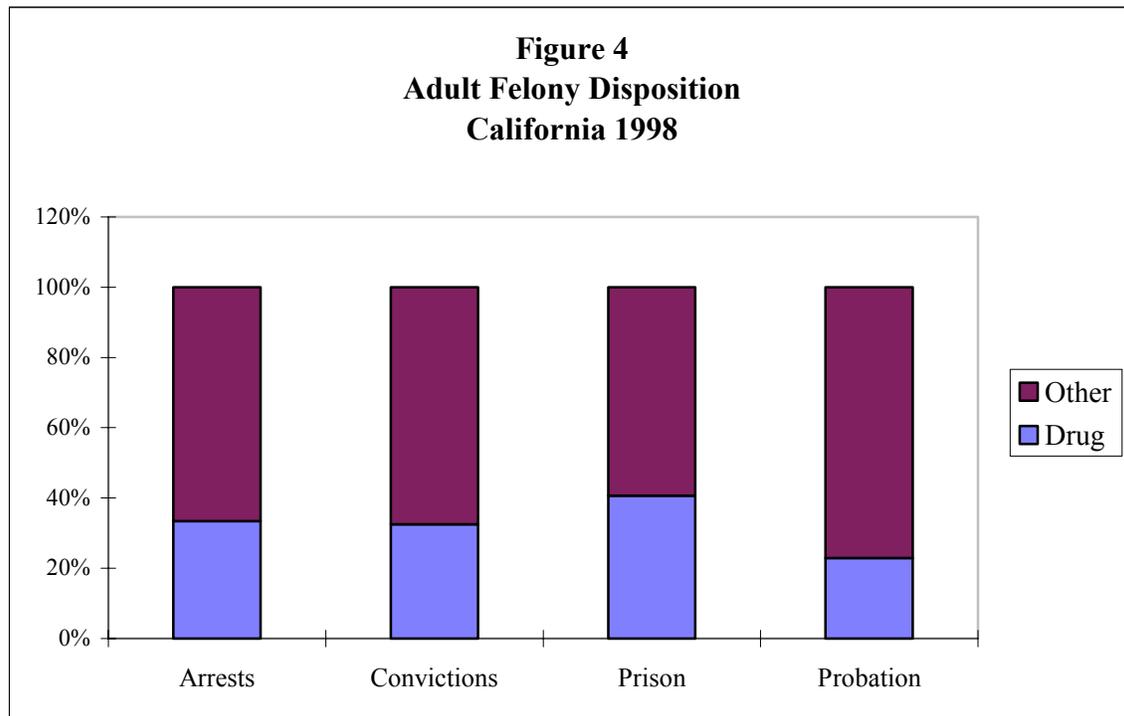
Source: California Attorney General, *Crime and Delinquency in California 1999*, Table 40, 2000

Drug convictions accounted for 41 percent of all adult felony convictions in California during 1998, but only 23 percent of drug convictions resulted in probation sentences. Table 4 summarizes these sentencing disparities for drug offenders (California Attorney General, Crime and Delinquency, Table 40, 2000).

	<u>Prison</u>	<u>%</u>	<u>Probation</u>	<u>%</u>
Drug Offenses	16,717	41%	4,397	23%
Nondrug Offenses	<u>24,398</u>	59%	<u>14,787</u>	77%
Totals	41,115		19,184	

Source: California Attorney General, *Crime and Delinquency in California 1999*, Table 40, 2000

Drug offenders in California are more likely to go to prison, and less likely to be released on probation, than are other felony offenders. Lost wages and tax revenues, lost educational and vocational opportunities, and broken families all result from imprisonment, whereas an offender sentenced to probation in the community has a better chance of maintaining these valuable social and economic ties. Figure 4 summarizes disposition data for adult felony drug arrests in California in 1998 (California Attorney General, *Crime and Delinquency*, Table 40, 2000).



One measure of the failure of California's drug policy is high recidivism rates, discussed in more detail in the section dealing with the parole system. But a brief look at California's recent parole violators returned to custody indicates that prison is having little impact on deterring drug use (California Attorney General, *Crime and Delinquency*, Table 3, 2000). Of the 112,494 inmates paroled from the Department of Corrections in 1999, 61,771 violated parole and were returned to prison (Table 5).² Almost half of these violations were drug-related (CDC, Facts, 2000).

March 1, 2000	
Total CDC Population	162,064
Convicted of Violent Offences	43%
Convicted of Nonviolent Offences	57%
Drug Offenders (December 31, 1999)	
Possession	20,716
Sales	20,538
Manufacturing/Other	<u>4,074</u>
Total Drug Offenders	45,328
Californians on Parole	112,494
Parole Violators Returned (1 Year)	61,771
Parolees Returned for Drug Possession	<u>48%</u>

Sources: California Department of Corrections, *Facts*, 2000, and *California Prisoners and Parolees 2000 Preliminary*, Table 9, 2000

III. SOURCES OF STATE REVENUE, CALIFORNIA FY 2000-01

The enforcement of California drug policy is estimated to cost taxpayers \$4 to \$5 billion a year. Who picks up the tab? What do people, small businesses, and corporations in California pay to imprison nonviolent drug offenders at record rates? Where is our money going? Are policies cost-effective, and do they accomplish what they are intended to do?

Drug policy enforcement in California is funded by a combination of state and federal budget allocations. These allocations are made from state and federal revenue, and mostly from income and sales taxes.

California Revenue: FY 2000-01 Projections

Between July 1, 2000 and June 30, 2001 the state of California is expected to collect more than \$86 billion in tax revenue (Legislative Analyst's Office, [LAO], Budget, Part 3, 2000). More than 70 percent of that revenue will come from just two sources: personal income tax (California state income tax), and sales and use taxes.³ Components of estimated revenue are summarized in Table 6.

<u>Source</u>	<u>Dollars (Billions)</u>	<u>% of Total</u>
Personal Income	\$ 38.4	44.4%
Sales and Use	\$ 23.8	27.6%
Motor Vehicles	\$ 8.4	9.7%
Bank and Corporation	\$ 6.2	7.2%
Tobacco Related	\$ 1.2	1.4%
Other	<u>\$ 8.3</u>	<u>9.6%</u>
Total Revenue	\$ 86.3	100.0%

Overview Of Income And Sales Taxes Revenues

For FY 2000-01, the Legislative Analyst's Office (LAO, Part 3, 2000) forecasts personal income tax revenues of \$38.4 billion, and a population of 34,629,000 (LAO, Budget, Part 2, 2000). Dividing revenue by population estimates the per capita tax burden:
 $\$38,400,000,000 / 34,629,000 = \$1,108.90$

The per capita state income tax burden in California FY 2000-01 is estimated to be \$1,108.90.

Californians' Contributions to Federal Income Tax Revenues

Because California's anti-drug efforts are funded by a combination of state revenues and federal reimbursements, the next step is to quantify our contribution to federal, as well as to state, revenues. The most recent detail available from the Internal Revenue Service (IRS, 1999) applies to tax revenue recognized in 1998 for income earned in 1997. Californians filed about 11 percent of Internal Revenue Service returns, and paid about the same proportion of federal tax revenue.

Year 1998 Number of IRS returns filed, U.S. total 224,453,283
 Number of IRS returns filed by Californians 25,847,472
 % of federal returns filed by Californians 11.5 %
 Federal tax revenues, U.S. total \$ 1,769,408,739,000
 Federal tax revenues paid by Californians \$ 199,106,247,000
 % of federal revenues paid by Californians 11.3 %

Using the 1990 state population of almost 33 million (Department of Finance [DOF], 1998) we can calculate the per capita Californian federal income tax burden during 1998.

Federal tax revenues paid by Californians \$ 199,106,247,000

$\$199,106,247,000 / 32,957,000 = \$ 6,041.39$

In 1998, Californians carried a per capita federal income tax burden of \$6,041.39. (This figure includes tax revenues paid by individuals, corporations, estates and trusts, and gift taxes.)

To estimate FY 2000-01 federal tax revenue and the consequent tax burden, we assume 46 percent growth between 1998 and 2000, which is the actual rate of increase for state tax revenues during the same period. This produces an estimate of federal tax revenues of more than \$290 billion paid by Californians. Dividing revenue by population produces an estimated per capita federal income tax burden of \$8,389.87 per Californian.

	Year 1998	Year 2000(Est.)
IRS income taxes paid by Californians	\$ 199,106,247,000	\$290,532,786,892
Per capita IRS income taxes paid by Californians	\$ 6,041.39	\$ 8,389.87

Sales Tax Revenues

The Legislative Analyst's Office projects year 2000 sales and use tax revenues of \$23.8 billion (LAO, Part 3, 2000). Using the LAO population estimate for the same period, the per capita sales tax burden is estimated:

$$\$23,800,000,000 / 34,629,000 = \$ 687.29$$

This results in an estimated year 2000 per capita California sales tax burden of \$687.29. Table 7 summarizes the estimated components of Californians' current per capita tax burden.

<u>Type of Tax</u>	<u>Tax Revenues</u>	<u>Per Capita Tax Burden</u>
State Income Tax	\$ 38,350,000,000	\$ 1,108.90
Federal Income Tax	\$ 306,940,285,877	\$ 8,389.87
State Sales Tax	\$ 23,800,000,000	\$ 687.29
Total 2000 General Revenue Tax Burden	\$ 366,770,265,877	\$ 10,186.05

Sources: Legislative Analyst's Office, Internal Revenue Service, and authors' calculations

During fiscal year 2000-01, the average person or business with taxable income earned in California will pay about \$10,000 in taxes to state and federal governments. This revenue will be added to existing balances to create a fund from which programs, including drug law enforcement programs, will be paid.

IV. THE FREEMAN PARAMETER: CALIFORNIA'S CRIMINAL PARTICIPATION RATES

The incarceration of otherwise employed (or employable) drug offenders removes productive workers from the workforce. We can begin to quantify this lost productivity and the associated tax revenues by calculating the portion of California's workforce that is in custody or under supervision.

Economist Richard B. Freeman (1996) compared the number of men nationwide in criminal custody or under supervision of the criminal justice system during 1993 to the number in the workforce during the same period. Freeman found that 1 man was in jail or prison for every 50 men in the workforce. And for each person in custody, another 2.1 were on probation, and 0.5 were on parole. Consequently, for every 15 men in the national workforce in 1993, there was 1 man under the supervision of the criminal justice system. Even more alarming was Freeman's conclusion that 1 of every 9 men between the ages of 18 and 34 was under supervision of the criminal justice system nationwide.

Table 8 confirms that Freeman's ratios held true in California in 1999, when there was one man in custody or under supervision for every 16 men in the workforce. This "Freeman Parameter" is useful in estimating the scope of lost production in California attributable to drug policy enforcement.

Males in California State and Federal Prisons	148,600
Males in California Jails	<u>65,769</u>
Males in Custody	214,369
Males on Probation	293,061
Males on Parole	<u>103,421</u>
Males on Probation and Parole	396,482
Total Males in Custody/Supervision	610,851
Calculation of the Freeman Parameter:	
Total Males Under Criminal Justice Supervision	610,851
Total Males in California Workforce	<u>9,595,715</u>
Males in Workforce / Males Under Supervision =	15.8
Freeman Parameter: For every 15.8 men in the California workforce in 1999, 1 man was in the criminal justice system.	

V. CALIFORNIA TAXPAYERS' CONTRIBUTIONS TO DIRECT COSTS OF THE DRUG WAR

In Table 9 we begin to estimate the current costs, by function, of California's drug policy enforcement during FY 2000-01. The first part of Table 9, "Custody and Supervision Costs," uses Department of Justice and Department of Corrections data to approximate the proportion of drug offenders within California's prison, parole, probation, and jail populations. (This analysis is limited to adult felony drug offenders in California. It specifically excludes offenders in jail or on probation for misdemeanor offenses, juvenile drug offenders, civil narcotic addicts, and drug offenders who served part of their sentence in jail.) Total custody and supervisions costs of \$1.79 billion are estimated in the first section of Table 9.

In the second section of Table 9, "Agency Drug Offender Costs," law enforcement, prosecution, public defense, and judicial costs are allocated to drug offenders, for a total cost that ranges between \$2.4 and \$3.2 billion. (Unfortunately, the most recent fiscal detail available for these agencies is for FY 1997-98. The decision was made to use these actual costs as conservative estimates of year 2000-01 costs. Forecasting the true costs is beyond the scope of this report.)

Table 9
Allocated Costs of Nonviolent Drug Offenders
California FY 2000-01

<u>Agency</u>	<u>All Offenders</u>		<u>% Drug Offenders</u>		<u>Average Cost</u>		<u>Total</u>	
Prison	160,687	x	28.2%	@	\$21,243	= \$	962,902,704	
Jail	76,311	x	30.4%	@	\$ 5,802	= \$	134,597,952	
Probation	338,785	x	30.4%	@	\$ 5,802	= \$	597,551,693	
Parole	117,612	x	38.4%	@	\$ 2,182	= \$	98,545,683	
Custody and Supervision Costs, Drug Offenders Only								\$ 1,793,598,033

Agency Drug Offender Costs, as % of 1997-98 Actual State Expenditures:

Law Enforcement (20% - 28.1%)	\$ 1,668,406,600 to \$ 2,344,111,273
Prosecution (24.4% - 28.1%)	\$ 261,496,580 to \$ 301,146,295
Public Defense (24.4% - 28.1%)	\$ 104,090,888 to \$ 119,875,162
Judicial (24.4% - 28.1%)	\$ 411,813,440 to \$ 474,260,560
Subtotal	\$ 2,445,807,508 to \$ 3,239,393,290
Custody/Supervision (detail above)	\$ 1,793,598,033
Total Allocated Costs:	\$ 4,239,405,541 to \$ 5,032,991,323

Per Capita Drug Enforcement Cost: \$122.42 - \$145.34

Average = \$133.88

Sources: CDC, *Prisoners and Parolees*, 2000; CDC, *Facts 2000*; U.S. Department of Justice, *Crime and Delinquency in California 1999*.

By combining all the cost components in Table 9, we estimate the current direct costs of California's drug war at \$4.2 to \$5 billion. This works out to a per capita drug war tax of \$122.42 to \$145.34. The average of this cost range is \$133.88.

Table 9 does not include costs incurred by the imprisonment of nonviolent, and otherwise productive, drug offenders. Unallocated costs which should be considered in our benefit-cost analysis include lost wages and lost employment taxes, and increased welfare support to spouses and children of drug offenders in custody. These costs are calculated in Tables 10 and 11, following.

In Table 10 we estimate the amount of income lost by incarcerated drug offenders who would otherwise be working, plus associated lost state income tax revenues. The total unallocated costs of employment interruption exceed \$800 million.

Table 10		
Unallocated Costs of Employment Interruption: Lost Earnings and State Income Tax Revenue California Prisons and Jails 1999/2000		
Number of Drug Offenders (Prisons and Jails)		
Females		15,526
Males		<u>52,986</u>
		68,512
Employable Population in Custody		
Females	15,526 x 53.6% =	8,322
Males	52,986 x 53.6% =	<u>28,401</u>
		36,723
Lost Earnings of Employable Offenders		
Females	8,322 x \$16,648 = \$	138,542,149
Males	28,401 x \$22,593 = \$	<u>641,657,728</u>
Total Lost Income		\$ 780,199,878
Lost State Income Tax Revenue		
Females	8,322 x \$227.68 = \$	4,591,146
Males	28,401 x \$659.56 = \$	<u>26,655,888</u>
Total Lost Tax Revenues		\$ 31,247,034
Unallocated Costs of Employment Interruption		
Lost Earnings		\$ 780,199,878
Lost Tax Revenues		<u>\$ 31,247,034</u>
Total		<u>\$ 811,466,912</u>

Sources: California Department of Corrections; Alissa Riker; U.S. Census Bureau; and State of California Franchise Tax Board

Number and Gender of Drug Offenders. Using Table 9's calculation of drug offenders in prison (28.2 percent of 160,687 = 45,313) and in jails in California (30.4 percent of 76,311 = 23,199), we estimate 45,313 prison + 23,199 jail = 68,512 drug offenders in custody in California. According to CDC, females account for about 7 percent of the general population but 23 percent of the addict population (CDC, Facts, 2000). An October 2000 census of San Francisco County Jails confirms the latter number: women constituted 22 percent of the county inmate drug offender population (Riker, 2000). Twenty-three percent of the 45,313 prison drug population = 10,422 females drug offenders in prisons, plus 22 percent of the 23,199 drug offenders in California jails = 5,104, for a total of 15,526 female drug offenders in custody in California. From this, we derive 68,512 total - 15,526 females = 52,986 male drug offenders in custody.

Employable Population in Custody. The Department of Corrections (Facts, 2000) estimates that 53.6 percent of offenders were employed prior to incarceration. Applying this ratio to the female drug population we calculate 15,526 x 53.6% = 8,322 women in custody on drug charges who would otherwise be employed. Similarly, we calculate the male component as 52,986 x 53.6% = 28,401. Combining the two (8,322 + 28,401) we estimate that 36,723 drug offenders are in custody who would otherwise be employed.

Lost Earnings of Employable Offenders. According to CDC (Facts, 2000) the average inmate has a seventh-grade education, so an estimate of lost wages is obtained from Census Bureau data (Money Income, 2000) for workers with less than a ninth-grade education. (These earnings figures are national, and so may underestimate California wages.) The average full-time wage for females was \$16,648, and \$22,593 for males. Multiplying these amounts by the number of incarcerated drug offenders results in $(\$16,648 \times 8,322) + (\$22,593 \times 28,401) = \$780,199,878$ in lost income per year.

Lost State Income Tax Revenue. California's Franchise Tax Board (1999) publishes income tax rate schedules for wages earned during 1999. Tax rates differ for married and for single earners, so for our calculations we use the average of the two rates. For female earnings of \$16,648 the single rate is \$363.74; the married rate is \$227.68; the average is \$295.71. For male earnings of \$22,593 the single rate is \$659.56 and the married rate is \$346.58, for an average of \$503.07. Multiplying the number of otherwise employable drug offenders in custody by the average income tax contribution of each offender estimates $(8,322 \times \$227.68) + (28,401 \times \$659.56) = \$31,247,034$ in lost state income tax revenues. The combination of lost wages and state income taxes on those wages, attributable to the income interruption of incarcerated drug offenders, exceeds \$800 million a year.

In Table 11 we next examine the effects of lost earnings on the offender's family. Using Table 10's estimate of 52,986 incarcerated male drug offenders, we separate the married males (20% of male offenders) to arrive at an estimate of 10,597 affected families. Assuming that 60% will become welfare dependent, we estimate 6,358 additional cases on welfare caseloads. Using the 1999 welfare match amount of \$4,800 per family per year, we estimate that increased social support of incarcerated drug offender's families cost California more than \$30 million in 1999.

Table 11
Unallocated Costs of Increased Social Support
California 1999

Additional Welfare Support to Spouses of Drug Offenders:	
Male Drug Offenders (prisons and jails)	52,986
Married	<u>x 20%</u>
Separated Spouses/Families	10,597
Welfare Eligibility	<u>x 60%</u>
Additional Welfare Cases	6,358
State Welfare Match	<u>x \$ 4,800</u>
Additional Welfare Support	\$30,519,936

Unallocated costs of incarcerating drug offenders in California totaled \$842 million in 1999.

VI. IMPLICATIONS: UNINTENDED CONSEQUENCES AND COLLATERAL DAMAGE

Corruption Costs Precipitated by the Drug War

A significant implicit cost of the drug war is the bribery and corruption of police, border patrol, and judicial officers. Law enforcement and judicial agents may be tempted by profits engendered by a prohibitionist policy which inflates the price of street drugs far above their pharmacological production costs. Another significant issue is that of money paid by authorities to criminal "informants." There are many surveys of the economics of corruption (Vencill, 1997).

The police often resort to unorthodox methods to arrest individuals for possession. The test for drug possession is formally quite demanding: immediate or exclusive access (to the drug or the dominion), plus control. Search and seizure powers of street patrol officers are effectively limited by probable cause standards. But people can be profiled or stopped for reasons unrelated to drugs, searched, and then charged if drugs are found. However, most of these arrests by street patrol officers do not lead to incarceration. Long-term covert operations are rare in drug operations. Most crimes are solved by retrospective investigation, a method which is only effective in those rare drug cases which have an informant well-placed in the distribution network. More commonly, an informant is planted in order to get information for a search warrant. Often, the key to drug law enforcement is the use of informants who cooperate in exchange for reduction of their own sentences.

The practice of using informants creates enormous potential for gross error, injustice, and corruption. The most important police strategy for arresting the larger dealers is to "buy and bust." After buying drugs several times to establish a credible business relationship, the undercover police officer arranges a new sale and makes an arrest after the money

and drugs have changed hands. This procedure offers numerous opportunities for corruption, since the police collect huge amounts of untraceable cash. Los Angeles Police Department's recent scandal in the Rampart Division is a prime example: millions of dollars of drugs sit in police evidence rooms, offering additional profit opportunities in theft and sale by police officers.

Policy and Funding Decisions

The removal of nonviolent drug offenders from California's labor force creates enormous opportunity costs in lost GDP, resulting in a sizable fiscal tax drain. These lost "opportunity taxes" could otherwise be applied to vital projects, or used to ease the tax burden by lowering tax rates. California's crumbling roads and potholes cost drivers more than \$1 billion a year, teachers' salaries are notoriously low, after-school programs have been canceled, and so on. Yet, this sizable drug incarceration tax drain is never calculated or reported.

The expansion of California's drug war has fueled the growth of a strong supporting constituency despite the limited success of supply-side tactics at eradicating, or even interdicting, drug traffic. The steady growth of legitimate state and national economies (with their attendant revenue streams) has bolstered the resolve of policy makers, and fueled a substantial and steady increase in drug war budgets. Moreover, this 30-year domestic struggle has given birth to strongly vested interests, in the form of advocacy groups which benefit richly from the battle.

America's drug war claims to target the economic costs of drug abuse, and the federal government has sponsored several estimates of these costs. In 2000, the National Drug Control budget was nearly \$20 billion and countless billions more were spent by states and local governments (Lindesmith Center - Drug Policy Foundation, 2000). However, these estimates are deceptively low because they include only the costs of controlling abuse, while ignoring societal costs resulting from drug abuse. The cost of crime associated with drug abuse has been estimated to be as high as \$13 billion, 90 percent of which is attributed to public expenditures on law enforcement. No value has been placed on safety or amenity.

Capital Construction Costs

Prison construction costs have deliberately been excluded from our calculations of the tax burden generated by California's drug policy. Although it might technically be more correct to allocate to each taxpayer a portion of the amortized new prison construction costs, this approach is problematic for several reasons.

First, prison overcrowding and court-mandated oversight of specific conditions, have necessitated the early release of some prisoners, including violent felons, to make room for the flood of newly sentenced nonviolent drug offenders. Early release has been used as a short-term solution to a long-term problem, obviating the need to increase prison capacity.

Also, had nonviolent drug offenders not been sentenced, and new prison space not been built, taxpayers would still have been taxed at the same marginal rate, but the tax revenue, not otherwise diverted, would have gone to California schools, primarily higher education. (See Gemello, Osman, and Jonas, 1996; Osman and Vencill, 1998; and Osman, 1999.)

Gemello et al (1996) show that the prison construction boom will increasingly crowd out spending on education, including new construction and school building maintenance. Between 1984 and 1994 state funding for higher education fell almost 17 percent, while the corrections budget tripled.

In the mid 1990's, California voters who were fed up with years of increases in violent crime rates heartily endorsed get-tough-on-crime legislation. But laws like "Three Strikes" failed to differentiate between violent career criminals and nonviolent drug users. Consequently, California's prison system was filled to overflowing, and costs went through the roof.

Rand (1994) estimates that funding enforcement of "Three Strikes" costs the average California taxpayer as much as \$300 per year. Using the earlier estimate of \$300 per year in prison construction costs borne by California taxpayers, we see that each taxpayer pays \$84 dollars a year just to finance the housing of drug war prisoners, who currently constitute 28 percent of the prison population ($\$300 \times 28\% = \84). The number of incarcerated nonviolent drug users and addicts, particularly those sentenced 25 years to life for possession or trafficking in small quantities to support their personal addiction, threatens to swamp the state's criminal justice system.

The Rand report shows that corrections will consume about 18 percent of California's General Fund appropriations by 2002 (Rydell and Everingham, 1994). It also estimates that funding Three Strikes alone will necessitate a 9 percent increase in California's corrections budget. Where will this increase come from? Funding for K-12 education was protected by voters endorsement of Proposition 98, which set minimal levels of funding. And because school enrollment is expected to grow faster than the tax base, funding for K-12 education will have to increase from the current 36 percent to 47 percent by 2002. Funding for higher education has been squeezed to accommodate the burgeoning corrections budget. In the 132 years prior to 1984, California built 12 prisons and 28 universities; from 1984 to 1995, California constructed 21 new prisons and only one university (Macallair, 1996).

If drug offenders as a percent of the institutional population remain constant, by 2002 about 5 percent of General Fund appropriations will go to the Department of Corrections to supervise drug offenders, at the expense of higher education and other programs.

Resume Damage and Reduction of Lifelong Earnings

People with a jail or prison record often experience resume or reputational damages upon release, reducing their lifetime earning potential and consequent tax contributions to their

communities and the state of California. A number of studies have confirmed that time spent in prison directly increases the likelihood of subsequent disengagement from the legal economy. Geschwender (1998) used the National Longitudinal Study of Youth to show that job termination (presumably including loss due to incarceration) has a serious negative impact on lifelong earnings. A thirteen-year panel study examined data from California's Departments of Justice and Employment Development to show that merely being arrested and charged (without being convicted or incarcerated) is seriously detrimental to occupational outcomes and earning capacity (Grogger, 1995). Hagan and Dinovitzer (1999) describe further damages to family income, parenting functions, future employability, and community income from high imprisonment rates mandated by California's drug war.

Reluctance to disclose a criminal record may deter some ex-offenders from seeking a higher-paying job or any job requiring a background check. Criminal convictions are a matter of public record, and job applications commonly ask prospective applicants if they have ever been convicted of a crime. A prison record is an automatic disqualification for many occupations: safety, teaching, the handling of money, jobs involving children, elder care, fiduciary trust, confidential data, security jobs, law enforcement, and so on.

Resume damage may be concentrated in areas that can least afford the costs: those with broken homes, no father present, and high levels of welfare dependency. Hagan and Dinovitzer (1999) note that as many as 80 percent of inmates in one penal institution in New York come from (and will return to) just seven communities in New York City. In California between 1985 and 1992, Los Angeles County accounted for 12 percent of the state's population, but was home to 37 percent of all offenders admitted to state prison.

Hagan and Dinovitzer (1999) emphasize that the incarceration of working-age youths imposes significant collateral costs on their communities and the state, ensuring a continued drain on earnings potential and tax revenues.

The permanent impact of conviction and imprisonment on legal-sector earnings capacity has been established by Freeman (1992) and by Sampson and Laub (1993). Freeman's Boston Youth Survey analysis indicated that youths incarcerated for drug possession had exceptionally low chances for employment. Similarly, his National Longitudinal Survey of Youth analysis showed that men who had been jailed or on probation experienced massive long-term employment losses (Freeman, 1992). Other data show that while more than half of state prisoners are employed before going to prison or jail, only about one-fifth of those on parole are employed following imprisonment (Irwin and Austin, 1994). With reduced post-prison employment prospects, significantly lower relative wages, and custodial contact with more experienced criminals, the prison experience increases the likelihood that post-release drug offenders will participate in illegal markets.

Table 10 addressed lost income and California tax revenues attributable to the incarceration of nonviolent drug offenders. But damage to an offender's post-release earnings capacity must also be considered. Resume damages are estimated to reduce annual earnings by about \$5,000. Extending this \$5,000 annual earnings loss over a post-

release work life (and possible re-incarceration period) of 25 years, at a real net discount rate of 3.5 percent, we estimate each affected drug offender realizes lifelong resume damages with a present value of \$82,408.

This earnings loss applies not just to the presently incarcerated population, but also to drug offenders on probation and on parole, whose employment prospects are more immediately affected by a criminal conviction. For this reason, to calculate total lifelong earnings damages attributable to California's incarceration of drug offenders, we must consider drug offenders in prison, in jail, on probation, and on parole. From Table 9 we derive an estimate of this affected population: 45,313 in prison + 23,199 in jail + 102,990 on probation + 45,163 on parole = 216,665 Californians with drug conviction records.

The earlier estimate of 53.6 percent employed or employable is unreasonably high for this population, especially when considering a 25-year work future. To ensure conservatism, we assume that only 20 percent of this population has a potential 25-year work life ahead of them. Twenty percent of 216,665 offenders with potential lifelong earnings damages = 43,333 people. If each realizes lifelong earnings damages with a present value of \$82,408, the total damage is \$3,571,001,126. We conclude California's drug enforcement policy will be responsible for \$3.5 billion in resume damages over the next 25 years. This amount accumulates as new offenders are added to the pool.

Having estimated lifetime earnings reductions for California's currently convicted drug offenders, we next consider the damages to those who will be arrested in the future. The enactment of Proposition 36 on July 1, 2001 will have a profound impact on the state's rate of incarceration. Because the measure mandates substance abuse treatment in lieu of incarceration, the dollar amount of earnings interruptions should be much less than in the past. And upon successful completion of treatment, offenders may be able to have the drug conviction erased from their record, theoretically avoiding potential resume damages. Although we have established aggregate resume damages do enormous collateral harm to Californians and the state's economy, the future may be much brighter.

VII. CALIFORNIA DRUG WAR BENEFITS

Quantifying the benefits of California's drug war is the next step in calculating cost-benefit ratios. One benefit is obvious: Incapacitating drug abusers and addicts affords, via forced abstinence, an opportunity to detoxify, dry out, get help, reform, or kick the habit altogether. Although the benefits of incarceration may seem more obvious than the often-hidden costs, they should be examined and quantified no less critically.

Expected Reduction in Level of Crime

It is commonly believed that drug use causes an increase in serious crime, usually committed to finance a drug habit. Incarcerating drug users and dealers, breaking up drug gangs, and punishing participants in drug markets is assumed to reduce street crime and turf war violence, thereby decreasing drug demand and drug profits. If incarcerating large numbers of nonviolent drug users actually did result in significant reductions in crime,

incarceration would be a measurable benefit of the California drug war. However, no study provides conclusive evidence that a reduction in crime is due to increased incarceration of nonviolent drug offenders. In fact, a recent report concludes just the opposite. *Drug Use and Justice: An Examination of California Drug Policy Enforcement* examines in detail the relationship between drug enforcement policies and crime rates at the county level in California, and concludes that "stricter drug enforcement is not associated with declines in crime rates or drug use" (Males et al, 2000, p. 7). If locking up drug offenders does not predictably reduce crime, what does? What is the nature of the connection between drug use and crime?

The complex relationship between drug use and criminal behavior precludes an exact determination of the extent of drug-related crimes. As the Office of National Drug Control Policy has concluded (ONDCP, 1999, p. 26),

Drug use and trafficking are illegal, but it is difficult to obtain reliable estimates of the number of transactions between buyers and sellers, or the number of times a user or trafficker possesses drugs for use and sale. Each of these events constitutes a drug-related crime. However, there also are several types of indirect drug-related crimes, including those stemming from the pharmacological effects of drugs (e.g., violent behavior); crimes related to a user's need to support his or her drug use (e.g., stealing, prostitution, and robbery); and crimes related to establishing and maintaining the retail market (e.g., cultivating marijuana and gang warfare over distribution areas). Finally, there are drug-related crimes to support the operation of the illicit drug industry (e.g., money laundering and bribery). Thus, because the consequences of drug use fan out into society and can lead to so many types of individual and systemic crimes, precise estimation of the extent of drug-related crime is impossible.

In 1986, researchers Linsky and Straus identified 15 social stress factors that predicted state-level crime rates, and none included drug use (cited in Irwin and Austin, 1994, p.162). The factors are business failures, unemployment claims, workers on strike, personal bankruptcies, mortgage foreclosures, divorces, abortions, illegitimate births, infant deaths, fetal deaths, disaster assistance, state residency of less than 5 years, new housing starts, new welfare applications, and high school dropout rates.

The inescapable conclusion of many experts is that drug use in itself does not lead to criminal behavior as a pharmacological side-effect, but that drug prohibition creates strong economic incentives to commit crimes. Prohibitionist policies inject enormous profits into this illicit market, and violent criminal behavior is the predictable result. Because drugs are illegal, their street prices become artificially and wildly inflated by market demand, anywhere from 15 to 300 times the actual cost of manufacture.

Benefits of Paroling Drug Offenders: Systemic Failure

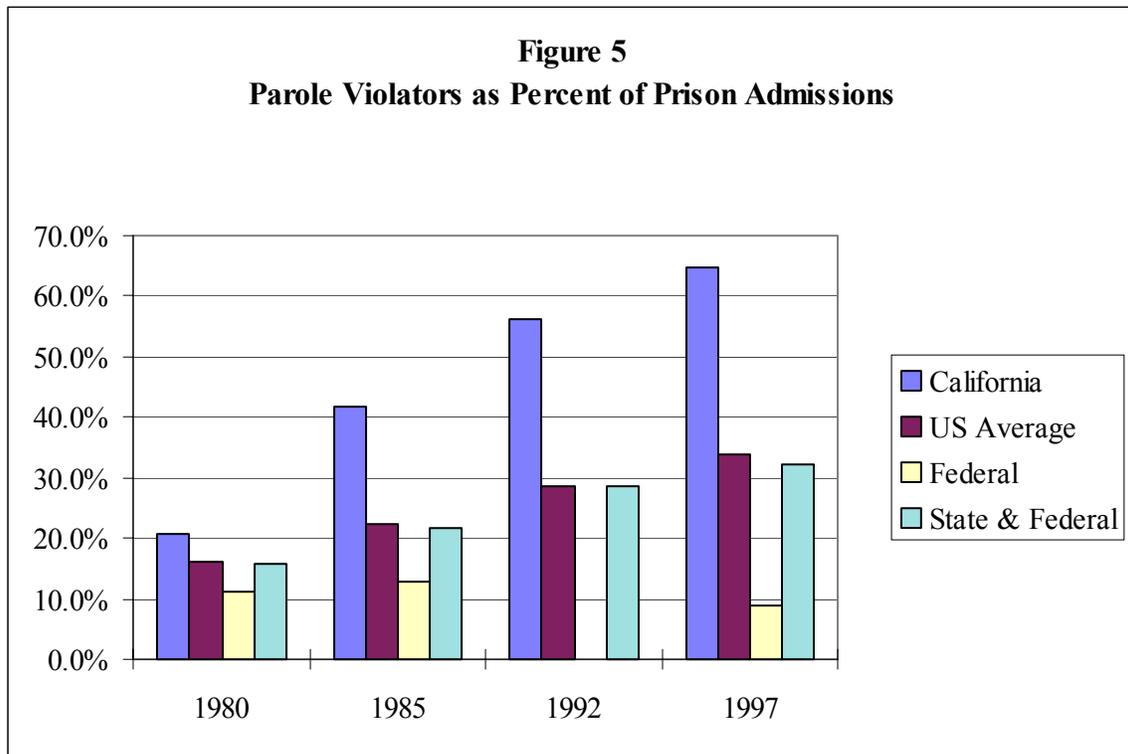
Does increasing the use of parole for drug offenders result in cost savings to taxpayers? In 1997, the parole population in Texas declined by 2.8 percent, while California's parole population increased by 4.9 percent (Petersilia, 1999). Has this increased rate of parole

resulted in fewer returns to custody? Table 12 demonstrates that since 1980, parolees have comprised an increasingly larger segment of admissions to California's prisons, especially in comparison to other jurisdictions. The state's high recidivism rates for drug offenders mean that increasing numbers of addicts and users are returning to prison, which we attribute to a total systemic failure of the parole system, rather than to the incorrigible behavior patterns of drug offenders.

	<u>1980</u>	<u>1985</u>	<u>1992</u>	<u>1997</u>
California	20.7%	41.7%	56.3%	64.7%
Average:				
All fifty states	16.1%	22.3%	28.6%	33.8%
Federal Only	11.1%	12.9%	n.a.	9.0%
State + Federal	15.8%	21.6%	28.6%	32.3%

Source: Bureau of Justice Statistics (various years) and unpublished data from 1997 contained in Petersilia, Table 5, 1999.

Figure 5 depicts this increased rate of parole failure in California during the last 17 years.



Clearly, the California parole system is failing to help offenders or to protect the public, and so major reform is indicated. Overworked parole agents, burgeoning caseloads, and insufficient funding all share the blame. More than 80 percent of parolees are seen less than twice a month by caseworkers. The funds available to support their supervision and services are generally less than \$1,500 per offender per year. By contrast, effective treatment programs are estimated to cost \$12,000 to \$15,000 per client year (Institute of Medicine, 1990). As Petersilia concludes, "It is no wonder that recidivism rates are so high. In a sense, we get what we pay for, and as yet, we have never chosen to invest sufficiently in parole programs" (1999, p. 514).

VIII. CALCULATION OF BENEFIT-COST RATIOS OF CALIFORNIA'S DRUG WAR

We next compute a range of benefit-cost ratios using the measurable economic variables addressed in this study. This calculated net benefit provides a working estimate of the drug war payoff, albeit incomplete. Several intangible benefits may be missing, as are a myriad of collateral costs and social costs. We attempt to quantify only those hard costs and benefits most relevant to Californians. (It should be noted that many economists reject the cost-benefit methodology entirely, due to inherent measurement problems. The results must be tempered with caution, as they are obviously quite sensitive to the set of assumptions employed.)

How much crime has been avoided as a result of California's drug policy? In Table 13 we estimate the value of property transfers avoided by the incarceration of drug offenders. Using prison and jail data from Table 9, we estimate that there are 68,512 drug offenders currently in custody in California. Using an unemployment rate of 26% among this population, 17,813 otherwise unemployed drug offenders are incarcerated in California. (Unemployment here refers to workers who actively seek legitimate employment, a separate group from those are unemployed and do not seek work.)

A hypothetical drug habit of \$250 per week, at 52 weeks per year, creates a \$13,000 a year drug habit. Absent a source of legal income, assume the entire amount must be stolen in the form of property. (Some of the amount would actually be borrowed, bartered, stolen in cash, or earned in petty drug dealings to friends or on the street.) Assuming that fencing stolen goods yields 25% of fair market value, a drug user would have to steal property valued at \$52,000 to support his habit for one year ($\$13,000 / .25 = \$52,000$). Thus, we estimate that the incarceration of 17,813 drug offenders who would otherwise be unemployed avoids property transfers totaling \$926,276,000 ($17,813 \times \$52,000 = \$926,276,000$). This results in a \$26.75 per capita benefit to Californians for property crimes avoided.

Table 13
Property Transfers Avoided by the Incarceration Of Drug Offenders
California FY 2000-01

Calculation of Incarcerated Drug Population, Otherwise Unemployed:

$$160,687 \times 28.2\% = 45,314 \text{ Drug offenders in prison}$$

$$76,311 \times 30.4\% = \underline{23,199 \text{ Drug offenders in jails}}$$

68,512 Incarcerated drug offenders

$$68,512 \times 26\% = 17,813 \text{ In Custody and Unemployed Outside}$$

Valuation of Property Crimes Necessary to Support Drug Habit:

Assume drug habit of \$250 per week @ 52 weeks = \$13,000 per year habit

Street value of fenced stolen property is 25% of fair market value.

Value of property transfers required to supply drug habit:

$$\$13,000 \div 0.25 = \$52,000 \text{ per year of stolen property}$$

Number of incarcerated offenders x value of property transferred:

$$17,813 \times \$52,000 = \underline{\$926,276,000 \text{ a year in property transfers}}$$

Benefits realized by Californians:

$$\$926,276,000 \div 34,629,000 \text{ population} = \underline{\$26.75 \text{ savings per capita}}$$

Conclusion: The incarceration of drug offenders saves Californians more than \$900 million a year, a per capita benefit of \$26.75.

In addition to incapacitating property crime offenders, California's drug war can be expected to save lives that would otherwise be lost to turf warfare in drug markets. Assuming that the incarceration of drug offenders saves 1,000 lives per year that would otherwise be lost through drug-related events, and that these 1,000 deaths are valued at \$1 million each, we estimate additional benefits of \$1 billion, or an additional \$28.88 per capita. Adding this amount to Table 13's \$926,276,000 in property "transfers" avoided by incarceration brings the quantifiable total benefits of incarceration to almost \$2 billion. Dividing this amount by the estimated population of California during the same period results in a per capita benefit of \$55.63, attributable to California's drug war:

California Per Capita Avoidance of Property Transfers \$ 926,276,000 = \$ 26.75

Avoidance of Loss of Life \$ 1,000,000,000 = \$ 28.88

Estimated Benefits of California's Drug Policy \$ 1,926,276,000 = \$ 55.63

$$\$1,926,276,000 / 34,629,000 = \$55.63 \text{ per capita benefit}$$

The benefit-cost ratio of California drug enforcement policy is the \$55.63 benefit calculated above, divided by the \$133.88 allocated costs of drug enforcement calculated in Table 9, for a ratio of 0.42. These calculations are detailed in Table 14.

Benefits:	<u>Low Estimate</u>	<u>High Estimate</u>
Property Transfers Avoided	\$ 926,276,000	(same)
Loss of Life Avoided	<u>1,000,000,000</u>	<u>(same)</u>
Total Benefits	\$ 1,926,276,000	\$ 1,926,276,000
Allocated Costs:		
Prison	\$ 962,902,704	(same)
Jail	134,597,952	(same)
Probation	597,551,693	(same)
Parole	<u>98,545,683</u>	<u>(same)</u>
Subtotal	\$ 1,793,598,032	\$ 1,793,598,032
Law Enforcement	\$ 1,668,406,600	\$ 2,344,111,273
Prosecution	261,496,580	301,146,295
Public Defense	104,090,888	119,875,162
Judicial	<u>411,813,440</u>	<u>474,260,560</u>
Subtotal	\$ 2,445,807,508	\$ 3,239,393,290
Total Allocated Costs	\$ 4,239,405,540	\$ 5,032,991,322
Benefits / Costs	0.45	0.38
Average of Low and High Estimates		<u>0.42 Benefit-Cost Ratio</u>
Or, on a per capita basis: \$55.63 benefit / \$133.88 cost = 0.42		

The benefit-cost ratio of California's drug enforcement policy is 0.42, which means that for each \$1.00 spent in the enforcement of California drug policy, the public receives \$0.42 in benefits. (The rewards would diminish further if we were to include federal taxes and prison construction costs.) Any benefit-cost ratio in the range of 0.22 to 0.46 is considered unacceptably low for government programs. No private sector firm could survive if it undertook expenditures with such low payoffs. In fact, economists urge the rejection of government programs which fail to pass the threshold of > 1.0 , which means that a dollar of public expenditures yields more than a dollar worth of benefits, properly discounted at an appropriate interest rate. For the incarceration of drug offenders to be

cost-effective from a crime-deterrence standpoint, the annual benefits (of crime losses averted) would have to exceed \$5 billion. It requires a suspension of belief to project savings of this magnitude, attributable solely to the incarceration of drug offenders in California.

These unfavorable benefit-cost ratios are evidence of the inefficiency of California's drug policy. Admittedly, we may have underestimated the costs attributable to drug dependency, but it should be stressed once again that many crimes are committed not because someone is high, but to meet the high cost of black-market drugs.

Other studies of benefit-cost ratios have focused exclusively on violent offenders. Zedlewski (1987) analysed the release of borderline offenders who would have gone to prison had space been available. (Ironically, the number of nonviolent drug offenders already in California's jails and prisons limits the amount of space available for new admissions.) According to Zedlewski, the annual cost of imprisonment is \$25,000 per prisoner, whereas social costs of \$430,000 per violent offender are averted by the incapacitation of that prisoner, for a benefit-cost ratio that exceeds 17:1. (The social costs are calculated as an estimated 187 violent crimes committed per offender per year, each at a cost of \$2,300: $187 \times \$2,300 = \$430,000$.) This seems to suggest that sentencing another 1,000 offenders to prison could only be beneficial, because 187,000 felonies would be averted through incapacitation of those offenders. But the fatal flaw in Zedlewski's study was pointed out by Zimring and Hawkins (1995, p. 144):

But since Zedlewski's incapacitation estimate would predict that the first 12,000 to 20,000 additional prisoners in California during the 1980s would have driven California's crime rate down to zero, it is difficult to understand where the last \$120 billion in crime-saving benefits would come from.

Also, Zedlewski's estimate of 187 crimes avoided per year per prisoner is problematic. The Rand Corporation, whose report is the only evidence Zedlewski cites, regards 187 crimes as an overestimate in the range of 1,000 to 2,000 percent.

IX. ALTERNATIVE OPTIONS: DRUG TREATMENT

Priorities and Policy

A recent survey in California indicates that by a margin of five to one, California voters would rather invest in prevention than in incarceration (California Center for Health Improvement, 1997). National surveys show that only 31 percent of the public favor an increase in taxes to build more prisons, while those who think too much is being spent on crime control has slowly grown from 4 percent in the 1980s to 7 percent in 1996 (Maguire and Pastore, 1997; Ambrosio and Schiraldi, 1997). This trend of a modest but rising disenchantment with incarceration no doubt results from the fact that trade-offs between imprisonment and education are becoming too dramatic to ignore (Arum, 1997).

According to Falco (1989), the failure to devise a coherent drug-fighting strategy is a function of the political process itself. Politicians respond to public outrage and demands

for immediate action by implementing short-term, myopic solutions. It may in fact take years for demand side policies such as treatment, prevention and education programs to produce demonstrable results. This potentially useful weapon in the war against drugs should be protected during the interim from the vagaries of the political system.

Treatment Goals, Options, and Costs

Drug abuse treatment programs can be classified in a number of ways, but are generally classified by goal, either detoxification or recovery. Detoxification is the process of withdrawing from drug use, usually considered a short-term approach necessary to stabilize clients before they can move into recovery. Detox by itself is not considered an effective means of treating drug abuse, but is a necessary first step in treatment. Recovery programs, by contrast, focus on helping the detoxified addict stay drug-free. Most recovery programs include group, individual or family counseling, educational and vocational training, social skills training, and additional components selected to support participants' efforts to stay clean. Programs generally include active treatment and aftercare components. Aftercare is designed to support clients when they reenter the community and face temptations that can lead to relapse. Aftercare commonly includes participation in a self-help group, including the well-known "12 step" programs.

According to Falco (1989) and Simpson and Sells (1982), 1988 treatment options included \$2,300 for a drug-free outpatient program, or \$3,000 for methadone maintenance program. In year 2000 constant dollars these would be \$3,345 and \$4,365, respectively. Residential programs that keep addicts in treatment for 18 months or longer cost as much as \$14,600 in 1988, or \$21,240 in current dollars. Table 15 summarizes these treatment options and costs.

	<u>1988</u>	<u>2000</u>
Outpatient Programs:		
Drug-free outpatient	\$2,300	\$3,345
Methadone maintenance	\$3,000	\$4,365
Residential, 18+ months	\$14,600	\$21,240

Sources: Falco, 1989; and Simpson and Sells (1982)

Treatment Statistics: Drug Detail

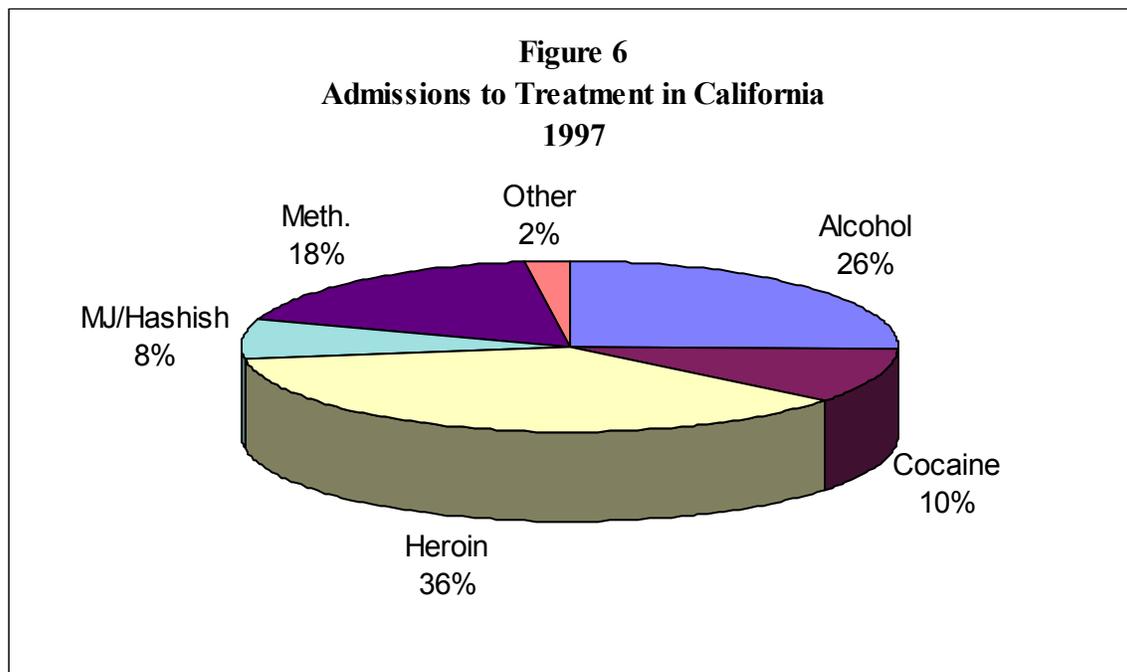
According to the White House's Office of National Drug Control Policy (Profile, 2000) 162,694 drug and alcohol treatment admissions were recorded in California during 1997. Heroin accounted for more than a third of all admissions, and alcohol (alone or in combination), accounted for another quarter. This data is presented in Table 16.

Table 16
Drug and Alcohol Treatment Admissions
California 1997

<u>Drug Type</u>	<u>Number of Admissions</u>	<u>% of Total</u>
Alcohol Only	16,538	10.2%
Alcohol with Secondary Drug	24,959	15.3%
Heroin	59,461	36.5%
Cocaine (smoked)	14,018	8.6%
Cocaine (other route)	2,821	1.7%
Marijuana/hashish	12,228	7.5%
Methamphetamine	29,065	17.9%
Hallucinogens	158	0.1%
PCP	771	0.5%
Inhalants	52	< 0.1%
Other/Unknown	<u>2,623</u>	<u>1.6%</u>
Total Admissions	162,694	100.0%

Source: Office of National Drug Control Policy, *State of California: Profile of Drug Indicators*, 2000.

Figure 6 presents the same information, but combines those categories which accounted for less than 2 percent of the total. Heroin and alcohol together accounted for about two-thirds of all admissions, followed by methamphetamine and cocaine admissions.



Source: Department of Health and Human Services, Treatment Episode Data Sets, 1999

Demand for Treatment Exceeds Capacity

Major cutbacks in funding from 1981 to 1989 reduced the availability of drug treatment nationwide. In that period, there were an estimated 1.3 million intravenous drug users in the U.S., but publicly funded programs treated a maximum of only 148,000 at any one time. In most central cities, waiting periods for admission to treatment programs averaged at least 6 months. The rapid spread of HIV/ AIDS among IV drug users increased government and public concern, which led to increased support for treatment funding. The report of the Presidential Commission on AIDS in June 1988 strongly recommended that funding for drug treatment be expanded by an additional \$15 billion over the decade ending in 1999. The Commission Report demonstrated that treatment was the most cost-effective way to contain the AIDS epidemic, even though treating the effects of HIV/AIDS often costs more than \$100,000 per person.

County-Based Treatment Programs in California

Senderling and Franklin (2000) report three shortcomings of California's substance abuse treatment program. First, lengthy waiting lists in a number of counties discourage would-be clients. Second, there is no statewide plan to address demand and to coordinate the variety of treatment services. Lastly, California must recognize the need for treatment services aimed specifically at adolescents.

Counties receive an allocation of federal and state funds from the Department of Alcohol and Drug Programs, a proportion of which must be matched by county expenditures. The federal and state allocations are mostly based on historical funding levels, and vary widely among counties. Some counties provide counseling and other treatment services directly, some contract with private treatment programs, and others offer a combination. San Francisco and Los Angeles counties contract with a wide variety of community-based treatment providers, enabling them to offer a range of treatment services and drug testing. In contrast, Tehama and Shasta counties hire staff to conduct counseling sessions in county offices, and contract for more intensive services (such as residential treatment) only when necessary. In general, urban counties are more likely to contract out a larger percentage of treatment services than are rural counties.

Studies of the Cost-Effectiveness of Treatment

California's Legislative Analyst (1997) concludes that substance abuse treatment is cost-effective to society in general. The 1999-00 Budget Act appropriated \$354 million to the Department of Alcohol and Drug Programs (DADP) for treatment services. At that time, there were 70,000 publicly funded treatment slots in California. But DADP would have needed an additional \$330 million to treat all persons seeking services, based on 56,000 additional treatment slots at \$5,893 each.

DADP coordinates California's substance abuse prevention and treatment efforts. The department licenses more than 1,800 programs statewide, about half of which currently receive public funding. Since July 1995, more than 600,000 Californians have received

publicly funded treatment of some type. According to DADP (2000), 15 percent of people needing treatment will seek it; 26 percent of adults and 54 percent of adolescents need publicly funded treatment.

Research on substance abuse treatment is inherently problematic.

- Most studies lack random assignment, an essential component of experimental methodology.
- A recent report by the General Accounting Office into the cost-effectiveness of treatment (cited in LAO, 2000) notes that even the most widely respected studies generally lack control groups, thereby limiting the validity of their conclusions.
- The common practice of using self-reporting data about drug use and criminal activity before and after treatment may tend to overstate treatment effectiveness. The GAO recommends increased use of objective tests (e.g., urinalysis) to confirm self-reported data.
- It may be tempting to generalize the results of one treatment program to others that appear similar, but which may differ significantly.

In a review of numerous studies, the Legislative Analyst found that the benefits of substance abuse treatment outweigh the costs. Benefit-cost ratios ranged from 2:1 to 10:1, depending on the type and duration of treatment, and on client characteristics. A number of studies using data from the Treatment Outcome Prospective Study have determined a 4:1 benefit-cost ratio to treatment.

Other research studies have concluded that substance abuse treatment is cost-effective for society as a whole. Rand Corporation (Rydell and Everingham, 1994) quantified the benefits: For every \$1 invested in treatment, \$7.46 in future costs are avoided.

Successful Treatment Design and Implementation

There is a vast evaluation literature on social intervention models of drug diversion programs, including prison-based treatment for drug-involved offenders (Inciardi, Lockwood, Martin and Wald, 1991; Inciardi, 1993), treatment protocol effectiveness studies (ONDCP, 1996), diversion and compulsory treatment (Schaffer Library of Drug Policy, 2000), and drug courts (Hoffman, 2000). Adequate experience exists to implement successful treatment designs and models. After twenty years of experimentation with diversion projects, we are surely in a position to agree on a consensus design for California. Funding for oversight, monitoring, and coordination are essential to any program that is implemented in California. Diversion and drug treatment are long-term models, and so immediate successes, although politically expedient, should not be the measure of effectiveness.

X. Community-Based vs. In-Custody Treatment

The prison environment is far from a suitable setting for drug treatment programs or for psychological treatments ... Intermediate punishments with conditions of treatment would

therefore seem particularly appropriate for addicted criminals, provided sufficient control of their behavior can be built into those programs to satisfy legitimate community anxieties.

--- Morris and Tonry, 1990, p. 188

Zimring (1995) demonstrates that community-based treatment programs and the imprisonment of drug-abusing offenders both effectively deter crime, although in very different ways. Prison promises physical control, whereas treatment targets the criminal propensity of drug offenders. The benefits of locking up a drug offender last only as long as the incarceration does, whereas any benefits gained through treatment will hopefully last indefinitely. Zimring denounces another popular policy option when he explains that combining imprisonment with drug treatment fails to produce a best-of-both worlds combination of short-term control and long-term treatment effects. Zimring concludes that community-based treatment programs carry a larger promise of success than do drug treatment programs inside prison (1995, p. 63).

If community-based treatment has a higher success rate than prison-based treatment, putting the offender into prison increases the amount of crime prevented by control but reduces the degree of crime prevention to be expected from successful drug treatment. Avoiding prison in favor of treatment maximizes the prevention associated with treatment but sacrifices the preventive benefits of control.

Therapeutic intervention for drug-dependent offenders is a policy option that has received both political and clinical support. Drug treatment has a better reputation in criminal justice courts than does any other therapeutic intervention for adults. The policy of imprisoning drug offenders garnered substantial political and judicial support in the late 1980s, as did a combination of community-based drug treatment plus risk monitoring through the use of chemical tests designed to detect current drug usage. The popularity of Treatment Alternatives for Street Crime (TASC) has helped to counteract the widespread loss of faith in rehabilitation. The successes of corrections-based therapeutic community treatment programs, such as Crest Outreach Center in Delaware, have been encouraging. The most successful treatment programs are broad-based and multi-phased, including job preparation, training, placement, reentry, support and follow-up (Inciardi et al, 1991).

Two policy models currently compete for middle-level drug or drug-related offenders. The first involves a relatively short imprisonment term, perhaps coupled with after-care programs that stress drug monitoring. The second is a package of community-based drug diversion programs, including an extended period of drug-use monitoring. Detection of drug use automatically triggers treatment repetition, affording a built-in second chance to those who fail.

Both treatment models are enforced by the threat of imprisonment in the event of multiple detections of drug use. The legal justification for re-imprisonment (of parolees) or sentencing (in the case of diversion) is the client's violation of court-ordered conditions. Incentives to remain in either program model therefore come from the threat of incarceration or reincarceration.

Administering California's War on Drugs

There is no centralized oversight of the state's drug enforcement program budget, but the Legislative Analyst's Office reports on pending budget legislation, and routinely recommends the rejection of unjustified expenditures (LAO, Analysis of Office of Criminal Justice Planning, 2000).

The State's FY 2000-01 budget proposes total expenditures of \$318 million for the Office of Criminal Justice Planning (OCJP). This is an increase of about 19 percent over prior year expenditures, due primarily to a proposal to include \$100.2 million to support new local law enforcement equipment grants. The LAO recommended that this proposal be rejected, citing a lack of oversight and of program evaluation, a lack of information regarding the demand for law enforcement equipment funds, the duplication of existing funding and unjustified workload increases.

In addition to providing state-administered assistance to local authorities, OCJP has the primary responsibility for administering federal criminal justice grants. Among OCJP's federally-funded programs are the Anti-Drug Abuse Enforcement Program, which targets drug abuse and associated violence through 67 1-year grants to law enforcement agencies, prosecution, and probation departments. Funding for this program comes from a \$40 million federal allocation. And in counties with significant marijuana cultivation problems, the Marijuana Suppression Program offers 16 1-year grants to California sheriffs, funded by an additional \$3.5 million in federal funds.

Not all anti-drug programs have proven successful. The LAO report on OCJP's budget requests notes that Drug Abuse Resistance Education (DARE) has not been shown to be effective at reducing drug abuse. LAO recommends the deletion of \$1 million requested for DARE, instead providing funds to programs that have been proven effective. The report cites Promoting Alternative Thinking Strategies (PATHS) programs which have been shown to be effective in reducing substance abuse. The PATHS curriculum addresses problem-solving, self-control, and social competence.

XI. PRELIMINARY CONCLUSIONS AND REMARKS

Looking Forward: Proposition 36

On November 7, 2000, 61 percent of California voters endorsed Proposition 36, correcting a serious defect in public policy. Proposition 36 requires the use of probation and drug treatment instead of incarceration for first and second-time offenders found guilty of possessing, using, or transporting illegal drugs. The legislation also allows for drug charges to be dismissed upon successful completion of treatment. California's Legislative Analyst estimates annual savings of between \$100 and \$150 million, plus a one-time savings of \$500 million realized from a slowdown in prison construction. But these fiscal benefits are only part of the story: Opportunity costs are a much more significant issue.

California's drug treatment programs currently serve about 70,000 clients per year, with another 5,000 in any given month waiting for admission to treatment (LAO, 1997). Proposition 36 is expected to generate an additional 36,000 new drug treatment clients per year. Ramping up for implementation will require legislation, guidelines, funding, and training. Although Governor Davis opposed the ballot measure, he has pledged support for rapid implementation of the program, which goes into effect July 1, 2001.

In 1999, the state's nonpartisan Legislative Analyst concluded that the existing network of service providers is overwhelmed. The state already budgets about \$354 million per year for treatment services, but almost twice that amount is needed to fully finance existing programs. An additional \$330 million per year is needed to eliminate long waiting lists for services, to establish treatment programs for adolescents, and to resolve other existing problems. However, the new law only provides for an additional \$60 million in interim funding through June 30, 2001.

There is concern that inadequate funding could result in some drug arrestees being released if treatment programs are running at capacity. Proposition 36 makes California's Department of Alcohol and Drug Programs the channel for distributing treatment funds to individual drug-control programs, but the initiative fails to specify how funds are to be divided. Adding to the start-up crunch facing Proposition 36 is the requirement that first- and second-time drug offenders be channeled into "a licensed and/or certified community drug treatment program." These include out-patient services, residential care, halfway houses, and drug education programs. But to date, DADP licenses only residential treatment programs, and lacks the legal authority to certify the other services. This implies that DADP will need to adopt new certification processes, develop staff to implement the process, and issue certificates.

Arizona's Drug Diversion Implementation

Other jurisdictions have implemented treatment alternatives similar in spirit to that of Proposition 36. Arizona's Drug Treatment and Education Fund was established in January 1997 to expand services for drug offenders and to utilize probation for non-violent drug offenses. According to a report on the first year of operations (Arizona Supreme Court, 1999) a total of 2,622 offenders were served by the program. Of these offenders, 932 completed the program, but only 568 successfully completed the program. Even so, the study estimates that the program saved taxpayers more than \$2.5 million statewide in fiscal year 1998. The state's own study of the success of diversion is more cautious, though, warning that not enough time has elapsed to accurately measure recidivism rates. The performance audit concludes that probation coupled with treatment significantly reduces the chances that offenders will commit future crimes. The report also noted that "probationers who complete substance abuse treatment programs, maintain employment, and complete community work services are much more likely to complete probation, and far less likely to have a subsequent arrest."

XII. DRUG WAR CONSEQUENCES FOR CALIFORNIA TAXPAYERS: SUMMARY

This paper is an initial attempt to quantify California's enormous drug war costs, both hard and soft, which are borne primarily by the taxpayers of this state. Although this exercise has required us to make some rather tenuous assumptions and calculations, we remain convinced that our estimates of the drug war's direct and indirect costs provide a conservative and reasonable first approximation of the true monetary costs. One result stands out: California policymakers definitely need to develop and maintain a Drug War Program Budget which provides a full and accurate cost accounting, and to make this readily available to legislators and the taxpaying public. Without such expenditure accountability and public sector transparency, we are all flying blind without benefit of instruments, measurement, or indicators of the relevant tradeoffs.

We discovered that a large portion of income and sales taxes paid by California taxpayers goes to arresting, processing, prosecuting, incarcerating, paroling and monitoring nonviolent drug offenders. Taxpayers contribute a minimum of 9 percent of their income taxes and 8 percent of their sales taxes to the drug war. An additional \$80 per Californian per year has financed prison and jail construction to warehouse the ballooning drug offender population. By including Federal income taxes paid to defray the host of federal anti-drug programs located in California, the per capita costs increase by an additional \$163 to \$200.

In addition, there are substantial soft costs, collateral damage costs, lost state income tax revenue from incarceration, lost income due to reputational damages caused by prison or jail records, and spillover costs (externalities) due to reduced expenditures on education, reduced police time allocations to fighting violent crime, prison crowding, new prison construction, added welfare transfer payments, and emergency room costs increased by drug turf wars. Communities lose breadwinners, and children are separated from a parent or parents. Few people realize that the drug war is diverting resources from the education sector, particularly higher education, in California. This has caused delayed construction of new universities, and increased fees imposed on college students and their families.

The benefits of California's drug war incarceration binge are more difficult to quantify, although clearly levels of crime committed by drug abusers will fall while potential offenders are held in jail or prison.

Not all offenders are eligible for community-based treatment. Most alternatives under consideration by policymakers apply only to nonviolent first- or second-time offenders, essentially people in possession of drugs for personal use. Proponents of alternatives to incarceration do not propose drug diversion for violent individuals, drug kingpins, traffickers, those with multiple drug offenses, or those caught dealing drugs to minors.

Because drugs are so readily available in California's prisons, and prison drug treatment programs are often limited or unavailable, putting drug users in jail or prison is certainly no guarantee that they will get off drugs. (Indeed, there is evidence to suggest that

incarceration actually increases drug use.) Perhaps treatment on request, or at the direction of the court in a diversion program, will better meet the challenge of getting people off drugs and getting their lives together. The current system of a stint in jail, a criminal record, and the subsequent loss of jobs, benefits, social ties, housing and opportunities is a demonstrable failure, and an expensive one.

In this study we demonstrated a benefit-cost ratio within the range of .22 to .46, far too low to establish confidence in any California drug war efficiency supposedly realized by taxpayers. We can reasonably assume that alternative uses of taxpayer dollars (deferred maintenance on roads, earthquake retrofitting, higher education, infrastructure development, violent crime deterrence, etc.) would realize a much higher benefit-cost ratio, probably exceeding 1.0. We remain convinced that our benefit-cost calculations, which incorporate very generous estimates of the benefits resulting from incarceration of nonviolent drug offenders, are accurate ballpark estimates. If we are correct, there are serious and significant misallocations of public tax revenue in California.

Any policy alternatives to incarcerating nonviolent drug offenders (such as demand-side approaches, treatment, or diversion of offenders) must address the issues of oversight and accountability. Recognizing this, we can focus on diversion models which have proven successful. Perhaps we can then move from being a society with the highest incarceration rate in the world (greater even than that of Russia) to one noted for compassion: A social contract predicated on second chances, for which we were once renowned.

The Cost of Enforced Prohibition

Throughout this report, we have only touched on the cost of drug users who are currently incarcerated. However, in any "war" that is undertaken, one must calculate the cost of "victory" as it is defined. If drug use is a crime and criminals should be punished, then any concept of justice would dictate that the makeup of incarcerated individuals should mirror the population of criminals. However, it does not. Using data for California generated from the National Household Survey on Drug Abuse we examined the typical breakdown of this population (Substance Abuse and Mental Health Services Administration [SAMHSA], 1998). Although women make up 23 percent of all imprisoned addicts, they are 38.5 percent of all habitual drug users (those who use illicit narcotics at least once a month). Although 53.6 percent of all offenders were employed prior to incarceration, 77.8 percent of all users are employed. Only 1 out of every 35 Asians is a habitual drug user, compared to 1 out of every 11 Whites, 1 out of every 14 Hispanics, and 1 out of every 7 Blacks. However, Blacks are incarcerated in far greater numbers than their level of addiction would warrant relative to other racial groups. In addition, a little less than half of those employed who regularly use drugs have at least some college, and more than 75 percent have at least a high school diploma. Another salient fact is that only 4.9 percent of those who are employed and married are habitual drug users, while 15.8 percent of employed singles are.

Another way of looking at this is to examine what is the percentage of employed habitual drug users with different characteristics. These percentages should mirror the prison population if justice were being "fairly" meted out.

	<u>Employed Users</u>	<u>All Users</u>
Asian	2.7 %	3.7 %
Black	8.1 %	9.1 %
Hispanic	19.3 %	20.9 %
White, Non-Hispanic	69.4 %	65.4 %
Married	28.8 %	24.9 %
Women	30.7 %	35.8 %
Less Than 9th Grade Education	3.2 %	8.6 %
9th Through 11th Grade Education	17.7 %	24.0 %
High School Education	31.5 %	27.9 %
Some College Education	27.7 %	23.3 %
College Degree	12.4 %	10.2 %
Graduate Degree	7.5 %	5.9 %

Source: Authors' calculations based on microdata from the *National Household Survey on Drug Abuse*, Substance Abuse and Mental Health Services Administration, 1998.

Going back to our earlier estimates, if the incarcerated population mirrored the addict population, the war on drugs would be even more costly. Using data from the Census Bureau (Money Income, 2000), we find that if there was an equal probability of being sentenced for drug possession to prison as there are addicts in the general population, then the lost earnings detailed earlier would be much higher.

The average male holder of a Bachelor's Degree makes \$ 62,543 a year, while the average male with a High School Diploma makes \$ 35,121. Similarly, female holders of Bachelor's Degrees make \$ 40,263, while those with only a High School Diploma make \$ 23,498. Multiplying each of the average amounts received by educational attainment by the percentage of individuals who have that degree who use drugs yields average wages of \$ 42,779 for men and \$ 28,374 for women. Multiplying these figures by the degree to which men and women enter the workforce yields an average wage of \$ 38,357. These figures will underestimate the actual income taxes collected because of California's progressive income tax. However, doing as we have done before and averaging the married and single brackets based on the number of drug addicts in each category yields state income tax requirements of \$ 1,606. Additionally, based on consumption patterns in the State of California and the amount of sales tax revenue generated by the State, approximately 2.6 percent of the family income went to sales taxes for the State. This would lead to an estimate of \$ 1,003 in lost sales tax revenues per incarcerated user.

These figures obviously drive up our cost estimates significantly. Yet, without fair application of the law, a law cannot be applied in a democratic society. As arrested drug users do not mirror the population of drug users, there is considerable evidence of discrimination in the application of the law, and it is only the discriminatory nature of prosecution that has made the application of the law palatable to this point. Indeed, our war on drugs is more a reflection of a failed welfare policy than of any attempt to constrain the flow of drugs.

There is no possibility of this war being "won." If all of the estimated 2 million users of drugs in California were incarcerated, the total economic loss to California in State sales and income tax dollars alone would exceed \$ 5.2 billion, which is roughly what the entire State correctional system spent last year. This would also result in the incarceration of approximately 10 percent of the working population. Roughly speaking, it is unlikely to be caught and the cost of the drug war to be counted as a success (meaning that all individuals who commit the crime do the time) is too high to be politically or economically feasible. Treatment for drug addiction, like treatment for alcohol addiction, is a far better solution to this issue.

ENDNOTES

1. California has the fifth largest economy in the world, outranking all other countries except the rest of the United States, Japan, Germany, and the United Kingdom.
2. Some drug offense subcategories in Table 5 have been combined. "Possession" includes possession of a controlled substance + hashish possession + marijuana possession for sale. (CDC tables do not separately report marijuana possession and marijuana sales). "Sales" includes controlled substance possession for sale + controlled substance for sale + marijuana for sale.
3. California's Sales and Use Tax is commonly referred to as sales tax. The terms are used interchangeably in this study.

REFERENCES

Ambrosio, Tara-Jen, and Vincent Schiraldi. 1997. *From Classrooms to Cell Blocks: A National Perspective*. Available online from <http://www.cjcj.org/>. Center on Juvenile and Criminal Justice, Justice Policy Institute.

Arizona Supreme Court, Adult Services Division. 1999. *Drug Treatment and Education Fund Legislative Report, Fiscal Year 1997-98*. Performance Audit, Office of Auditor General, Administrative Office of the Courts.

Arum, Richard. 1997. Schools or Prisons? The Effects of High School Education on the Risk of Incarceration. *Proceedings of the American Sociological Association Meeting, Toronto*.

California Center for Health Improvement. 1997. *Invest in Kids: Californians Support New Approach to Prevent Youth Violence*. Sacramento: California Center for Health Improvement.

California, State of, Attorney General. 2000. *Crime and Delinquency in California 1999*. Table 40: "Adult Felony Arrest Dispositions, 1998." Available online from <http://caag.state.ca.us/cjsc/cd99/tabs/cd99tb40.pdf>. Accessed on 10/26/00.

----- Department of Alcohol and Drug Programs. 2000. *Treatment Works*. Available online from <http://www.adp.cahwnet.gov/Rxworks.pdf>. Accessed on 10/09/00.

----- Department of Corrections. 2000. *California Prisoners and Parolees 2000 Preliminary*. Available online from <http://www.cdc.state.ca.us/pdf/calpris2000elect.pdf>. Accessed on 10/07/00.

-----, -----, 2000. *CDC Facts, Third Quarter 2000*. Available online from <http://www.cdc.state.ca.us/factsht.htm>. Accessed on 12/17/00.

-----, -----, 1999. *Fall 1999 Population Projections*. Available online from <http://www.cdc.state.ca.us/pdf/Fall99Proj.pdf>. Accessed on 4/10/01.

----- Department of Finance. 1998. *Estimates of Population of the State of California with Components of Change 1940 - Present*. Available online from <http://www.dof.ca.gov/html/demograp/spr98.pdf>.

-----, Franchise Tax Board. 1999. *1998 Annual Report*. Available online from <http://www.ftb.ca.gov/other/annrpt/1998/pdf/b5.pdf>. Accessed on 11/14/00.

-----, ----- 1999. *1999 California Tax Rate Schedules*. Available online from <http://www.ftb.ca.gov/press/archive/1999/99-55att.htm>. Accessed on 4/10/01.

-----, Legislative Analyst's Office. 2000. *Analysis of the 2000-01 Budget Bill: Office of Criminal Justice Planning (8100)*. Available online from http://www.lao.ca.gov/analysis_2000/crim_justice/cj_as_OCJP_8100_an100.htm#_1_1. Accessed on 10/14/00.

-----, -----, 2000. *Budgets, Taxes and Spending: The Promise and Challenge in California*. Available online from http://www.lao.ca.gov/Presentations/092600_Joint_Venture.pdf. Accessed on 11/3/00.

-----, -----, 2000. *The 2000-01 Budget: Perspectives and Issues*. Part 2: "Economy and Demographics." Available online from http://www.lao.ca.gov/analysis_2000/2000_pandi/part2/pandi_pt2_2000.pdf. Accessed on 11/03/00.

-----, ----. 2000. *The 2000-01 Budget: Perspectives and Issues*. Part 3: "State Revenues." Available online from http://www.lao.ca.gov/analysis_2000/2000_pandi/part3/pandi_pt3_2000.pdf. Accessed on 11/03/00.

-----, -----, 1997. *Substance Abuse Treatment in California: Services are Cost-Effective to Society*. Sacramento: Legislative Analyst's Office.

DrugSense Weekly. December 1999. Available online from <http://www.drugsense.org/dsw/1999/ds99.n127,128>.

Falco, Mathea. 1989. *Winning the Drug War: A National Strategy*. New York City: Priority Press Publications, Twentieth Century Fund.

Freeman, Richard. 1992. "Crime and the Economic Status of Disadvantaged Young Men." In George Peterson and Wayne Vroman (Eds.), *Urban Labor Markets and Job Opportunities*. Washington, D.C.: Urban Institute Press.

Freeman, Richard B. 1996. "The Supply of Youths to Crime." In Susan Pozo (Ed.), *Exploring the Underground Economy: Studies of Illegal and Unreported Activity*. Kalamazoo, MI: W.E. Upjohn Institute for Employment Research.

Gemello, John M., Jack W. Osman, and Michael Jonas. 1996. "Financing Schools or Jails in California: An Interstate Comparison of Trends." Working Paper, Department of Economics, San Francisco State University. Presented to the Western Regional Science Association, February 25-28.

Geschwender, Laura Ellen. 1998. *The Consequences of Job Loss for the Likelihood, Extent, and Stability of Later Employment*. Ph.D. Dissertation, The Ohio State University.

Grogger, Jeffrey. 1995. "The Effects of Arrest on the Employment and Earnings of Young Men." *Quarterly Journal of Economics*, 110 51-72.

Hagan, John, & Ronit Dinovitzer. 1999. "Collateral Consequences of Imprisonment for Children, Communities, and Prisoners." In Michael Tonry & Joan Petersilia (Eds.), *Prisons, Crime and Justice, A Review of Research*. 26 121-162. Chicago: University of Chicago Press.

Hoffman, Morris B. 2000. "The Drug Court Scandal." *North Carolina Law Review*, 78:5 1437-1534.

Inciardi, James A. 1993. *Criminal Justice: 4th Edition*. San Diego: Harcourt Brace Jovanovich College Publishers.

Inciardi, James A., Dorothy Lockwood, Steven S. Martin, and Bruce M. Wald. 1991. "Therapeutic Communities in Corrections and Work Release: Some Clinical and Policy

Considerations." Presented at the National Institute on Drug Abuse Technical Review Meeting on Therapeutic Community Treatment Research, Bethesda, MD, May 16-17.

Institute of Medicine. 1990. *Treating Drug Problems*, Vol. 1: The report of a study by a committee of the Institute of Medicine, Division of Health Care Services. Washington, DC: National Academy Press.

Internal Revenue Service. 1999. *IRS Gross Collections by State, 1998*. Table 4: "Number of Returns Filed, By State," and Table 8: "Internal Revenue Gross Collections, by State." Available online from <http://ftp.fedworld.gov/pub/irs-soi/98db04nr.xls> and <http://ftp.fedworld.gov/pub/irs-soi/98db08co.xls>. Accessed on 10/30/00.

Irwin, John, & James Austin. 1994. *It's About Time: America's Imprisonment Binge*. Belmont, CA: Wadsworth Publishing.

Liedtke, Michael. 2001, June 15. "California's economy passes France in size, making it fifth largest in the world." AP Wire Service.

Lindesmith Center - Drug Policy Foundation. 2000. *Fact Sheet: Economic Costs and Consequences of the Drug War*. Available online at <http://www.lindesmith.org>. Accessed on 6/26/01.

Macallair, Dan. 1996, December 18. "The Sacrifice of Colleges for Prisons." *The San Francisco Examiner*, A21.

Maguire, Kathleen, & Ann L. Pastore (Eds.). 1997. *Sourcebook of Criminal Justice Statistics, 1996*. U.S. Department of Justice, Bureau of Justice Statistics. Available online from <http://www.albany.edu/sourcebook>.

Males, Mike, Dan Macallair, Cheryl Rios, and Deborah Vargas. 2000. *Drug Use and Justice: An Examination of California Drug Policy Enforcement*. Washington, DC: The Justice Policy Institute. Available online from <http://www.cjcj.org/>.

Morris, Norval, & Michael Tonry. 1990. *Between Prison and Probation: Intermediate Punishments in a Rational Sentencing System*. New York: Oxford University Press.

Office of National Drug Control Policy. 2000. *National Drug Control Strategy: FY 2001*, Table 5: "National Drug Control Budget by Function, FY 1991-2001." Available online from <http://www.whitehousedrugpolicy.gov/policy/budget00/budget2000.pdf>. Accessed on 10/06/00.

----- . 2000. *State of California Profile of Drug Indicators, July*. Available online from <http://www.whitehousedrugpolicy.gov/stateandlocal/states/ca/ca.pdf>. Accessed on 12/29/00.

-----, 1999. *Performance Measures of Effectiveness: A System for Assessing the Performance of the National Drug Control Strategy, 1998-2007*. Washington, D.C.: U.S. Government Printing Office.

-----, 1996. *Treatment Protocol Effectiveness Study*.

Osman, Jack W. 1999. "California Budget Priorities: Schools v. Jails." Presented at San Francisco State University, sponsored by the Economics Students Association, April 22. Tables and graphs available from author.

Osman, Jack W., and C. Daniel Vencill. 1998. "Budgeting by Ballot: California's Recent Referenda and the Provision of Schools, Jails and "Green" Outcomes." Working Paper, Department of Economics, San Francisco State University. Presented at the Western Economic Association International Meetings, July 2.

Petersilia, Joan. 1999. "Parole and Prisoner Reentry in the United States," in *Prisons*. In Tonry & Petersilia, (Eds.). Chicago: University of Chicago Press.

Rand Corporation. 1994. *Three Strikes and You're Out: Estimated Costs and Benefits of California's Mandatory Sentencing Law*. Santa Monica.

Reuter, Peter. 1992. "Hawks Ascendant: The Punitive Trend of American Drug Policy." *Daedalus*, Journal of the American Academy of Arts and Sciences, from *Political Pharmacology: Thinking About Drugs*, Summer 121:3.

Riker, Alissa. 2000. *An Analysis of the Impact of Proposition 36 on San Francisco's Jail Population*. San Francisco: Justice Policy Institute.

Rydell, Peter C., and Susan B. Everingham. 1994. *Controlling Cocaine*. Prepared for the Office of National Drug Control Policy and the U.S. Army. Santa Monica: Drug Policy Research Center, RAND Corporation.

Sampson, Robert, and John Laub. 1993. *Crime in the Making*. Cambridge, Mass.: Harvard University Press.

Schaffer Library of Drug Policy. 2000. *Drugs and the Law: Report of the Independent Inquiry into the Misuse of Drugs Act, 1971*. Available online through <http://www.druglibrary.org/shaffer>.

Senderling, Cathy, and Deborah Franklin. 2000. *Substance Abuse Treatment In California: Services are Cost-Effective to Society*. "Available online from <http://www.health.org/res-brf/Apr00/7>.

Simpson, D.D., and S.B. Sells. 1982. "Effectiveness of Treatment for Drug Abuse." *Advances in Alcohol and Substance Abuse* 2:1 7-29.

Substance Abuse and Mental Health Services Administration. 1998. *National Household Survey on Drug Abuse (NHSDA) Series*. Available online from <http://www.samhsa.gov/csatsat.htm>. Accessed on 10/10/00.

U.S. Census Bureau. 2000. *Money Income in the United States: 1999*. Table 9: "Educational Attainment - Total Money Earnings in 1999 of People 18 Years Old and Over by Age, Work Experience in 1999, and Sex." Available online from <http://www.census.gov/prod/2000pubs/p60-209.pdf>. Accessed on 4/7/01.

----- 2000. *Summary of State and Local Government Tax Revenue*, Table 3, Table 29. Available online from <http://www.census.gov/govs/qtax/qtax994t3.wk1>. Accessed on 11/23/00.

U. S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. 1999. *Treatment Episode Data Sets*. Rockville, MD: U.S. Department of Health and Human Services.

U. S. Department of Justice, Bureau of Justice Statistics. 2000. *Crime and Delinquency in California 1999*. Available online from http://justice.hdcdojnet.state.ca.us/cjsc_stats/prof99/index.htm. Accessed on 11/8/00.

U.S. Department of Justice, Bureau of Justice Statistics. 1999. *National Corrections Reporting Program, 1996*. [CD-ROM]. ICPSR ed. Ann Arbor, MI. Inter-University Consortium for Political and Social Research [producer and distributor].

Vencill, C. Daniel. 1997. The political economy of global corruption. In J. Curtin (Ed.), *Crime and wealth: Readings in the political economy of criminal justice* (pp. 65-94). New York: American Heritage.

Zedlweski, Edwin W. 1987. *Making Confinement Decisions*. Washington, D.C.: National Institute of Justice.

Zimring, Franklin E. and Gordon Hawkins. 1995. *Incapacitation: Penal Confinement and the Restraint of Crime*. New York: Oxford University Press.

Critical Challenges In Addressing The Mental Health Needs Of Juvenile Offenders

Daniel P. Mears*

ABSTRACT

Despite growing attention to the mental health needs of juvenile offenders, there are critical challenges yet to be resolved in addressing these needs. The challenges include: (1) increasing scholarly and practitioner recognition of juvenile offender mental health needs; (2) raising awareness about the importance of mental health as a potential predictor of recidivism and as constituting the "best interests" of juveniles; (3) focusing attention on co-occurring rather than specific areas of need (e.g., mental health, emotional stability, education/disability, substance abuse, peer and family relations, health/hygiene, sexual adjustment, employment/vocational skills); (4) promoting the use of needs assessments through [a] clarifying the purposes and appropriate uses of assessments throughout juvenile justice processing, [b] improving the reliability and validity of assessment instruments, and [c] enhancing the feasibility of conducting assessments; (5) identifying resource and service gaps and promoting diversion; and (6) encouraging collaboration among juvenile justice, child welfare, social service, and education systems. This paper outlines each of these challenges, their implications for efficiently and effectively addressing the mental health needs of youths, and recommendations for how to resolve them.

INTRODUCTION

In recent years, researchers and practitioners increasingly have focused on the mental health needs of juvenile offenders (Elliott, Huizinga, and Menard 1989; Coccozza 1997; Bilchik 1998; Burns 1999; Coccozza and Skowrya 2000). However, there still remains relatively little recognition of the importance or prevalence of mental health needs among youths processed through the juvenile justice system (Coccozza 1992; Towberman 1992; Hubner and Wilson 2000). As importantly, there are few systematic accounts of how these needs can best be met or the challenges to be faced in addressing them.

* Daniel P. Mears is a Research Associate with the Justice Policy Center at the Urban Institute. His research focuses on a range of juvenile justice, delinquency, and crime control topics, as well as the study of religion, welfare reform, and other sociological and policy-related issues. He has published in Crime and Delinquency, Criminal Justice and Behavior, Criminology, Journal of Research in Crime and Delinquency, Law and Policy, Law and Society Review, Sociology of Religion, and Sociological Perspectives. Direct correspondence to Daniel P. Mears at the Urban Institute, Justice Policy Center, 2100 M Street, N.W., Washington, D.C. 20037 (dmears@urban.org), phone (202-261-5592), fax (202-659-8985). Grateful acknowledgment is extended to Bruce Kruger and Emily Leventhal for their thoughtful comments and suggestions.

The mental health needs of youthful offenders assumes particular importance when we recall that the juvenile court originally was premised on the idea of acting in the "best interests" of youths (Feld 1999). That is, irrespective of the commission of an offense, the juvenile court historically has had an obligation to provide any and all necessary services to rehabilitate and treat youths. This foundation has slowly eroded, especially during the last decade of "get tough" reforms (Singer 1996; Torbet et al. 1996; Torbet and Szymanski 1998). Whether due to this erosion, increased attention to potential etiological linkages between mental disorder and crime (Hodgins 1993), or an increasing reliance on justice rather than social service systems to handle individuals with mental illnesses (Liska, Markowitz, Whaley, and Bellair 1999; Cocozza and Skowrya 2000; Goldkamp and Irons-Guynn 2000), recently there have been calls for more systematically identifying and addressing the mental health needs of youthful offenders (Elliott, Huizinga, and Menard 1989; Dembo and Brown 1994; Bilchik 1998; Anderson 2000; Cocozza and Skowrya 2000; U.S. Public Health Service 2000). However, much of the research to date has focused primarily on providing earlier and more accurate clinical assessments of mental disorders among juvenile referrals (e.g., Rivers, Dembo, and Anwyl 1998; Hoge 1999) and on establishing whether and to what extent mental disorder causes crime (Hodgins 1993; Barratt and Slaughter 1996; Blackburn 1998).

This paper echoes these concerns but departs from a slightly different premise --namely, that to address adequately the mental health needs of youthful offenders, a number of critical challenges must be resolved, challenges that include but are not restricted to accurate assessment of mental disorders (Cocozza 1992; Towberman 1992; Redding 1999; Goldkamp and Irons-Guynn 2000; Hubner and Wilson 2000). Drawing on this observation and relevant literatures, the remainder of this paper focuses on outlining critical challenges to addressing the mental health needs of youths within the juvenile justice system. More challenges certainly can be identified. However, those discussed here represent particularly salient and pressing barriers to efficiently and effectively identifying and treating the mental health needs of youthful offenders. The paper concludes by identifying several potential solutions and then discussing implications of the identified challenges for juvenile justice policy, practice, and research.

CHALLENGE 1. INCREASING SCHOLARLY AND PRACTITIONER RECOGNITION OF JUVENILE OFFENDER MENTAL HEALTH NEEDS

The most recent review of research on mental health needs of youthful offenders suggests that youths processed through the juvenile justice system generally evidence much higher rates of mental health disorders, as defined by the Diagnostic Statistical Manual of Mental Disorders: Fourth Edition, DSM-IV (American Psychiatric Association 1994), than do general population youths (Cocozza and Skowrya 2000; see also Pallone 1991; Otto et al. 1992; Greenbaum, Foster-Johnson, and Petrila 1996). For less serious mental disorders, such as conduct disorder, the prevalence is estimated to be 80 percent or more of all youthful offenders (Cocozza and Skowrya 2000:6). Between 1 and 6 percent of youths in the juvenile justice system are estimated to suffer from psychotic disorders, a

higher rate than found in the general population (Otto et al. 1992:21). For serious disorders generally, such as schizophrenia, major depression, and bipolar disorder, the combined prevalence is estimated to be at least 20 percent, compared with 9-13 percent of general population youths (Cocozza and Skowrya 2000:6). Other estimates indicate that close to half of all general population youths receiving mental health treatment have dual-diagnoses (i.e., more than one mental disorder, including learning and substance abuse disorders), with the prevalence among youthful offenders likely to be much higher (p. 7).

Unfortunately, prevalence estimates for a wide range of mental disorders still are lacking (Cocozza and Skowrya 2000:5). For example, although many youths in the juvenile justice system have been abused or traumatized, there are few estimates of the prevalence of post-traumatic stress disorder (Otto et al. 1992:21). The limitations of extant prevalence studies should not, however, obscure the general finding that mental health disorders of various kinds, not simply the most serious, are considerably more widespread among youths in the juvenile justice system compared with general population youths (Cocozza and Skowrya 2000:5).

Against the backdrop of what is known about the prevalence of mental disorders among youthful offenders, the relatively low priority given to needs assessment is striking. In a national study of the use of needs assessment instruments, Towberman (1992) found, for example, that in many states youths do not receive a needs assessment until after commitment to a correctional facility, that only one-third of all states used a formal needs assessment instrument, that only half assess emotional and psychological needs, and, more generally, that the quality of needs assessments, as well as when they are given, varies enormously. Although it is likely that these estimates have increased since the time of the survey (1990), dramatic increases would be required to result in systematic assessment of all committed youths, much less of youths admitted to intake.

Towberman's (1992) study also raised the issue that few states have established clear purposes for using needs assessments. Other studies have echoed her findings as well as highlighted the numerous ways in which practitioners at different stages of the juvenile justice system perceive the appropriate purposes and uses of assessments (Maupin 1993; Wiebush et al. 1995; Mears and Kelly 1999).

These two issues -- the lack of assessment and ambiguity about the purposes of assessment -- likely play a key role in why so few appropriate mental health resources and services are available in local jurisdictions or in correctional facilities (Melton and Pagliocca 1992). Indeed, the two issues symbolize a lack of awareness among practitioners about the prevalence and importance of addressing the mental health needs of youths, where such needs are defined more broadly than being at risk of suicide. Suicide, of course, represents a primary concern at any stage of juvenile justice processing (Hayes 2000), yet clearly mental health needs include issues other than suicidal ideation.

Until recently, the lack of awareness was reflected in scholarly research on youthful offenders and the juvenile justice system. As Coccozza and Skowrya (2000:3) have noted: "The mental health needs of youth in the juvenile justice system have received more attention at the Federal level in the past 2 years [1998-1999] than in the past three decades combined." Thus, practitioners have had relatively little assistance from scholars in understanding the centrality of mental health needs among youthful offenders or in knowing how to assess or address these needs.

It is unlikely that the juvenile justice system will ever be able to identify adequately all mental health disorders, much less treat them. However, considerable room exists to develop a greater understanding and sensitivity toward mental health needs. For example, few detention, probation, and parole officers are trained to identify and treat mental disorders; yet certainly knowledge that a particular youth suffers from one or more disorders may assist officers in understanding that youth's behavior and perhaps how to intervene proactively on a daily basis (Maupin 1993; Mears and Kelly 1999). Similarly, few juvenile defense attorneys are trained adequately about how to advocate for the mental health needs of their clients (Puritz et al. 1995), much less to employ assessments in legal arguments (Woolard et al. 1992). Clearly, though, defense attorneys would be better able to advocate for their clients if they understood the potential role of mental disorders in affecting their clients' behavior and their need for services (Grisso and Barnum 2000:10; see also Peters and Hills 1997).

CHALLENGE 2. RAISING AWARENESS ABOUT THE IMPORTANCE OF MENTAL HEALTH AS A POTENTIAL PREDICTOR OF RECIDIVISM AND AS CONSTITUTING THE "BEST INTERESTS" OF JUVENILES

The juvenile justice system should have an interest in youthful offenders' mental health needs for at least two distinct reasons: on the one hand, mental disorders may cause or contribute to criminal behavior, and, on the other hand, there is a moral injunction, derived from the *parens patriae* ("state as parent") foundation of the juvenile court, to provide services in the "best interests" of youths. However, and as will be discussed below, both of these issues involve unique challenges, especially in terms of how to energize attempts to address youths' mental health needs.

Throughout much of the nineteenth and twentieth centuries, most accounts of a putative crime/mental disorder link have been premised upon biological or psychological theories that assumed criminal behavior to be an expression of a diseased or otherwise abnormal individual. Such accounts have diverged in two directions, with criminal behavior conceptualized as resulting either from "an imbalance in the key components of the human personality, namely the id, the ego and the superego" or "from problems incurred during an individual's personality development" (Goff 1986:246). However, beginning in the 1930s and throughout the 1940s and 1950s, the criminologist Edwin Sutherland, along with others, increasingly fought against the notion that criminal behavior results from physical or mental illness (Mulvey, Blumstein, and Cohen 1986; Vold and Bernard 1986). The strongest critiques generally fell along three lines. First, most studies of criminal behavior and mental disorder have relied upon highly biased samples of

criminals (e.g., those who already are incarcerated) and suffer from substantial methodological problems. Second, few psychological theories provide any substantial account of how mental disorder causes criminal behavior. Third, many criminals do not evidence psychopathology; hence, it is argued, criminal behavior must relate to a general process found among both mentally disordered and non-mentally disordered populations.

The debate concerning linkages between crime and mental disorder are considerably more sophisticated today, yet little evidence exists to suggest a strong, unequivocal relationship between the two (see, e.g., Monahan and Steadman 1983; Goff 1986; Mulvey, Blumstein, and Cohen 1986; Pallone 1991; Hodgins 1993; Raine 1993; Huizinga et al. 2000). Indeed, research establishing links between a wide range of mental disorders and specific types of criminal behavior are for the most part lacking. Thus, although preventing or treating certain types of mental disorder among youthful offenders may reduce criminal behavior, there is little compelling evidence to support this notion. The question then arises, why focus on criminogenic aspects of mental disorder at all?

One simple response is that there may well be a link and that it simply has not yet been sufficiently established. For example, mental disorders may cause or contribute to development of a range of other conditions that in turn eventually lead to criminal behavior, yet research on such links is conspicuously absent. Consider, however, research on conduct disorder, a diagnosis that applies to almost all youths in the juvenile justice system:

Conduct disorder . . . is the disorder most frequently referred to child psychiatric clinics. It is hard to treat. It has a significant level of persistence into adult life and is a precursor to many other dysfunctions that give rise to impairment in adult life, including alcoholism and schizophrenia. (Mrazek and Haggerty 1994:171)

The fact that conduct disorder is "hard to treat" has led researchers in mental health to consider risk factors that contribute to its onset as well as to consider appropriate preventive interventions. Perhaps unsurprisingly, such research has led to identification of factors that parallel those identified for onset of juvenile delinquency, including biological and psychological traits such as genetic vulnerability, early temperamental difficulties, hyperactivity, low self-control, as well as psychosocial and ecological dimensions such as family adversity, poverty, overcrowding, and poor housing (Mrazek and Haggerty 1994:171-193; see also Howell et al. 1995; Peters and Bartoi 1997; Tonry and Moore 1998).

Within criminology, there has been increasing recognition that criminal behavior also is "hard to treat" (Barlow 1995). Furthermore, one of the leading theories of crime argues that low self-control (Gottfredson and Hirschi 1990), a central feature of conduct disordered youths, is the primary cause of criminal behavior. Such parallels suggest that in fact there may be strong linkages between mental disorders and crime, and thus that there may be potential crime reduction gains from intervening early and effectively with mentally disordered youths. At the very least, current research indicates that

comprehensive needs-based interventions generate the strongest and most significant reductions in criminal behavior (Cullen and Gendreau 2000), suggesting that mental health should be part of any effective rehabilitative or crime reduction strategy.

It should be emphasized that even if mental disorders were not in any way causally linked to crime, the historical and continuing *parens patriae* foundation of the juvenile court is to promote the "best interests" of youths (Feld 1999; Mohr, Gelles, and Schwartz 1999). For this reason, the juvenile justice system generally has provided services (e.g., educational, vocational) even if no obvious crime reduction is anticipated. Even with the "get tough" reforms of the 1990s (Singer 1996; Torbet et al. 1996; Tonry and Moore 1998; Torbet and Szymanski 1998), rehabilitation remains one of the primary purposes guiding juvenile justice (Melton and Pagliocca 1992:111). Thus, insofar as juvenile justice systems across the country wish to fulfill their mandates, mental health, along with other needs, represents a core issue to be addressed, regardless of any criminogenic benefits that might result.

CHALLENGE 3. FOCUSING ATTENTION ON CO-OCCURRING RATHER THAN SPECIFIC AREAS OF NEED

The overwhelming majority of youths who enter the juvenile justice system suffer from multiple and co-occurring areas of need. As noted earlier, research indicates that approximately half of the general youth population receiving mental health services suffer from additional problems, including learning and substance abuse disorders, with the estimated prevalence considerably higher for youths in the juvenile justice system (Cocozza and Skowrya 2000:7; see also Greenbaum, Foster-Johnson, and Petrila 1996; Peters and Bartoi 1997). Yet all too frequently these needs either are unaddressed or priority is given to one or another need to the exclusion of the others (Cocozza 1992; Howell et al. 1995; Coordinating Council on Juvenile Justice and Delinquency Prevention 1996; Tonry and Moore 1998; Redding 1999)

The implication is self-evident, though often overlooked in practice: if we wish to intervene effectively not only with delinquency but other measures of individual progress (e.g., education, family functioning, and physical and mental health), interventions should be premised on an understanding of the multiple pathways and linkages contributing to a wide range of negative outcomes (Crowe 1998). Such a multi-faceted focus not only represents the "best interests" of youths (Feld 1999), but constitutes sound preventive policy. For example, individuals who suffer from co-occurring disorders are at increased risk of developing other types of disorders and problem behavior later in life; they also are much less likely to respond favorably to traditional treatment programs (Kessler et al. 1996:29; Peters and Bartoi 1997:3; Crowe 1998:49; Young, Gardner, and Dennis 1999). Thus, if youths' multiple needs remain unidentified, the risk arises that resources will be expended for interventions of questionable short or long-term efficacy.

Although few jurisdictions enjoy access to a full range of needed resources and services, it is unclear that investment in single-issue programming (e.g., substance abuse) represents a more cost-effective use of resources than does an equal investment in multi-

issue programming (see, e.g., Henggeler 1999). The widespread prevalence of mental disorders among youthful offenders alone suggests how ineffective interventions are likely to be if they fail to address the possible confounding effects of youths' mental health needs (Cocozza and Skowrya 2000; Goldkamp and Irons-Guynn 2000). Their efficacy may be further compromised when we consider that among certain populations with multiple needs, there may be significant differences in treatment responsiveness (Onken et al. 1997). For example, research increasingly suggests that physical, sexual, and emotional abuse/victimization play a central role in the behavior, including delinquency, of adolescent girls (Prescott 1998). In addition, the mental health needs of racial/ethnic minority groups also may be distinct or simply under-addressed relative to racial/ethnic majority groups (Isaacs 1992; U.S. Public Health Service 2000).

The challenge, then, is to create interventions that target multiple problem areas and yet that respond to the individualized needs of particular youths (Peters and Hills 1997; Cullen and Gendreau 2000). Unfortunately, human service agencies, including juvenile justice systems, traditionally have adopted a categorical approach to youth needs (Young, Gardner, and Dennis 1999). That is, they have tended to focus separately on chemical dependency, abuse or neglect, school misbehavior, mental health, or delinquency, but rarely on all of these issues at once. The result is a fractured and patchwork effort that results in missed opportunities to intervene early, proactively, and more effectively. As will be discussed later in this paper, there are, however, some promising initiatives that have emerged in recent years.

CHALLENGE 4. PROMOTING THE USE OF NEEDS ASSESSMENTS

Although significant attention has been given to risk and placement/custody-level assessment, considerably less has been given to needs assessment (Wiebush et al. 1995). Risk and placement/custody-level assessments focus primarily on the probability of recidivism or risk of misbehavior while in detention or on probation or parole (see, generally, Gottfredson 1987; Bonta 1996; Clements 1996; Lauen 1997). By contrast, needs assessments focus primarily on identifying a range of potential areas of need to aid in treatment decisions at multiple points throughout juvenile justice processing (Wiebush et al. 1995; Gendreau 1996; Grisso and Barnum 2000). The needs areas generally include mental health, emotional stability, education/disability, substance abuse, peer and family relations, health/hygiene, sexual adjustment, and employment/vocational skills. When they are accurate and used appropriately, needs assessment instruments have the potential to aid greatly in more efficient and effective identification and treatment of youths' needs, especially as compared with ad hoc assessments of need. Nonetheless, there are critical challenges, described briefly below, to the use of such instruments.

A. Clarifying the Purposes and Appropriate Uses of Needs Assessments throughout Juvenile Justice Processing

A fundamental challenge to the use of needs assessments is clarity about exactly what purposes they can or should serve. As described by Wiebush et al. (1995:180), there are five primary purposes of needs assessments:

1. consistency -- "to ensure that certain types of problems are considered by all staff";
2. conciseness -- "to provide a quick 'read' of a juvenile's problems for the case manager, other staff and supervisors, and service providers from other agencies";
3. case planning -- "to provide the foundation for the service plan";
4. prioritizing workload -- "to serve as an additional basis for classification in community settings";
5. management information -- "to provide a database for agency planning and evaluation, especially with respect to the sufficiency of available treatment resources."

Each of these purposes would suffice by itself to justify the use of needs assessments. Consistency, for example, represents a crucial dimension with respect to mental health given that minority populations typically are over-represented in the juvenile justice system and underrepresented in the child welfare system (Isaacs 1992). Additional purposes, however, also can be identified. For example, needs assessments can be used to detect youths who require specialized services (e.g., counseling, medication, suicide watch) while in detention (Hayes 2000) or on parole (Maupin 1993) or indeed at any stage of processing (Grisso and Barnum 2000). In addition, they can be used to guide referral decisions for cases that might be dismissed but where child welfare or other social services may be needed (Wiebush et al. 1995:186; see also Mrazek and Haggerty 1994; Peters and Bartoi 1997). Finally, with empirically-based information about the prevalence of mental health needs, it becomes possible to allocate resources and services in a more cost-effective manner.

Unfortunately, without clarity about exactly which purposes are to be served by needs assessments, it is unlikely that they can achieve any purpose effectively. At minimum, the consistency with which they are used is likely to be minimal. Mears and Kelly (1999) have documented, for example, considerable confusion among practitioners in Texas as to the acceptable and appropriate uses of a state-mandated risk/needs assessment instrument. Some viewed the instrument as a way of raising "red flags," that is, identifying potential needs that should be addressed; others viewed it as assisting with detention, case management, and dispositional decision-making.

Apart from clarifying the uses of needs assessments, both in theory and in practice, an additional challenge is ensuring that needs assessments are actually used as well as not mis-used. For example, studies show that practitioners frequently do not use risk/needs assessments to inform their decision-making, even when they are required to by law or administrative guidelines (Maupin 1993). Other studies show that they sometimes are used inappropriately, as when prosecutors use them to assist primarily or exclusively with adjudication of delinquency cases rather than to focus on treatment needs (Mears and Kelly 1999). In short, if judges, prosecutors, defense attorneys, probation officers, and child welfare and social service agency providers do not commit to using needs assessments appropriately for specific purposes, the likelihood of these tools assisting in effective decision-making is greatly diminished (Wiebush et al. 1995:210).

B. Improving the Reliability and Validity of Needs Assessment Instruments

For assessments to provide effective guidance in addressing youths' mental health needs, it of course is necessary that they be reliable (i.e., consistently interpreted and completed by different assessors) and valid (i.e., measure actual mental health needs). Unfortunately, both constitute central and ongoing challenges (Cocozza and Skowrya 2000:9). As Wiebush et al. (1995:181) have emphasized: "Many needs issues are subject to wide interpretation (e.g., emotional stability, family functioning). Unless they are accompanied by a set of definitions to guide scoring, the goal of attaining consistency in the assessment process will be undermined." The continuing challenge, then, rests with creating instruments that can reliably and accurately tap into or screen for a wide range of mental health needs, as well as clinical instruments that reliably and accurately diagnose specific disorders.

Screening in particular represents a neglected focus. Unlike assessment for specific disorders, screening instruments allow for identification of potential areas of need and thus encourage a broad-based approach to intervening with youths. Because they attempt to tap into a wide range of possible needs and generally must rely strongly on self-reported facts by youths, they also present considerable challenges. However, when coupled with adequate training and funding, recent advances show considerable promise in generating reliable and accurate information about potential needs (see discussion below).

C. Enhancing the Feasibility of Conducting Mental Health Needs Assessments

There are several stages or places within juvenile justice processing in which assessments typically can occur: intake (generally in probation departments); emergency and pre-trial detention centers; state correctional facility reception centers; and upon entry in rehabilitation programs or secure facilities (Grisso and Barnum 2000:11; see also Wiebush et al. 1995). Frequently, comprehensive assessments are not possible because of time or cost constraints, or they are not allowed due to legal reasons (e.g., there is a possibility that reports of recent activities might incriminate respondents), especially during youths' earliest contacts with the juvenile justice system. Moreover, most assessments that are conducted generally must rely on youths' self-reported accounts of specific issues. By contrast, certain instruments have been created to adjust to these limitations and to provide immediate assistance with specific decisions, yet these generally are tailored to quite specific concerns (e.g., suicide risk, alcohol/drug dependence). Other instruments, especially those conducted in later stages of processing, may focus on clinical assessment of specific types of mental disorders. Frequently, however, needs assessments are not conducted, staff are ill-equipped either to conduct or interpret assessments, or youths may not have all of their potential needs identified.

One promising response to this set of problems has been to develop mental health screening instruments. Grisso and Barnum (2000), for example, have promoted the use of the Massachusetts Youth Screening Instrument (MAYSI) instrument because it can provide a more comprehensive snap-shot of a youth's potential mental health needs. As

importantly, the MAYSI has the following advantages: it screens for a wide range of mental, emotional, and behavioral problems (alcohol/drug use, anger/irritability, depression/anxiety, somatic complaints, suicidal ideation, thought disturbances, and traumatic experiences); it relies on self-reports and a reading ability no greater than 5th grade; it can be applied to all youths, regardless of age, sex, or racial/ethnic background; it can be administered and scored in 10-15 minutes and requires no clinical expertise to administer or interpret; it is relatively inexpensive to use; and, although it does not and cannot provide psychiatric diagnoses, it demonstrates psychometric reliability and validity consonant with specific types of disorders (Grisso and Barnum 2000:13; paraphrase). As noted earlier, no instrument by itself can ensure adequate identification and treatment of the mental health needs of youths. However, the typical barriers to assessment can be significantly offset through employment of screening instruments such as the MAYSI, which not only are cost-effective but can reduce the likelihood that a range of important mental health needs will go unidentified and therefore unaddressed.

CHALLENGE 5. IDENTIFYING RESOURCE AND SERVICE GAPS AND PROMOTING DIVERSION

Several ironies arise from the increased reliance upon the juvenile justice system to address the many needs of youthful offenders, including those who have committed relatively minor offenses (Liska, Markowitz, Whaley, and Bellair 1999; Coccozza and Skowrya 2000). First, local and state juvenile justice systems frequently lack the resources or services to address these needs (Towberman 1992; Redding 1999). Second, just as frequently, the needed resources and services actually may be available through diversion to other programs and agencies or through collaborative initiatives among them (Young, Gardner, and Dennis 1999). Third, youths who fail to have their needs addressed are considerably more likely to recidivate, ultimately placing an even greater burden on the juvenile justice system (Coccozza 1992; Howell et al. 1995; Coordinating Council on Juvenile Justice and Delinquency Prevention 1996; Tonry and Moore 1998).

Such ironies suggest two relatively self-evident challenges to the juvenile justice system: namely, that of identifying the needs of youths and the extent to which these needs can be met with available resources and services, and of promoting diversion when and where possible (Mohr, Gelles, and Strauss 1999; Oldenettel and Wordes 2000; Rivers and Anwyl 2000). Against this backdrop, the relative inability of most jurisdictions to estimate the extent of mental health or other needs among referrals, much less to contrast these needs against what resources and services are available to address them, is striking. Indeed, if assessments are lacking, the symbolic effect would appear to be one of de-prioritizing service provision. And even if addressing the mental health needs of youths constitutes a priority, without empirical estimates it is difficult if not impossible to allocate scarce resources effectively (Pallone 1991; Rivers and Anwyl 2000). Furthermore, without systematic assessments of all youths, diversion is less likely to occur and is more likely to be inconsistent when it does (Coccozza and Skowrya 2000). The sum result is that diversion and treatment are minimized and correctional placement is maximized.

CHALLENGE 6. ENCOURAGING COLLABORATION AMONG JUVENILE JUSTICE, CHILD WELFARE, SOCIAL SERVICE, AND EDUCATION SYSTEMS

In recent years, considerably more attention has been given to the notion that juvenile justice, child welfare, social service, and education systems should collaborate in addressing the mental health and other needs of youths (e.g., Melton and Pagliocca 1992; Sheppard and Zangrillo 1996; Mears and Kelly 1999; Redding 1999; Young, Gardner, and Dennis 1999; Anderson 2000; Coccozza and Skowrya 2000; Hubner and Wilson 2000; Slayton 2000; U.S. Public Health Service 2000). Collaborative efforts and initiatives can include "coordinated strategic planning, multiagency budget submissions, implementation of comprehensive screening and assessment centers, cross-training of staff, and team approaches to assessment and case management" (Coccozza and Skowrya 2000:8).

For many of the reasons enumerated earlier, such collaboration poses many benefits. For example, youths referred to the juvenile justice system often suffer from a wide range of mental health and other problems. Common sense thus suggests that systems that have more experience with or resources for addressing these problems should be involved with these youths. Because youth behavior may be driven by multiple areas of need, systematic and comprehensive attention to these needs may result in improved functioning in all aspects of behavior, not simply delinquency. Furthermore, the benefits may extend to youths not currently in any of the relevant systems. For example, if a truant youth is discovered to come from a family background involving domestic violence, resources and services can be brought to bear not only for that youth but for his or her siblings. No guarantee exists that this approach will be effective, but the likelihood is considerably greater than it is for the traditional "counsel-and-release" decision typical in many truancy and other less serious types of referrals to probation departments.

Unfortunately, despite the many and significant benefits flowing from collaborative initiatives, significant challenges loom large (Oldenettel and Wordes 2000). Different agendas, philosophies, and goals constitute a central barrier. For example, juvenile justice increasingly has become focused primarily on punishment, which contrasts sharply with the goals of child welfare agencies (Feld 1999). Indeed, studies show that frequently one system will refuse to become involved with youths until exclusive jurisdiction has been established (Mears and Kelly 1999; Young, Gardner, and Dennis 1999; Coccozza and Skowrya 2000). Even within the juvenile justice system, strong lines of demarcation still remain between those with rehabilitative versus correctional orientations (Coccozza 1992; Redding 1999; Rivers and Anwyl 2000).

There are nonetheless promising examples of how to promote collaboration across different systems. Interagency agreements, for example, can clarify roles and responsibilities, and expectations, and identify target populations. But it is important to emphasize that such agreements can be significantly undermined if careful attention is not given to addressing issues such as a lack of trust among participating agencies,

inadequate funding, and concerns about the legalities of sharing information that might not necessarily be in the "best interests" of youths (Slayton 2000).

POTENTIAL SOLUTIONS

For any significant social problem, there are few silver bullet (one factor) solutions. However, a growing body of literature suggests a number of promising approaches to addressing the mental health needs of youthful offenders. Two of these are described below to illustrate the elements that likely will need to be part of any long-term solution.

A. Juvenile Assessment Centers

One potential solution to resolving several of the challenges described above is to implement a state-wide system of juvenile assessment centers (JACs) such as has been enacted in Florida (Dembo and Brown 1994; Rivers, Dembo, and Anwyl 1998; Springer, Shader, and McNeece 1999; Rivers and Anwyl 2000). JACs are used to provide a centralized intake process based on multidisciplinary screening and assessment. The goals include: ensuring that youths' needs are addressed at disposition; linking youths and their families with needed services; and monitoring how youths' needs are addressed through programming (Springer, Shader, and McNeece 1999:46; Oldenettel and Wordes 2000:1-2). Organizationally, JACs have several central elements: a single point of entry through a 24-hour centralized point of intake; immediate and comprehensive assessments; use of a management information system (MIS); co-location of services to ensure non-redundant provision of appropriate treatment and rehabilitation services; and integrated case management (Springer, Shader, and McNeece 1999; Oldenettel and Wordes 2000). The importance alone of early screening for mental health disorders cannot be underestimated because of their potential to reduce problem behaviors over the long term. As Peters and Bartoi (1997:6) have noted: "Universal screenings are warranted due to the high rates of co-occurring disorders among individuals in the criminal justice system and to the negative consequences for nondetection of these disorders."

Although JACs are not panaceas, they nonetheless can provide significant benefits. As Oldenettel and Wordes (2000) and others (e.g., Rivers, Dembo, and Anwyl 1998; Springer, Shader, and McNeece 1999) have noted, JACs can address many of the problems endemic to the traditional model of juvenile justice operations. They can, for example, reduce gaps in services, improve communication among agencies, enhance mental health service delivery, determine when youths have multiple and co-occurring needs, decrease confusion about how the juvenile justice, child welfare, social service, and education systems operate, identify the need for increased funding to serve the specific needs of youths, and promote earlier and more effective collaborative intervention efforts. Similar observations have been made about efforts to address the mental health needs of adult offenders in jails, suggesting parallels in how the mental health needs of both juveniles and adults might be addressed (Morris, Steadman, and Veysey 1997).

As with any programming effort, the utility of JACs rests largely on effective implementation. Studies have shown, for example, that JACs in some states have experienced a wide range of problems. Several of these bear emphasizing briefly because of their importance to developing efficient and effective JACs in any jurisdiction: poor integration with existing child welfare and social service systems; difficult-to-use management information systems; inadequate funding and programming; ongoing tensions between correctional and treatment staff; disproportionately lower utilization rates by racial/ethnic minority populations, due in part to language barriers and cultural insensitivity among service providers; violation of youths' due process rights; net-widening; and stigmatization of youths (Springer, Shader, and McNeece 1999; Oldenettel and Wordes 2000; Rivers and Anwyl 2000).

B. Wraparound Service Programs

In contrast to traditional "one size fits all" approaches to serving youths with emotional and mental health needs, Wraparound service programs focus on providing treatment that is tailored to the needs of each youth. Although this notion accords with the original philosophy of the juvenile court (Feld 1999), the Wraparound philosophy is specifically oriented toward placing youths in "small group homes with individualized care, flexible programming, and a 'never give up' philosophy" (Kamradt 2000:14-15; Clark and Clarke 1996). Specific elements of Wraparound programming include: adoption of intervention approaches that draw on the strengths, as opposed to deficits, of children and families; active involvement of families in the treatment process; provision of needs-based service planning and delivery; individualized service plans; and outcome-focused treatment processes (Kamradt 2000:16-17). Wraparound interventions are founded on an organizational framework that can ensure individualized care through the use of care coordinators, child and family teams, mobile crisis teams, and a provider network comprised of a wide range of local and state agencies (Kamradt 2000:17-18).

As with JACs, Wraparound service programs and other similar types of promising programs, such as mental health courts (Goldkamp and Irons-Guynn 2000), which draw on a similar approach as these programs, are not without potential problems. Training staff, determining jurisdiction ("turf"), establishing databases, enabling efficient and effective communication among practitioners and community members, tracking outcomes empirically, incorporating evaluations into program change -- these and other issues represent challenges that few programs can safely ignore (Roberts 1994; Conly 1999; Harachi et al. 1999; Goldkamp and Irons-Guynn 2000). Yet, if attention is given to these challenges, Wraparound, Multi-Systemic Therapy (Henggeler 1999), and other similar initiatives hold considerable promise, not least because they are grounded in those factors known to be linked to effective rehabilitative and treatment efforts (Cullen and Gendreau 2000).

CONCLUSION

As juvenile justice systems have toughened, there increasingly are critical challenges to addressing the mental health needs of youthful offenders, especially as these systems

have come to be relied on to care for the mentally ill. The challenges include perceptual problems, such as recognition among scholars and juvenile justice practitioners that mental health is an important issue, as well as more technical issues, such as how to obtain cost-effective mental health needs assessments and interventions. Overcoming such challenges will not be easy, but the alternative represents a missed opportunity to promote an efficient and effective crime prevention/reduction strategy. Indeed, research increasingly shows that prevention and early intervention initiatives pose the greatest opportunity to impact significantly delinquency and other anti-social adolescent behavior (Mrazek and Haggerty 1994; Bonta 1996; Coordinating Council on Juvenile Justice and Delinquency Prevention 1996; Tonry and Moore 1998; Bilchik 1998; Cullen and Gendreau 2000; Hubner and Wilson 2000; Rivers and Anwyl 2000; U.S. Public Health Service 2000). Apart from any crime reduction benefits, failure to address the mental health needs of youths represents a failure to promote or achieve the foundational goal of the juvenile court -- namely, to further the "best interests" of youths.

If it is accepted that addressing youthful offenders mental health needs is important, significant challenges nonetheless remain. These include creation and implementation of individualized, multiservice interventions; programming that is grounded in knowledge of effective treatment and empirical assessment; clear definition of goals and objectives; rigorous staff training; and collaborative efforts among justice, child welfare, social service, and education systems that promote diversion to appropriate services (Pallone 1991; Clark and Clarke 1996; Redding 1999; Young, Gardner, and Dennis 1999; Anderson 2000; Cocozza and Skowrya 2000; Cullen and Gendreau 2000). There are, however, several promising strategies that address such challenges. Screening instruments, for example, can provide a cost-effective platform by which the mental health needs of youths can be identified and through which jurisdictional resource and service requirements can be determined. When then linked with information about the efficacy of treatment and of community-level alternatives to incarceration -- such as JACs and Wraparound programs (Roberts 1994; Peters and Hills 1997; Cocozza and Skowrya 2000; Cullen and Gendreau 2000) -- a more solid basis is established from which to advocate for significant changes in national, state, and local policies.

The basic thrust of this paper is to argue for greater attention to comprehensive and systematic identification and treatment of the mental health needs of youthful offenders. Ideally, such efforts should be implemented before youths develop more serious or co-occurring disorders or become serious or chronic offenders (Howell et al. 1995; Bilchik 1998). Yet it is insufficient to focus generally on mental health, to increase funding for mental health programs, or to develop ever-more precise clinical assessment instruments. Such factors constitute critical elements of any mental health intervention for youthful offenders. But as importantly, there is a need to enact legislation and programs that are well-designed and implemented and that draw on individualized, multiservice, and collaborative programming based on and guided by empirical assessment (Cocozza and Skowrya 2000; Mears 2000). In short, we need research and policy agendas that prioritize mental health and that explicitly focus on overcoming the many, yet ultimately surmountable, challenges to addressing youthful offenders' mental health needs.

REFERENCES

American Psychiatric Association. 1994. Diagnostic Statistical Manual of Mental Disorders: Fourth Edition, DSM-IV. Washington, D.C.: American Psychiatric Association.

Anderson, Jeffrey A. 2000. "The Need for Interagency Collaboration for Children with Emotional and Behavioral Disabilities and their Families." Families in Society: The Journal of Contemporary Human Services 81:484-493.

Barlow, Hugh, ed. 1995. Crime and Public Policy: Putting Theory to Work. Boulder, CO: Westview Press.

Barratt, Ernest S., and Laura Slaughter. 1996. "Mental Illness and Violence." Current Opinion in Psychiatry 9:393-397.

Bilchik, Shay. 1998. Mental Health Disorders and Substance Abuse Problems Among Juveniles. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Blackburn, Ronald. 1998. "Criminality and the Interpersonal Circle of Mentally Disordered Offenders." Criminal Justice and Behavior 25:155-176.

Bonta, James. 1996. "Risk-Needs Assessment and Treatment." Pp. 18-32 in Choosing Correctional Options That Work, edited by Alan T. Harland. London: Sage.

Burns, Barbara J. 1999. "A Call for Mental Health Services Research Agenda for Youth with Serious Emotional Disturbance." Mental Health Services Research 1:5-20.

Clark, Hewitt B., and Richard T. Clarke. 1996. "Research on the Wraparound Process and Individualized Services for Children with Multi-System Needs." Journal of Child and Family Studies 5:1-5.

Clements, Carl B. 1996. "Offender Classification: Two Decades of Progress." Criminal Justice and Behavior 23:121-143.

Cocozza, Joseph J., ed. 1992. Responding to the Mental Health Needs of Youth in the Juvenile Justice System. Seattle, WA: The National Coalition for the Mentally Ill in the Criminal Justice System.

-----, 1997. "Identifying the Needs of Juveniles with Co-Occurring Disorders." Corrections Today 59:146-148.

Cocozza, Joseph J., and Kathleen Skowrya. 2000. "Youth with Mental Health Disorders: Issues and Emerging Responses." Juvenile Justice 7:3-13.

Conly, Catherine. 1999. Coordinating Community Services for Mentally Ill Offenders: Maryland's Community Criminal Justice Treatment Program. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.

Coordinating Council on Juvenile Justice and Delinquency Prevention. 1996. Combating Violence and Delinquency: The National Juvenile Justice Action Plan. Washington, D.C.: Coordinating Council on Juvenile Justice and Delinquency Prevention.

Crowe, Ann H. 1998. Drug Identification and Testing in the Juvenile Justice System. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Cullen, Francis T., and Paul Gendreau. 2000. "Assessing Correctional Rehabilitation: Policy, Practice, and Prospects." Pp. 109-175 in Criminal Justice 2000, vol. 3, Policies, Processes, and Decisions of the Criminal Justice System, edited by Julie Horney. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.

Dembo, Richard and Richard Brown. 1994. "The Hillsborough County Juvenile Assessment Center." Journal of Child and Adolescent Substance Abuse 3:25-43.

Elliott, Delbert S., David Huizinga, and Scott Menard. 1989. Multiple Problem Youth: Delinquency, Substance Use, and Mental Health Problems. New York: Springer-Verlag.

Feld, Barry C. 1999. Bad Kids: Race and the Transformation of the Juvenile Court. New York: Oxford University Press.

Gendreau, Paul. 1996. "Offender Rehabilitation: What We Know and What Needs to Be Done." Criminal Justice and Behavior 23:144-161.

Goff, Colin. 1986. "Criminological Appraisals of Psychiatric Explanations of Crime: 1936-1950." International Journal of Law and Psychiatry 9:245-260.

Goldkamp, John S., and Cheryl Irons-Guynn. 2000. Emerging Judicial Strategies for the Mentally Ill in the Criminal Caseload: Mental Health Courts in Fort Lauderdale, Seattle, San Bernardino, and Anchorage. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Assistance.

Gottfredson, Don M. 1987. "Prediction and Classification in Criminal Justice Decision Making." Pp. 1-51 in Criminal Justice: A Review of Research, edited by Don M. Gottfredson and Michael H. Tonry. Chicago, IL: University of Chicago Press.

Gottfredson, Michael R., and Travis Hirschi. 1990. A General Theory of Crime. Stanford, CA: Stanford University Press.

Greenbaum, Paul E., Lynn Foster-Johnson, and Amelia Petrila. 1996. "Co-Occurring Addictive and Mental Disorders among Adolescents: Prevalence Research and Future Directions." American Journal of Orthopsychiatry 66:52-60.

Grisso, Thomas, and Richard Barnum. 2000. Massachusetts Youth Screening Instrument -- 2: User's Manual and Technical Report. Worcester, MA: University of Massachusetts Medical School.

Harachi, Tracy W., Robert D. Abbott, Richard F. Catalano, Kevin P. Haggerty, and Charles B. Fleming. 1999. "Opening the Black Box: Using Process Evaluation Measures to Assess Implementation and Theory Building." American Journal of Psychology 27:711-731.

Hayes, Lindsay M. 2000. "Suicide Prevention in Juvenile Facilities." Juvenile Justice 7:24-32.

Henggeler, Scott W. 1999. "Multisystemic Therapy: An Overview of Clinical Procedures, Outcomes, and Policy Implications." Child Psychology and Psychiatry 4:2-10.

Hodgins, Sheilagh, ed. 1993. Mental Disorder and Crime. Newbury Park, CA: Sage.

Hoge, Robert D. 1999. "An Expanded Role for Psychological Assessments in Juvenile Justice Systems." Criminal Justice and Behavior 26:251-266.

Howell, James C., Barry Krisberg, J. David Hawkins, and John J. Wilson, eds. 1995. Sourcebook on Serious, Violent, and Chronic Juvenile Offenders. Thousand Oaks, CA: Sage.

Hubner, John, and Jill Wolfson. 2000. Handle with Care: Serving the Mental Health Needs of Young Offenders. Washington, D.C.: Coalition for Juvenile Justice.

Huizinga, David, Rolf Loeber, Terence P. Thornberry, and Lynn Cothorn. 2000. Co-occurrence of Delinquency and Other Problem Behaviors. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Isaacs, Mareasa R. 1992. "Assessing the Mental Health Needs of Children and Adolescents of Color in the Juvenile Justice System: Overcoming Institutionalized Perceptions and Barriers." Pp. 141-163 in Responding to the Mental Health Needs of Youth in the Juvenile Justice System, edited by Joseph J. Coccozza. Seattle, WA: The National Coalition for the Mentally Ill in the Criminal Justice System.

Kamradt, Bruce. 2000. "Wraparound Milwaukee: Aiding Youth with Mental Health Needs." Juvenile Justice 7:14-23.

Kessler, Ronald C., Christopher B. Nelson, Katherine A. McGonagle, Mark J. Edlund, Richard G. Frank, and Philip J. Leaf. 1996. "The Epidemiology of Co-Occurring Addictive and Mental Disorders: Implications for Prevention and Service Utilization." American Journal of Orthopsychiatry 66:17-31.

Lauen, Roger J. 1997. Positive Approaches to Corrections: Research, Policy, and Practice. Lanham, MD: American Correctional Association.

Liska, Alan E., Fred E. Markowitz, Rachel B. Whaley, and Paul Bellair. 1999. "Modeling the Relationship between the Criminal Justice and Mental Health Systems." American Journal of Sociology 104:1744-1775.

Maupin, James R. 1993. "Risk Classification Systems and the Provision of Juvenile Aftercare." Crime and Delinquency 39:90-105.

Mears, Daniel P. 2000. "Assessing the Effectiveness of Juvenile Justice Reforms: A Closer Look at the Criteria and the Impacts on Diverse Stakeholders." Law and Policy 22:175-202.

Mears, Daniel P., and William R. Kelly. 1999. "Assessments and Intake Processes in Juvenile Justice Processing: Emerging Policy Considerations." Crime and Delinquency 45:508-529.

Melton, Gary B., and Pauline M. Pagliocca. 1992. "Treatment in the Juvenile Justice System: Directions for Policy and Practice." Pp. 107-139 in Responding to the Mental Health Needs of Youth in the Juvenile Justice System, edited by Joseph J. Cocozza. Seattle, WA: The National Coalition for the Mentally Ill in the Criminal Justice System.

Mohr, Wanda, Richard J. Gelles, and Ira M. Schwartz. 1999. "Shackled in the Land of Liberty: No Rights for Children." The Annals 564:37-55.

Monahan, John, and Henry J. Steadman. 1983. "Crime and Mental Disorder: An Epidemiological Approach." Pp. 145-189 in Crime and Justice: An Annual Review of Research, vol. 4, edited by Michael H. Tonry and Norval Morris. Chicago, IL: The University of Chicago Press.

Morris, Suzanne M., Henry J. Steadman, and Bonita M. Veysey. 1997. "Mental Health Services in United States Jails: A Survey of Innovative Practices." Criminal Justice and Behavior 24:3-19.

Mrazek, Patricia J., and Robert J. Haggerty, eds. 1994. Reducing Risks for Mental Disorders: Frontiers for Preventive Intervention Research. Washington, D.C.: National Academy Press.

Mulvey, Edward P., Alfred Blumstein, and Jacqueline Cohen. 1986. "Reframing the Research Question of Mental Patient Criminality." International Journal of Law and Psychiatry 9:57-65.

Oldenettel, Debra, and Madeline Wordes. 2000. The Community Assessment Center Concept. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Onken, Lisa S., Jack D. Blaine, Sander Genser, and Arthur M. Horton, Jr. 1997. Treatment of Drug-Dependent Individuals with Comorbid Mental Disorders. Washington, D.C.: U.S. Department of Health and Human Services, National Institutes of Health.

Otto, Randy K., Jonathan J. Greenstein, Michael K. Johnson, and Robert M. Friedman. 1992. "Prevalence of Mental Disorders Among Youth in the Juvenile Justice System." pp. 7-48 in Responding to the Mental Health Needs of Youth in the Juvenile Justice System, edited by Joseph J. Cocozza. Seattle, WA: The National Coalition for the Mentally Ill in the Criminal Justice System.

Pallone, Nathaniel J. 1991. Mental Disorder Among Prisoners. New Brunswick, NJ: Transaction.

Peters, Roger H., and Marla G. Bartoi. 1997. Screening and Assessment of Co-Occurring Disorders in the Justice System. Delmar, NY: The GAINS Center.

Peters, Roger H., and Holly A. Hills. 1997. Intervention Strategies for Offenders with Co-Occurring Disorders: What Works? Delmar, NY: The GAINS Center.

Prescott, Laura. 1998. Improving Policy and Practice for Adolescent Girls with Co-Occurring Disorders in the Juvenile Justice System. Delmar, NY: The GAINS Center.

Puritz, Patricia, Sue Burrell, Robert Schwartz, Mark Soler, and Loren Warboys. 1995. A Call for Justice: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings. Washington, D.C.: American Bar Association, Juvenile Justice Center.

Raine, Adriane. 1993. The Psychopathology of Crime: Criminal Behavior as a Clinical Disorder. Boston, MA: Academic Press.

Redding, Richard E. 1999. "Barriers to Meeting the Mental Health Needs of Juvenile Offenders." Developments in Mental Health Law 19(1):1-4, 14-23.

Rivers, James E., Richard Dembo, and Robert S. Anwyl. 1998. "The Hillsborough County, Florida, Juvenile Assessment Center: A Prototype." Prison Journal 78:439-50.

Rivers, James E., and Robert S. Anwyl. 2000. "Juvenile Assessment Centers: Strengths, Weaknesses, and Potential." The Prison Journal 80:96-113.

Roberts, Michael C. 1994. "Models for Service Delivery in Children's Mental Health: Common Characteristics." Journal of Clinical Child Psychology 23:212-219.

Sheppard, David I., and Patricia A. Zangrillo. 1996. "Coordinating Investigations of Child Abuse. (Guidelines for Collaboration between Law Enforcement and Child Protection Agencies)." Public Welfare 54:21-31.

Singer, Simon I. 1996. "Merging and Emerging Systems of Juvenile and Criminal Justice." Law and Policy 18:1-15.

Slayton, Julie. 2000. Establishing and Maintaining Interagency Information Sharing. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Springer, David W., Michael A. Shader, and C. Aaron McNeece. 1999. "Operation of Juvenile Assessment Centers: Trends and Issues." Journal for Juvenile Justice and Detention Services 14:45-61.

Tonry, Michael H., and Mark H. Moore, eds. 1998. Youth Violence. Chicago, IL: University of Chicago Press.

Torbet, Patricia and Linda Szymanski. 1998. State Legislative Responses to Violent Juvenile Crime: 1996-1997 Update. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Torbet, Patricia McFall, Richard Gable, Hunter Hurst IV, Imogene Montgomery, Linda Szymanski, and Douglas Thomas. 1996. State Responses to Serious and Violent Juvenile Crime. Washington, D.C.: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.

Towberman, Donna B. 1992. "National Survey of Juvenile Needs Assessment." Crime and Delinquency 38:230-38.

U.S. Public Health Service. 2000. Report of the Surgeon General's Conference on Children's Mental Health: A National Action Plan. Washington, D.C.: U.S. Surgeon General.

Vold, George B., and Thomas J. Bernard. 1986 [1958]. Theoretical Criminology, 3rd ed. New York: Oxford University Press.

Wiebush, Richard G., Christopher Baird, Barry Krisberg, and David Onek. 1995. "Risk Assessment and Classification for Serious, Violent, and Chronic Juvenile Offenders." Pp. 171-212 in A Sourcebook: Serious, Violent, and Chronic Juvenile Offenders, edited by

James C. Howell, Barry Krisberg, J. David Hawkins, and John J. Wilson. Thousand Oaks, CA: Sage.

Woolard, Jennifer L., Sharon L. Gross, Edward P. Mulvey, and N. Dickon Reppucci. 1992. "Legal Issues Affecting Mentally Disordered Youth in the Juvenile Justice System." Pp. 91-106 in Responding to the Mental Health Needs of Youth in the Juvenile Justice System, edited by Joseph J. Cocozza. Seattle, WA: The National Coalition for the Mentally Ill in the Criminal Justice System.

Young, Nancy K., Sid Gardner, and Kimberly Dennis. 1999. Responding to Alcohol and Other Drug Problems in Child Welfare: Weaving Together Practice and Policy. Washington, D.C.: Child Welfare League of America.

Smarter Policing And Stepped-Up Imprisonment As The Primary Causes Of Falling Crime Rates In New York City: The Emergence Of An Urban Legend?

Andrew Karmen *

ABSTRACT

Crime rates fell across the nation during the 1990s. In New York City, murder rates tumbled more than in most other parts of the country. The widely accepted explanations were that the NYPD greatly improved its strategies and tactics, and that the criminal justice system got much tougher with serious offenders. But some of the available data does not support these highly politicized contentions, so a "blue ribbon commission" ought to be set up to determine exactly why crime rates rise and fall before an urban legend misleads officeholders, policymakers, and voters.

Something profoundly mysterious and totally unanticipated but indisputably beneficial took place as the twentieth century drew to a close: an outbreak of better behavior swept across the land, especially on the part of teenagers and young adults (Tucker, 2000). Although the sustained drop in interpersonal violence and stealing was a national phenomenon during the 1990s, it was most pronounced in the biggest cities, where street crime rates had soared during the late 1980s (Combined News Services, 2000) New York City experienced one of the sharpest declines in murders - down an impressive 72% from an all-time high of 2,245 in 1990 to a 34 year low of 633 in 1998.¹

New York's plunging murder rate not only brought relief to besieged urban dwellers, it also touched off a spirited political debate about the reasons for the suddenly shrinking crime problem (see Karmen, 2000). Conservatives proclaimed that repressive tactics were winning the war on crime and scoffed at any insistence that substantial headway could not be achieved without eradicating the "social roots" that generated lawbreaking behavior: income inequality, poverty, dysfunctional families, and limited educational, vocational, and recreational opportunities for high risk youth. Champions of gun ownership as a means of self-defense declared that the right-to-carry laws that were

* Andrew Karmen received his Ph.D. in sociology from Columbia University in 1977. Since 1978, he has been a professor in the Sociology Department at John Jay College of Criminal Justice. He has taught courses on criminal justice, criminology, victimology, drug abuse, delinquency, social problems, race relations, research methods, statistics, and general sociology. He is a coordinator of the master's program in criminal justice and a member of the doctoral faculty, and was the advisor for criminology and for criminal justice undergraduates. Dr. Karmen has written a textbook, "Crime Victims: An Introduction to Victimology" (4th edition, Wadsworth, 2001), and has co-edited a reader, "Deviants: Victims or Victimized?" (Sage, 1983). He has written chapters in books and journal articles on a number of subjects, including drug abuse, police use of deadly force, auto theft, providing defense attorneys to indigents, victims' rights, the victimization of women, and predictions about the plight of crime victims in the future. His latest book is "New York Murder Mystery: The True Story Behind The Crime Crash Of The 1990s" (NYU Press, 2000).

passed by many state legislatures were creating an armed citizenry that was increasingly able to ward off attacks by predators (see Lott, 1998). Death penalty advocates asserted that the deterrent effects of the accelerating pace of executions were becoming obvious. Hard-liners insisted that they were helping to turn the tide by dismantling the last vestiges of permissiveness via mandatory sentences, three strikes laws, stiffer penalties, more vigorous enforcement of laws, handling more juveniles as adults, and strict curfews for teenagers. Supporters of the prison-industrial complex argued that the shrinking of the criminal element could be directly attributed to the swelling of the ranks of convicts incapacitated behind bars. New prison construction was touted as a cost-effective social investment, and it became the preferred mode of providing public housing for low income residents during the 1980s and 1990s. Officeholders (at the federal, state, and municipal level), criminal justice officials, and lobbyists for interest groups scrambled to stake their claims for credit as the unanticipated improvements in public safety materialized. Vote-seeking politicians pointed to the effectiveness of their pet projects as they sought re-election or ran for higher office (see Dicker, 2000). Agencies touted their alleged improved performance as they sought expanded budgets and enhanced authority. Police chiefs across the country were among the most vocal voices that unabashedly claimed credit, although they cited a wide variety of different strategies and tactics, ranging from forging closer ties with the community to subduing it with massive arrest campaigns against minor forms of misbehavior. It was the best of times to be a criminal justice official because it seemed as if everything "worked" - a policy was changed and shortly thereafter crime went down.

However, many of the leading explanations for the nationwide decline could not possibly account for the unprecedented drop in crime rates in New York City. Two-time losers were not put on notice by a new three-strikes-and-you're-out state law, and no strict municipal curfew drove troublemaking teens off the streets at midnight. Not a single execution was carried out in New York, and only a handful of killers were sent to languish on death row after the state legislature restored capital punishment in 1995. No new right-to-carry state law enabled Gotham's inhabitants to travel around town packing concealed pistols and revolvers; in fact, handgun licenses became much harder to obtain or renew. So these explanations for the tumbling crime rate in other parts of the country could not apply to New York City. That narrowed the field of heavily promoted arguments traceable back to powerful special interest groups to just two: 1) smarter/stricter policing and 2) a greater reliance on incarceration. Since these two explanations were so widely circulated and so readily accepted, they will be the focus of this analysis.

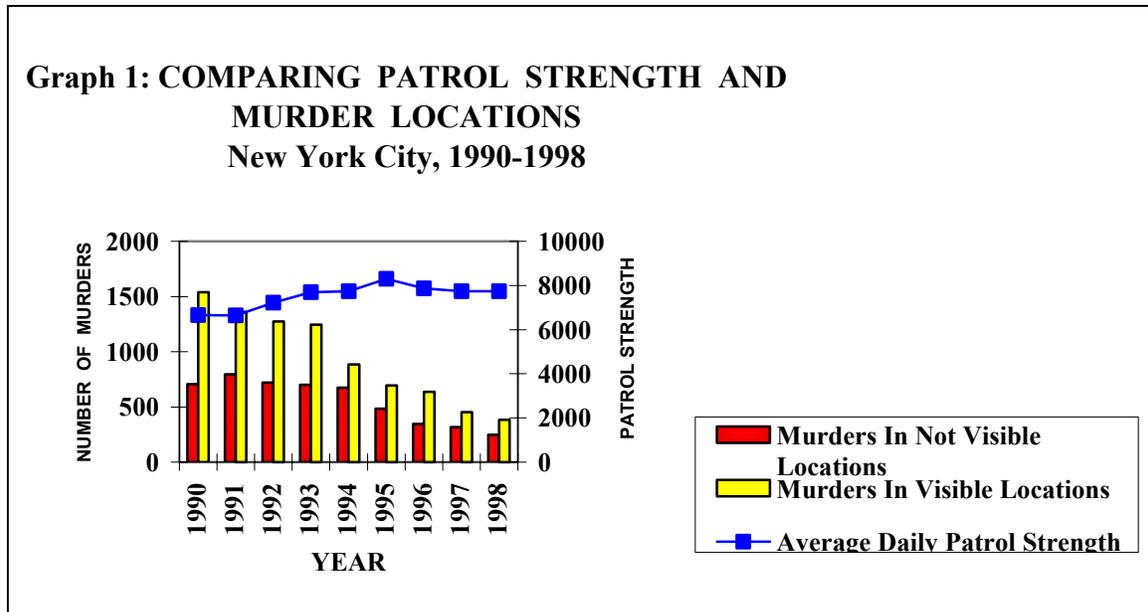
Did Better Policing Cut Crime Substantially In New York?

There can be no doubt that a severe deterioration in police protection can make a crime wave worse. But can a sudden improvement in the operations of a law enforcement agency quell a rising tide of street crime and force it to reverse course? Unfortunately, the New York experience can't answer that question. Revamped policing strategies and high-tech tactics were adopted by a re-engineered and re-invigorated NYPD shortly after Mayor Rudolph Giuliani and his Police Commissioner William Bratton took office at the

beginning of 1994 (for a description of these profound changes, see Bratton, 1998; and Silverman, 1999).² Almost immediately, the numbers of reported assaults, robberies, burglaries, and vehicle thefts began to tumble. However, the crime wave of the late 1980s had been slowly receding after peaking in 1990, so the situation did not "turn around;" what actually happened was that the rate of decline accelerated during the second half of the 1990s.

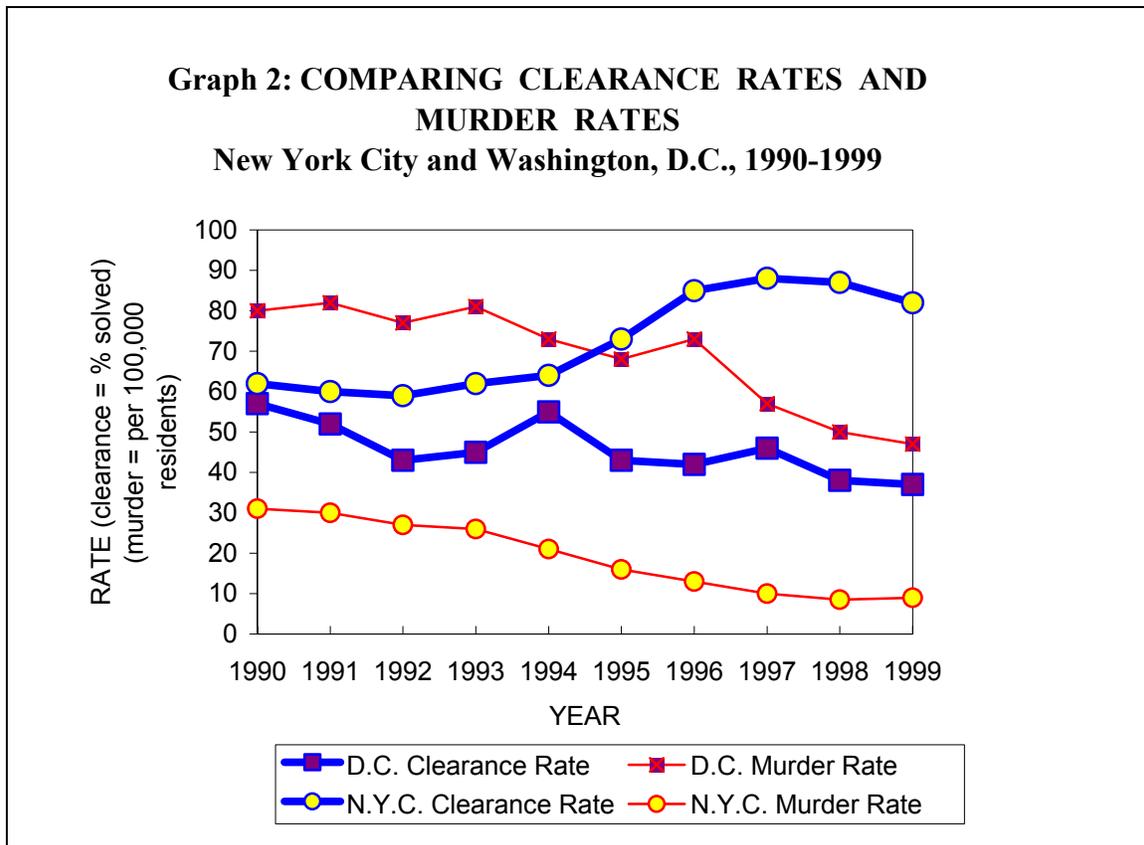
Nonetheless, the word went out that the police department had single-handedly "tamed" the City's meanest streets and restored order to formerly out-of-control neighborhoods, without the help of any other positive developments like an improving economy or favorable demographic shifts (see Krauss, 1995). Hundreds of delegations of law enforcement officials from around the country and across the globe visited NYPD headquarters to find out how they did it (see Gootman, 2000). New York's falling crime rate was attributed to the NYPD's strict crackdown on nuisance offenses, and its use of computer-drawn maps to reveal local hot spots and patterns of criminal activity which were addressed at regularly held progress-report meetings ("Compstat"). Also credited was a corporate-style devolution of responsibility by headquarters to precinct commanders, who were held accountable for producing results (lowered crime rates); and the spread of a "can-do" spirit throughout the hierarchy that quality policing could make a big difference (see Giuliani, 1997; Bratton and Andrews, 1998; Kelling and Bratton, 1998). It is certainly possible that these managerial initiatives contributed to the decline in the City's crime problem (but possibly at the expense of other nearby municipalities, if drug dealers and predatory individuals were displaced across jurisdictional boundaries to greener pastures).³ But the direct impacts of any of these strategic changes are difficult to evaluate since they were introduced as a package citywide, and were not tested out separately in some precincts but not in other comparable ones, in accord with the classic scientific method of a controlled social experiment for evaluation purposes.

One explanation that was widely circulated to account for the rapid decline in crime rates was that the NYPD "took back the streets" by greatly expanding its presence in troubled communities.⁴ Indeed the ranks of the NYPD increased by 25% to over 40,000 sworn personnel during the second half of the 1990s, making New York the most heavily policed city in the country, in terms of its ratio of residents to officers (about 185:1). As soon as the NYPD's patrol strength was beefed up, the number of murders committed out-of-doors in places visible to officers on patrol plunged. However, some facts don't support this hypothesis that increases in patrol strength result in decreases in offenses committed right out in the open. The number of uniformed officers assigned to daily street patrol did not go up after 1995, and even drifted back down during the next several years, and yet outside killings kept diminishing. Even more puzzling, slayings carried out indoors in locations not visible to NYPD officers on patrol - and therefore not subject to immediate police intervention and prevention via deterrence - fell almost as dramatically, as Graph 1 shows.⁵ Furthermore, crime rates tumbled during the 1990s in cities that did not build up their police forces.



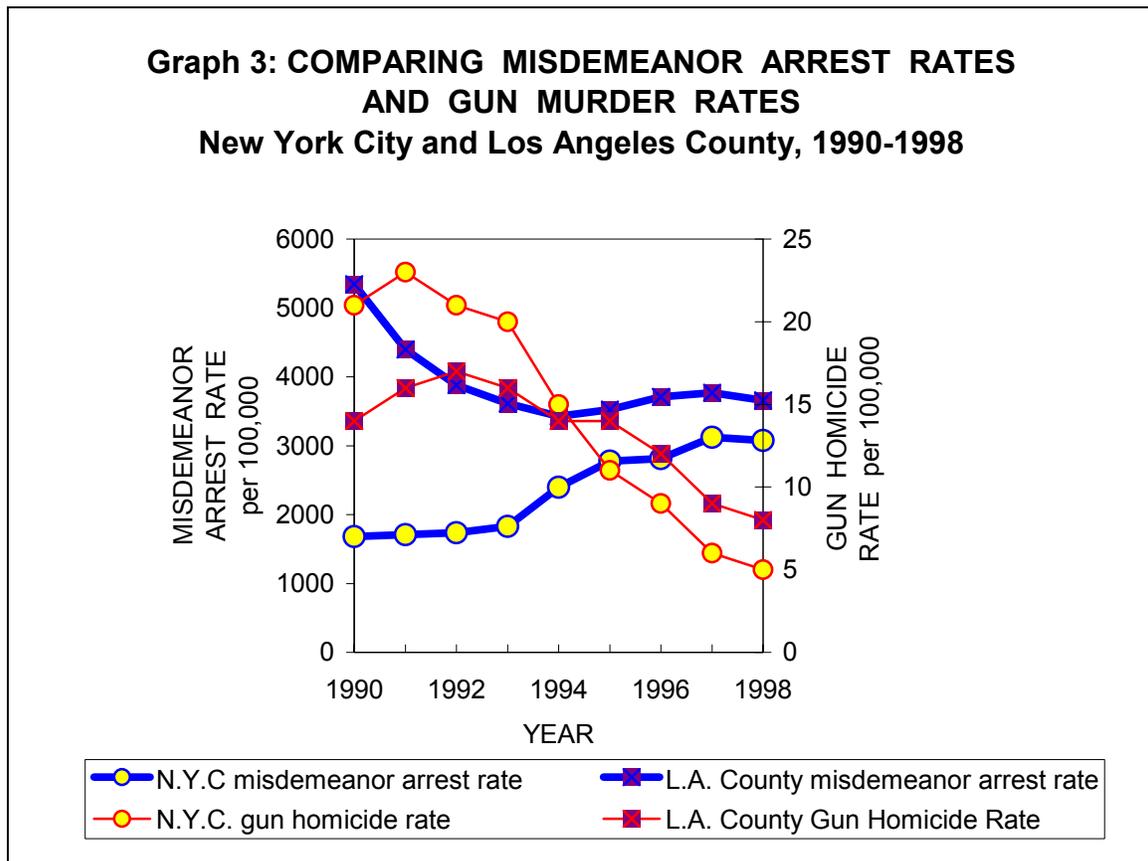
Another plausible explanation for why New York's murder rate went down was that the re-invigorated NYPD's ability to solve homicides went up. Indeed, the clearance rate improved impressively. At the start of the 1990s, the Department's performance was sub-standard (a few percentage points below the national norm of about 67%); by the end of the decade, detectives appeared to be making arrests in nearly 90% of all slayings. Perhaps the enhanced threat of getting caught frightened some would-be killers, and the capture of dangerous persons made the City's streets safer.⁶ But some problems undermine any assertion that catching more killers has a clearly demonstrable deterrent and incapacitative effect on interpersonal violence. One reason for the skyrocketing solution rate was that a cold case squad began to make arrests for killings that took place years earlier. In accord with the FBI's instructions for calculating clearance rates, solving old cases can be credited to current year totals (potentially, that means the annual clearance rate could exceed 100%). But a careful inspection of homicide logs maintained by the NYPD's Chief of Detectives during the middle 1990s revealed that the clearance rate for current murders did not improve much beyond 60%, roughly the same proportion solved at the start of the decade (see Parascandola, 2001). Furthermore, the rising clearance rate might not be proof of superior police work and therefore a "cause" of a falling murder rate. Instead, it might simply be the effect of a diminishing workload that enabled beleaguered detectives to devote more time to cases that in high volume years would have received short shrift. Also, levels of violence dropped in cities like Washington, D.C. and Chicago even though their troubled homicide squads were able to solve fewer murders as the 1990s wore on (see Thompson, Chinoy, and Vobejda, 2000; Main, 2001; and Ferkenhoff and Possley, 2001). Graph 2 shows that trends in clearance rates and murder rates appear to be linked in New York City, but not in Washington, D.C., so improved policing is not a necessary condition for enhanced public safety.⁷ Finally, a glaring anomaly casts doubt on the overall impact of solving crimes: the rate of vehicle theft tumbled even faster and further than the murder rate during the 1990s, despite the fact that the NYPD's solution rate remained stuck at a dismal sub-par 7% (compared to a national average of an arrest made in 14% of all reported vehicle thefts).⁸

In other words, car stealing went out of style (to varying degrees across the country, but especially in New York) despite the inability of the police to catch most of the perpetrators.



The most frequently and insistently touted explanation for the vast improvement in public safety in New York was the zero tolerance crackdown on quality-of-life infractions that was implemented in early 1994. According to the "broken windows" thesis (see Wilson and Kelling, 1982; and Kelling and Coles, 1996), attending to these nuisance offenses by issuing citations and making misdemeanor arrests should forestall the eruption of much more serious acts of theft and violence.⁹ Furthermore, summoning and arresting residents who stepped out of line enabled officers to search them for concealed weapons. A mass arrest campaign for minor infractions could intimidate would-be violent offenders into leaving their handguns at home, lest they get in serious legal trouble for concealed weapons charges. Indeed, the number of people arrested for minor transgressions soared during the second half of the 1990s, and the number of killings, especially those carried out with handguns, plunged. However, once more, some facts don't neatly fit the theory. First of all, the NYPD issued more summonses and made more arrests during 1986 and 1987 than during the 1990s, but that crackdown did not stem the rising tide of violence and theft as the crack epidemic engulfed the metropolitan area. Second, even with all the arresting that went on in New York City in the latter half of the 1990s, officers in other police departments were more active, in terms of arrests per officer per year (see Karmen, 2000). Meanwhile, in several other big cities (especially

San Diego and Los Angeles) the murder rate tumbled even though officers continued to exercise their discretion to overlook many minor violations of state and local laws (see Greene, 1999; also Butterfield, 2000; and Joanes, 2000). On a nationwide basis, an unambiguous statistical relationship between more arrests for minor infractions and the prevention of serious offenses can not be demonstrated (Cohen, Kauder, and Ostrom, 2000; and Blumstein and Wallman, 2000). As Graph 3 shows, misdemeanor arrests soared and gun murders tumbled in New York City; but in Los Angeles county, gun murders dropped even though the LAPD and other small nearby police departments made fewer arrests during the second half of the 1990s¹⁰ Furthermore, the alleged benefits of the zero tolerance crackdown - in tandem with a stepped-up stop-and-frisk campaign against those who aroused "reasonable suspicions" in officers but weren't doing anything illegal - might incur substantial social costs, in the form of heightened tensions between the police and the low income young men who are their targets (see Dixon, 1999). The NYPD's increased volume of minor arrests produced overcrowded courts, ineffective "assembly-line" case-processing, and low quality legal representation for indigent defendants (see Fritsch and Rohde, 2001).



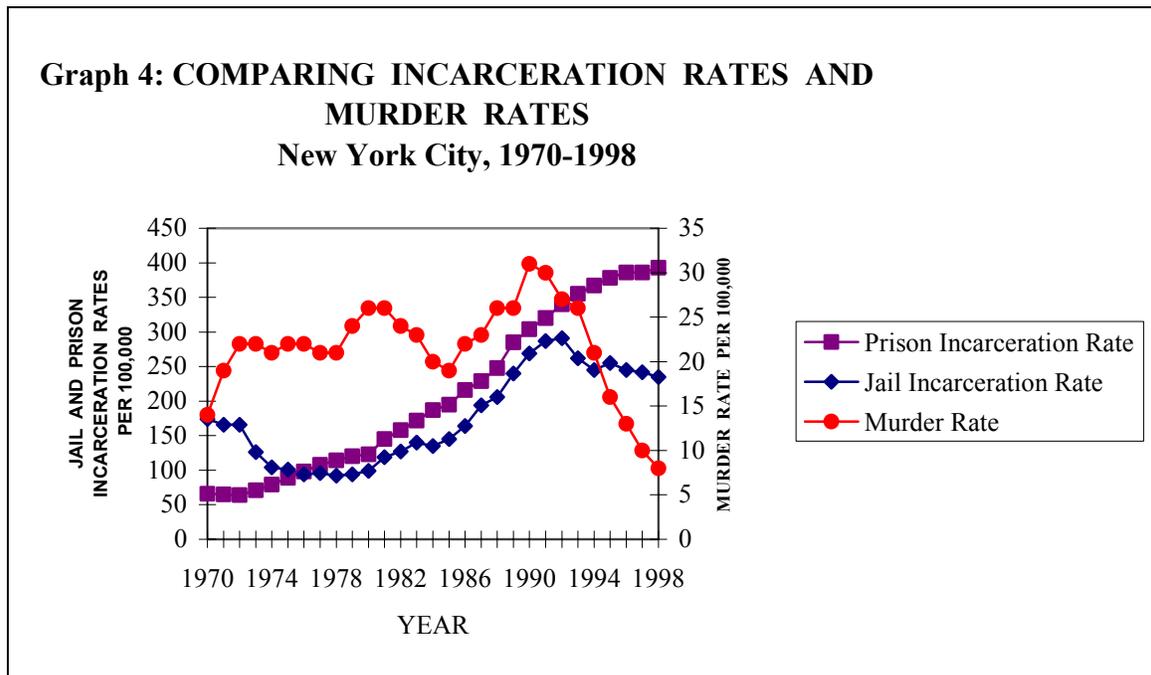
This new emphasis on the apparent effectiveness of a police force's crime reduction policies, whether in New York, or in other jurisdictions, has diverted attention from actual, directly measurable standards for evaluating a Department's delivery of services to its victimized consumers: how frequently residents reported victimizations committed against them; how quickly squad cars arrived at the scene of emergencies; how

competently officers provided psychological and physical first aid to injured parties; how adequately complainants were protected from intimidation and reprisals; how often stolen property was recovered and returned to its rightful owners; how well investigators gathered evidence and prepared cases for prosecution; how credible juries found the testimony of police witnesses at trials; and how often defendants were convicted of the serious charges originally lodged against them at the time of arrest on the basis of their victims' complaints.

Did A Greater Reliance On Imprisonment Cut Crime Substantially In New York?

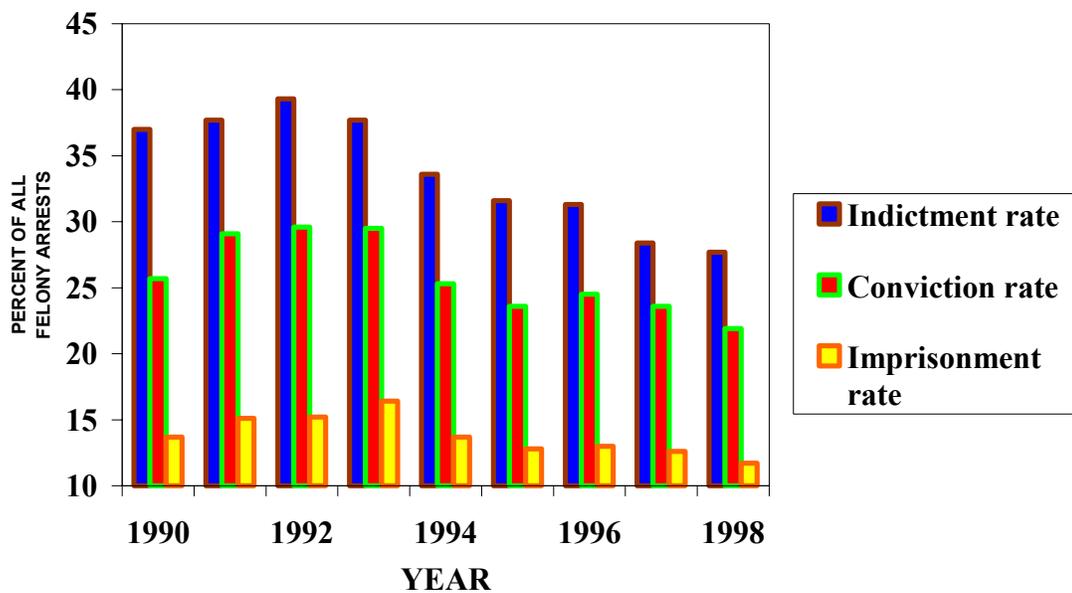
There can be little doubt that if the gates of New York State's prisons suddenly sprung open and all the inmates were set loose, a terrible crime wave would engulf the metropolitan area. But the key question boils down to: What contribution did the rising incarceration rate make to the falling crime rate? Since more than two-thirds of all the City's murder arrestees previously had been in trouble with the law, an effective criminal justice system potentially could play a significant role as a source of deterrence, incapacitation, and even rehabilitation.

The inmate population in New York State prisons rose steadily throughout the 1970s, 1980s, and 1990s before peaking at over 70,000 and then dropping a bit in 2000 (Rohde, 2001). On any given day during the late 1990s, more than 60,000 City residents were confined in local jails and state institutions: almost 6% of all male New Yorkers of African descent and more than 3% of all Hispanic males (as compared to less than 1% of whites and Asians) (see Karmen, 2000).¹¹ This heavy reliance upon warehousing and punishment was often cited as a necessary price to pay by "realists" who argued that imprisonment was working as intended.¹²



But is it true that longer sentences, mandatory minimums, more stringent standards for parole, and record-breaking numbers of New Yorkers behind bars made such a difference? As Graph 4 demonstrates, the apparent correlation (inverse relationship) between more convicts under lock and key and less mayhem on the streets only holds for the 1990s.¹³ Murder rates did not drop during the late 1970s and late 1980s, even though the number of prisoners climbed steadily during those years (see Karmen, 2000; also see Mauer 1999). Furthermore, as crime rates tumbled, record numbers of parolees re-entered the City; restrictions on parole eligibility did not kick in until the very end of the 1990s. Even more puzzling, other states forged ahead with new prison construction and more incarceration at a faster clip than New York, and yet their crime declines were not as impressive. Incongruously, even though the prison population grew, the jail population declined. Despite the crackdown on quality-of-life infractions that resulted in more misdemeanor arrests, the average length of stay shortened in the City's massive penal colony on Rikers Island. Why was a "slap-on-the-wrist" allegedly so effective as a deterrent to escalating misbehavior all of a sudden, whereas hard-liners had derided "turnstile justice" for decades? Finally, the City's entire criminal justice system did not become "tougher" as the 1990s wore on, despite the heated rhetoric and political posturing. The proportion of felony arrests that led to felony indictments, felony convictions, and state prison sentences actually peaked in 1993 in the City's five boroughs, right before crime rates tumbled. Then, while serious offenses were committed far less frequently, these three indicators of how harshly people arrested for felonies actually were handled in court slipped back down to levels previously castigated as signs of "leniency" for the remainder of the decade, as Graph 5 reveals.¹⁴

Graph 5: TRENDS IN COURT PROCESSING OF FELONY ARRESTS
New York City, 1990 - 1998



The Emergence Of An Urban Legend?

Even though the jury is still out, in terms of ongoing research, it appears that the verdict is already in. Many pundits have rushed to judgment, and are circulating what might someday be regarded as an "urban legend": smarter policing and tougher criminal justice policies were the sole reasons for the precipitous retreat of the "criminal element" from New York's meanest streets. But social scientists must harbor reasonable doubts, adopt a skeptical stance in the face of these insistent claims emanating from vested interests, and demand, "Prove it! Where is the hard statistical evidence?" "Where are the scientifically sound social experiments testing out the effectiveness of new strategies, with other areas serving as control groups for comparison purposes?" Other positive developments during the 1990s might have helped pull down New York City's oppressively high crime rates, especially favorable demographic shifts and the changing values of youth (away from guns/drugs/gangs as counter-productive and self-destructive expressions of adolescent angst and political alienation). Crime's decline also may be due to an improving economy and a waning crack epidemic (see Karmen, 2000). Since so much is at stake politically (including budget priorities, social programs, and criminal justice policies) and so many research findings already don't support what could be an emerging urban legend, it seems that the only responsible course of action would be to convene a "blue ribbon commission" with sufficient authority to collect hard-to-obtain agency data in order to get to the "bottom" of this mystery, and solve it - before it is too late and crime rates begin to rise once more.

ENDNOTES

1. Murder is the most accurately measured of all the street crimes that are closely monitored by the FBI's annual Uniform Crime Report. Completed motor vehicle thefts also are a well reported crime, and they declined just as quickly as murders, so the ebbing of the crime wave in New York was virtually "across-the-board" for acts of both violence and theft.
2. Mayor Giuliani forced Commissioner Bratton to resign in 1996 because of their rivalry over which man deserved the credit for designing the NYPD's new strategies that allegedly led to the sharp decline in crime rates (Nagourney, 2000).
3. Substantial numbers of criminals may have been chased out of New York by new NYPD strategies, reversing a situation in which the City formerly attracted career criminals from around the world. After some police chiefs of upstate cities complained about NYC residents setting up shop in their towns, Governor Pataki ordered a study of this displacement hypothesis (see Karmen, 2000).
4. If "police presence" truly was a factor, then it was heavily supplemented by a growing army of private security personnel, ranging from armed guards to store detectives to doormen. Surveillance cameras also have proliferated (see Karmen, 2000).

5. Data about the breakdown of murders committed indoors in contrast to outdoors appears in the NYPD's "Complaints and Arrests" annual reports. Data about patrol strength is revealed in the annual Mayor's Management Reports.
6. The clearance rate does not indicate what actually happens to the arrestees as their cases are processed by the court system. Many cases that are "solved" do not result in murder or manslaughter convictions.
7. NYPD clearance rates appear in the Department's "Complaints and Arrests" annual reports. The clearance rates for the District of Columbia's police force appeared in a chart in the Washington Post on December 17, 2000.
8. Overall clearance rates for all of the nation's 17,000 police departments combined are published in the FBI's annual "Uniform Crime Report."
9. Stepped-up arrest activity, needed to enforce the zero-tolerance policy, justified by the "broken windows" thesis, was considered to be too controversial by federal officials to even experiment with during the Reagan years (see Nifong, 1997).
10. L.A. County includes the city of Los Angeles, and has a total population greater than New York City's five boroughs. The L.A. County arrest rate was calculated by the California Division of Criminal Justice on its website for the resident population over 10 and less than 69 years old. The L.A. county gun murder rate was estimated on the basis of the L.A.P.D. online website figures for the proportion of gun murders in the city of Los Angeles. The N.Y.C. arrest figures were extracted from the NYPD's annual reports, and the proportion of deaths from gunfire came from reports by the NYC Department of Health.
11. Many more were out on bail, or on probation or parole, or under the control of the criminal justice system in some other way.
12. On a nationwide basis, the boom in prison construction and the soaring inmate population was estimated to account for between 5% and 25% of the 1990s decline in crime, an amount that led some analysts to question whether the benefits of expansion were worth the financial and social costs (Butterfield, 2000).
13. Prison incarceration rates are computed for each state annually by the Bureau of Justice Statistics. Jail populations are tracked by the New York City Department of Corrections. Rates are per 100,000 residents, but would be much higher if women, children, and the elderly were excluded from the calculations.
14. The New York State Division of Criminal Justice Services tracks these variables on its internet website.

REFERENCES

Blumstein, A. and Wallman, J. (eds.), *The crime drop in America*. New York: Cambridge University Press.

Bratton, W. (1998). *Turnaround: How America's top cop reversed the crime epidemic*. New York: Random House.

Bratton, W., and Andrews, W. (1999). "What we've learned about policing." *City Journal*, Spring: 14-27.

Butterfield, F. (2000a). "Cities reduce crime and conflict without New York-style hardball." *New York Times*, March 4, p. A1, B4.

----- (2000b). "Effects of prison building on crime is weighed." *New York Times*, September 28, p. A16.

Cohen, T., Kauder, N., and Ostrom, B. (2000). "A renewed interest in low-level crime." *Caseload Highlights*, 6, 2 (September), pp. 1-5.

Combined News Service (2000). "Crime drops 8th year in row." *Newsday*, October 16, p. A8.

Dicker, F. (2000). "New York leads way in reducing violent crimes." *New York Post*, October 16, p.12.

Dixon, D. (1998). "Broken windows, zero tolerance, and the New York miracle." *Current Issues in Contemporary Justice*, 10, 1 (July): 96-106.

Ferkenhoff, E. and Possley, M. (2001). "As murders drop, fewer cases solved." *Chicago Tribune*, April 13, pp. A1,A5.

Fritsch, J. and Rohde, D. (2001). " "For the poor, a lawyer with 1,600 clients. *New York Times*, April 9, pp. A1, B5.

Giuliani, R. (1997). "Innovative computer mapping program has reduced crime to its lowest levels in 30 years." City Hall Press release, May 13 (NYC official Internet website: ci.nyc.ny.us/).

Gootman, E. (2000). "A police dept.'s growing allure: Crime fighters from around world visit for tips." *New York Times*, October 24, p. B1, B10.

Greene, J. (1999). "Zero tolerance: A case study of police policies and practices in New York City." *Crime and Delinquency*, 45, 2 (April): 171-187.

Joanes, A. (2000). "Does the New York City police department deserve credit for the decline in New York City's homicide rates?: A cross-city comparison of policing strategies and homicide rates." *Columbia Journal of Law and Social Justice*, 33, 3 (Spring), 265-303.

Karmen, A. (2000). *New York murder mystery: The true story behind the crime crash of the 1990s*. New York: New York University Press.

Kelling, G., and Bratton, W. (1998). "Declining crime rates: insiders' views of the New York City story." *Journal of Criminal Law and Criminology*, 88, 4 (Summer): 1217-1232

Kelling, G. and Coles, C. (1996). *Fixing broken windows: Restoring order and reducing crime in our communities*. New York: Free Press.

Krauss, K. (1995). "The commissioner vs. the criminologists." *New York Times*, November 19, p. B43.

Lott, J. Jr. (1998). *More guns, less crime: Understanding crime and gun control laws*. Chicago: University of Chicago Press.

Main, F. (2000). "Cops catching fewer killers." *Chicago Sun Times*, December 21, p. A8.

Mauer, M., (1999). *Race to incarcerate*. New York: New Press.

Nagourney, A. (2000). "Timing not right to make bid for mayor, Bratton says." *New York Times*, October 2, p. B5.

Nifong, C. (1997). "One man's theory is cutting crime in urban streets" *Christian Science Monitor*, February 18, pp. 1, 10-11.

Parascandola, R. (2001). "Police homicide numbers queried: Arrests in old cases count in current year." *Newsday*, April 9, pp. A6, A30.

Rohde, D. (2001). "After long climb, prison population falls in New York." *New York Times*, February 2, pp. A1, B5.

Silverman, E (1999). *NYPD battles crime*. Boston: Northeastern University Press.

Thompson, C. (2000). "D.C. police knew of homicide problems." *Washington Post*, December 17, p. C1.

Tucker, N. (2000). "Juvenile homicides lowest since '80." *Washington Post*, December 15, p. A14.

Wilson, J. and Kelling, G.(1982). "Broken windows." *Atlantic Monthly* (March), pp. 29-38.

SOCIAL STATE TO PENAL STATE

Moral Panic and Sex Offenders

MEGAN'S LAW AS A RESULT OF MORAL PANIC

Hans H. Selvog*

Introduction: Moral Panic Defined

Moral panic (Hall et al., 1978; Jenkins, 1992; Chiricos, 1995) was coined by Stanley Cohen, a sociologist at the London School of Economics, who offered this definition:

A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right thinking people; socially accredited experts pronounce their diagnoses and solutions; and ways of coping are evolved or resorted to (Cohen, 1972:9).

Philip Jenkins (1998), Distinguished Professor of History and Religious Studies at Pennsylvania State University, in his most recent work, "Moral Panic: Changing Concepts of the Child Molester in Modern America," refers to moral panic, with reference to sexual offenders, as a state in which public reaction to a problem is out of proportion to the actual threat offered, when socially accredited experts perceive the threat in all but identical terms, and when the media universally stress sudden and dramatic increases in numbers involved or events and novelty, above and beyond that which a sober, realistic appraisal could sustain (p. 6-8).

Margaret Talbot (1999), a fellow of the New America Foundation, reviewed Jenkin's book, as well as others, on the topic of moral panic and sex offenders. Talbot highlighted the salient features of the moral panic over sexual offending and offered the following aspects:

1. Inflated statistics.
2. Eschewing of countervailing evidence.
3. Dubious research.

* Mr. Selvog is a Ph.D. student at Virginia Commonwealth University School of Social Work. He was the Clinical Director of the Augustus Institute for Forensic Services, a program of the National Center on Institutions and Alternatives. Mr. Selvog managed the private non-profit outpatient mental health clinic. He also supervised clinical staff, wrote proposals and grant applications and provided individuals and group therapy services to sexual offenders, persons with compulsive sexual behaviors, and victims of sexual abuse (adolescents and adults). He has been recognized as a national expert on violence, sexual disorders and mental health analysis of defendants charged with capital and other violent offenses.

4. Indiscriminate merging of crime categories.
5. Diversion of attention and resources form more prevalent forms of cruelty to children (e.g., emotional and physical neglect, physical abuse, abandonment, and poverty).

In a review of former moral panics, Chiricos (1995), a professor with the School of Criminology & Criminal Justice at Florida State University, critiqued the moral panic of violent crime. He noted that in 1993 violent crime captured popular consciousness with images of random violence on television. Violence was characterized as "epidemic." Politicians called for law and order responses to the public's hysteria.

Chiricos (1995) noted that founding moral panic theorists criticized societal responses as "fundamentally inappropriate" (Cohen, 1972, p. 9), and they reinforced an ideological pattern. This fundamentally inappropriate response referred to unintended consequences. With reference to the 1993 moral panic to the threat of drugs (e.g., the war on drugs in our urban areas), the unintended consequences were more African-American men in prisons. Perhaps the parallel with sex offenders is the newly created civil commitment of sexual offenders just recently supported by the U.S. Supreme Court (*Kansas v. Hendricks*, 1997).

Chiricos (1995) pointed out that the ideological patterns spurred on by moral panic was used during the war on drugs to justify expanding the punitive apparatus of the state, even as crime rates were declining then and are still falling currently (U.S.A.Today, May 8, 2000, front page). Is a similar ideological pattern being played out with reference to civil commitment and sexual offenders?

Moral panics divert attention and resources from more fundamental social ills. Chiricos (1995) raised the notion that moral panics provide "vocabularies of punitive motive." For example, like the 1993 moral panic to an "epidemic" of drug violence, which was the vocabulary of punitive motive to justify an explosion in prison construction, so too the moral panic to an epidemic of sex offending is the current vocabulary of punitive motive to justify civil commitment of ever increasing numbers of sex offenders.

Chiricos (1995) expands further on the ideological pattern of moral panic and its role in obscuring more fundamentally appropriate social policy. He related that moral panic promoted the "positive" and "negative" functions" attributed to ideology. Specifically, the positive function of ideology that moral panic promotes is partisan discourse in the pursuit of interests. The negative function of ideology that moral panic promotes, is distorting reality in the pursuit of those interests. Chiricos concluded that both these functions of ideology entertain discourse that seeks to gather, assemble, husband, defer and control the discharge of political energies and, consequently, foments popular support for public projects. In the case of the drug war, prison construction occurred. In the case of sex offenders, community notification, Megan's law, and expanding civil commitment of sexual offenders enjoy immense, popular support.

Moreover, Chiricos (1995) reveals that these hugely popular public projects are mobilized without reference to tradition, authority or faith. Reports are made about the world that justifies commands to do something of a public nature (i.e., community notification of sex offenders). The core of ideology, Chiricos contends, is a relationship between reports and commands and is rooted in partisanship.

Moreover, moral panic requires the misrepresentation of partisan interests. In the case of the war on drugs, the myth of an explosion of random violence contained the belief that violence once confined within the parameters of the inner-city had moved from its confines and gained the potential to wreak havoc in suburban or middle-class neighborhoods. In the same way, when referring to sex offenders, mythical misrepresentations in the form of high rates of recidivism, incurable and intractable behaviors, and unmotivated and conscienceless psychopaths roaming our communities, all have served partisan politics.

Returning to the kernel of ideology as the relationship between reports and commands, Chiricos (1995) unveils the dual function of moral panic-driven, ideological patterns to report and reveal, but also to blur and conceal. *Moral panic performs its social function not only by its reports but also by the silences it imposes* [italics added].

The silence imposed by the moral panic to sexual offending is described in "Politics, Punishment, and Populism" (Windlesham, 1998), a detailed account of the Violent Crime Control and Law Enforcement Act of 1994, which included the passage of the federal version of Megan's Law. Lord Windlesham (1998), a prominent legal scholar, British legislator, and Oxford College Principal, analyzed the passage of Megan's Law by the 103rd Congress. President Clinton signed Megan's Law on May 17, 1996. During debate of the bill that preceded the signing, only a single voice in opposition, U.S. Representative Melvin Watt (D.-N.C.), argued against it. The U.S. House of Representatives voted unanimously in support of the bill: 418 to 0, with 15 not voting. The Senate as a whole passed the bill with even less fanfare and no objections whatsoever. Windlesham noted the political implications for representatives if any dissent was raised "against a law directly aimed at increasing protection for children" (p. 179).

Representative Watts, in his dissenting remarks, although he voted for the passage of the bill, accepted the assumption that sex offenders repeated their offenses at a higher rate than other offenders did. This assumption currently prevails in spite of consistent analyses that show a low rate of recidivism among sex offenders and a lower rate than other offenders (Hanson & Bussière, 1998; Hanson, 2000). Moreover, as these recidivism findings were available in some studies then, other available studies at the time of the passage of Megan's Law included the findings that the majority of sex offenses (80-90%), child molestation especially, were committed by family members (Finkelhor, 1984). In addition, if the often quoted statistic that one out of four females and one out of six males have been sexually abused in America (Finkelhor, 1984) are to be believed, it seems that these figures tend to establish sexual abuse as a social and cultural phenomenon that is a consistent and reliable part of the fabric of American communities. Moreover, a recent

study showed that, in support of the previous notion, socio-economic demographics of convicted sex offenders mirror in almost direct proportion the socio-economic demographics of the U.S (Marshall, 1996).

To reiterate Chiricos' (1995) point of the imposition of silence as one function of moral panic, politicians are simply unable to vote against sex offender legislation unless they truly want to commit political suicide. In a similar vein, many examples exist of the same phenomenon occurring among mental health professionals who are afraid to speak out against the prevailing authority of the sex offender epidemic for fear of ruining their careers. Be forewarned, social scientists who have tried to reexamine some of the moral panic assumptions have found themselves vitiated by the right-wing of Congress. While Rind, Tromovich, & Bauserman (1998) were completing a study which questioned the notion that being sexually abused has dire, life threatening consequences for many and all victims, Tom Delay (R., TX) excoriated the American Psychological Association (APA) and led the passage of a Senate resolution condemning the research. The Chief Executive of the APA was so vitiated by the maelstrom of criticism that, after the incident finally calmed down, he was forced to take a respite from his duties to recover physically and emotionally from the unsuspected political onslaught. The message, it seems, is social scientists should be deterred from questioning authority when it comes to our cultural sexual maladies. Only one perception is allowed, all others need not apply.

In Chiricos' (1995) analysis of moral panics, a variety of changes fostering the erosion of "traditional" were described. A feature of the discourse around sex offenders also focuses on aberrations to the traditional. For example, "traditional" therapy was coined as inadequate for sex offenders because "traditional, insight-oriented" therapies were inadequate to prevent sex offender recidivism and because sex offenders are not "traditional clients" (O'Connell, Leberg & Donaldson, 1990; Salter, 1988).

Claims-makers often draw attention to a specific problem in part because it symbolizes another issue which, for one reason or another, can not be attacked directly (e.g., feminists want to attack patriarchal structure of society so they attack sex offenders who are predominately male). Jenkins described this kind of displacement as the "politics of substitution" (1992, pg. 10).

Summarizing the key features of the recent moral panics of drugs and violence, Chiricos (1995, pg. 15) provided the following:

1. Explosion in the volume of media reports (400% increase in 6 month period).
2. Thematic emphases: a) behaviors spreading to previously safe places and b) carriers of the menace were increasingly children (e.g., juvenile sex offenders, adolescent pedophiles).

The explosion of media coverage surrounding the murders of Polly Klaas and Megan Kanka, both of whom were white girls in middle-income neighborhoods, catapulted the random and epidemic-proportion threat of violent, predatory sex offender into popular public consciousness. In the Polly Klaas murder, on October 1, 1993, the offender had done lengthy prison time. The Megan Kanka case was committed by a twice-convicted

sex offender who had been released into the community after serving a lengthy prison sentence. The message of media reports emphatically implied that no one in any place in America is immune from the potential threat posed by the sexual offenders among us. As discussed previously, Chiricos (1995, p. 19) noted that a key element in both moral panics of drugs and violence was a presumption that dangerous behaviors thought common to inner-city neighborhoods were suddenly spreading out of the ghetto into middle America. This same presumption is fostered by the Klaas and Kanka cases, both of whom were white, middle-class girls who lived in nice neighborhoods where vile murders of this sort should not occur.

A central issue then in the moral panics of 1993 (Chiricos, 1995) was the presumption that violence was spreading from the inner-city into places once considered safe. The same assumption about sex offenders also developed. The view of sex offenders as homeless and derelict dirty-old-men who were depraved winos from the ghettos was replaced by the view that any man is potentially a sexual offender. Family members, not strangers but persons known to the victim, committed 85-95% of child sexual abuse offenses. The presumed randomness of sexual violence elevated its threat to people who had learned to avoid "dangerous" places. Similarly with sex offenders, the threat was now potentially in our nice neighborhoods.

Panics over crack and violence drew heavily from reports emphasizing the escalating involvement of young people in drugs and violence. Similarly, programs for juvenile sexual offenders (JSOs) mushroomed. New and expensive inpatient programs specifically designed to address JSOs sprang up around the country. The supporting claims insisted that JSOs were different than regular delinquents and often slipped through the cracks of the criminal justice system because their crimes were often reduced in plea negotiations to nonsexual crimes and court workers were not trained to look for evidence of sex offenses. However, Mark Weinrott (1996) showed that JSOs are not essentially any different from other juvenile delinquents and, based on his critique of the literature on juvenile sexual aggression, proposed that specialized treatment programs for sex offenders are unjustified. He noted that JSOs share the symptoms found in general juvenile delinquent populations: family dysfunction, neglect, abuse, ADHD, etc.

Menace both to and from youth is a common theme in the anxiety of moral panics (Chiricos, 1995, p.22). Reasons include the beliefs that youngsters are presumably more vulnerable, less predictable, less remorseful, and physically closer to the rest of us. Hall et al. (1987) observed that fears and panics about youth center on the "indiscipline" of youth.

The bottom line of all ideological discourse is the use of reports (Chiricos, 1995), whether they distort reality or not, to mobilize popular support to do something in the public arena. Moral panics have relentless energy and employ rhetoric like "epidemic," "firestorm," "rising tide" and "plague." Command implications in light of this rhetoric is decisive (i.e., Megan's Law) (Windlesham, 1998).

As a result of the moral panics of 1993 (Chiricos, 1995), arrests increased as well as the flow of African-American males into prisons. It would be interesting to see what percentages of sex offenders currently in prison are black versus white. A recent Youth Law Center (2000) study on racial disparity and incarceration rates (Washington Post, 4/26/00) found substantial racial disparity. Expansion or creation of new sex crimes, lower age of adult offenses, and stiffer penalties (i.e., the federal Megan's Law doubled the maximum term for repeat sex offenders) (Windlesham, 1998), have developed out of the current moral panic over sex offenders.

In April 1994, U.S. Department of Justice and Defense signed a five year agreement to cooperate on solving problems "common" to the military and law enforcement communities (Chiricos, 1995). Pentagon technology was applied to crime fighting. Chiricos concluded that the "success" of moral panic as an ideological phenomenon could be no more aptly demonstrated than in the melding of military and law enforcement in response to our social ills.

These actions (e.g., the war on drugs) have also assisted in the dismantling of the middle class, the growth of an isolated underclass and a more unequal distribution of wealth and opportunity than at any time since the onset of the last Great Depression (Chiricos, 1995, p. 38). With reference to sex offenders, isolation and shame are hallmarks of the underlying condition of sex offending behavior yet social policies increase an offender's isolation and shame (Gilligan, 1996).

For instance, instead of waging war on inhuman conditions, social policies (e.g., the war on drugs, Megan's Law) have dehumanizing consequences for mental health and social support that contributes to an increasingly growing underclass (i.e., sex offenders), for whom life has less and less meaning. We wage war on individuals who seek meaning in drugs and violence (Chiricos, 1995), and, I submit, in deviant sexual behavior and fantasies.

The greatest victims of private and public policies are those groups demonized by moral panics and herded behind ever widening walls of exclusion. Although it could be argued that community notification helps offenders reduce isolation and exclusion (e.g., bringing them out of the closet), the real danger of the recent moral panics is that they treat problems that have been substantial and enduring for several decades (Kincaid, 1995) as if they are a sudden firestorm.

Virginia Sex Offender Registration Legislation

The Sex Offender and Crimes Against Minors Registry became effective on July 1, 1998, (§19.2-298.1), and governs the registration and re-registration requirements of convicted sex offenders in the Commonwealth of Virginia. The registry is maintained in the Central Criminal Records Exchange within the Department of State Police. A subject must personally report to the appropriate law enforcement agency for the locale in which they live, undergo fingerprinting and photographing, and provide in writing the information requested on Sex Offender Registration Form 236.

Prior to July 1, 1998, the law automatically recorded all registrants as violent sex offenders. The statute did not distinguish any differences among sexual offenders who were subject to registration. However, as of July 1, 1998, sub-paragraph A1 and A2 do distinguish between Sexual Offender and Violent Sexual Offender, respectively. So registrants must submit documentation that places them in sub-paragraph A1 in order to be removed from the conditions of sub-paragraph A2. Until such time, registrants are subject to the more stringent requirements of sub-paragraph A2, which requires re-registration every 90 days.

Virginia Statute §19.2-298.1 (Code of Virginia) requires individuals convicted of certain enumerated offenses to register with the Department of State Police within ten days of release from confinement. The standard registration period for nonviolent offenders is ten years, although there is a method to expunge one's name and identifying information from the registry after that time (e.g., §§19.2-298.2, 19.2-298.3). But, violent sexual offenders, as defined in §19.2-298.1(A)(2), have a duty to re-register every 90 days for life.

Relief from Sex Offender Registration Requirements

A violent sexual offender can seek relief from the 90-day registration requirement by petitioning the court in which he was convicted. Prior to a hearing intended to determine if the client suffers from a mental abnormality or a personality disorder that makes him a menace to the health and safety of others or significantly impairs his ability to control his sexual behavior, the court must order an assessment and report from a panel of three certified sex offender treatment providers (e.g., §19.2-298.4). The statute does not indicate how the panel is to be selected. Nonetheless, after a court reviews the panel's findings, it may or may not grant the sex offender's petition. If the petition is granted, the person is still required to re-register every year, but his name and identifying information will be removed from the Internet system, which is maintained in accordance with §19.2-390.1(D).

Constitutional Challenges to State Sex Offender Registration Laws

A recent Princeton Law Journal (Belin, 1997) article regarding constitutional challenges to state sex offender laws noted that, in reviewing the Virginia statutes, there appear possible bases for attack on the registry, especially when one considers its stated purpose:

. . . to assist the efforts of law-enforcement agencies to protect their communities from repeat sex offenders and to protect children from becoming victims of criminal offenders by helping to prevent such individuals from being hired or allowed to volunteer or to work directly with children (§19.2-390.1(A)).

With respect to community protection, there are two difficulties. First, the express aim is protection against repeat sex offenders, but the registry applies uniformly to all offenders,

meaning that the registry may be overly broad in its design. Moreover, the names of both one-time convicted and repeat-convicted offenders are automatically placed on the Internet. No distinction is made currently between one-time convicted and repeat-convicted offenders.

Second, the section appears to assume that sex offenders pose a greater risk to public safety than other categories of offenders. This assumption is contrary to recent recidivism data that showed convicted sex offenders have relatively low rates of recidivism compared to other offenders (Lotke, 1996). For example, treated sex offenders recidivated at a rate of 10.5 %, untreated sex offenders at a rate of 18.5 %, drug offenders at a rate of 25 %, and violent offenders at a rate of 30%. With respect to protecting children, the statute's language appears to protect them from "criminal offenders," yet only sex offenders are required to register.

"Violent" Sexual Offender

"Sexually Violent Offenses" include abduction for immoral purposes (18.2.48ii); rape (18.2-61); forcible sodomy (18.2-67.1); object sexual penetration (18.2-67.2); aggravated sexual battery (18.2-67.3); and attempted rape, forcible sodomy, object sexual penetration (18.2-67.5.A) (Virginia State Police, 1999). If a person's offense falls within the above categories, actual physical injury is not required for him to be labeled a sexually violent offender. In the category of aggravated sexual battery, sexual contact with a child under the age of 13 is labeled as violent whether or not violence actually occurred during the offense behavior. It seems that this mischaracterization of the offense behavior would qualify as a symptom of moral panic (Jenkins, 1998).

By categorizing all sexual molestation of children who are under the age of 13 as violent sexual behavior, the statute produces the impression that "sex offender" can be equated with "violent offender." Thus, the exaggerated label of violent sexual offender encourages the general perception of sexual offenders as possessing violent proclivities. Yet, most sex offenders, like those categorized as sexually violent by the Virginia Internet-accessible community notification registry, are not prone to violence (Jenkins, 1998). Characteristic of moral panic, the use of extreme language that heightens the public's fear of sexual offenders as sexually violent and predatory criminals is examined next.

The Myth of "Predatory" Crime: Mistaking Parasites for Predators

At the annual meeting of the American Society of Criminology, on November 11, 1998, in Washington, D.C., Malcolm Holmes argued that, although criminals are, by definition, antisocial, they are not literally predators. "Violent criminals often injure and kill their victims," stated Dr. Holmes, "but they rarely consume them (p. 1)." Consequently, the predation metaphor, he contended, has had serious and far-reaching consequences that pertain both to the fundamental logic used in efforts to explain crime and in policy initiatives developed to address crime (i.e., escalation of prison construction).

The words "violent sex offender" in the Commonwealth of Virginia law that requires the community notification of sexual offenders via the Internet has similarly clouded understanding of the extensive continuum of individuals who are convicted of sex crimes. "Violent" is an amorphous term and used as a catchall to categorize a variety of sexual offense behaviors, ranging from those that inflict physical damage on the victims to those that do not. What are the implications of using such a term to describe sexual offense behaviors that are not violent and do not cause physical injury?

Holmes and Machalek (1998) noted that while predation is natural but not pathological, the description of crime as a predation connotes pathology in the form of sociopathy, ruthlessly self-interested behavior, amoral psychology, and a propensity to subhuman aggression and violence. The authors asserted that the metaphor of predation has been appealing because it conveys the exploitation suffered by victims, especially in the context of violent crime. Predators literally kill and consume other animals, and this provides an image powerfully evocative of the costs incurred by victims.

An alternative term is social parasitism (Holmes & Machalek, 1998). It does not suggest pathology and it is an ethologically correct classification of many forms of crime. Social parasitism refers to an interaction in which one participant benefits at the other's cost. Social parasites usurp resources produced by other individuals. In some instances, social parasitism involves aggression and violence, but in other cases, the means of usurpation entail deception or stealth. And when the parasitic behavioral strategy involves the use of force, the host may be injured or even killed. Such fatalities are not, however, due to predation. The host is not prey; it is, instead, the locus of a resource that is wrested away by the parasite. Injury or death suffered by the host is incidental to the act of parasitism; it is not a prerequisite for converting an animal's body into food, as it is in predation.

Social parasitism does not presume that such forms of exploitation are by nature pathological (Holmes & Machalek, 1998). Rather, social parasitism characterizes expropriative crime as a form of resource competition that reflects the absence of common interests or the existence of opposing interests between the host and the parasite. An example of the latter is the interaction between a neglected child in need of adult attention and a compulsive, sexually disordered adult in need of sexual contact with a child to temporarily ameliorate his severely damaged self-esteem.

In contrast to the view of crime as predatory, the social parasitism model invites research questions and directs inquiry to specific empirical domains (e.g., etiology) in order to identify factors that contribute to crime causation. The authors suggested that the logic of social parasitism raises questions about what patterns of social organization and strategies of social behavior are more vulnerable to invasion by parasitic strategies; how cooperation generates parasitism; why some individuals but not others adopt parasitic strategies; and how macrostructural factors, such as stratification systems, promote or inhibit parasitism.

Jenkins (1998) points out the diversion of attention and resources from other lethal problems facing children when the child abuse problem is framed exclusively in sexual

terms. The number of children killed by strangers in sex killings annually is a very small proportion of the majority of child murders each year caused by physical maltreatment, neglect, and torture, usually at the hand of parents or other family members. Jenkins wrote:

Although recent debate about sex offenders has focused on child killers like Westley Alan Dodd and sex murders committed by strangers, like the men who killed Megan Kanka and Polly Klaas, these atrocious crimes represent a tiny proportion of homicide activity and of sexual offenses in general, and we should not use these cases as typical examples in shaping social policy toward sexual deviance (p.11).

Holmes & Machalek (1998) closed by suggesting several directions for future research that included the identification of the policy implications associated with conceptualizing crime as social parasitism rather than as predation. However, the purpose of the present study is to make the point that perhaps the choice of extreme language regarding the social phenomenon of sexual offending fuels a moral panic reaction to it. Next, presented is a review of a study that evaluated whether community notification is achieving its stated intent. After describing the results of the study, assertions are supported that suggest how the analysis contributes to moral panic.

An Evaluation of Community Notification in Washington State

Schram and Milloy (1995) conducted a study in Washington State that provided the first examination in the country of how the community notification law has been implemented. They investigated who has been affected by it and its impact on recidivism among sex offenders who were subjects of the law. Washington State's community notification law is the first of its kind in the nation and was implemented in 1990. The purpose of the law was twofold: 1) to prevent crime by making public the known sex offenders neighborhood by neighborhood, and 2) to provide law enforcement with an additional tool to investigate crime by using information on convicted sex offenders in their jurisdictions. The study produced a description of sex offenders who were subject to the highest level of community notification during the initial three years of implementation. It also compared recidivism between two groups of sexual offenders on the basis of the number of sex offense convictions and type of victim (adult or child). The two groups consisted of sexual offenders not subject to community notification and those that were subject to the highest level of community notification.

The authors (Schram & Milloy, 1995) found no significant effect on recidivism resulting from community notification. Of the 125 adult offenders who were in the study group, 18 offenders (14%) were arrested for new sex offenses during the 54-month follow-up period. (The follow-up period is the period of time the study group offenders were released from prison and considered "at risk" in the community (p. ii).) The selected 125 adult offenders were subject to the highest level of community notification and, thus, considered the "most serious offenders" (p.2). According to Schram and Milloy (p.5):

The method of dissemination at this level can vary from letters to close neighbors to general press releases. The information that is most often distributed includes a photograph, physical description, and the address of the offender. Frequently criminal history information, including the offender's method of approaching victims, is also circulated. Other information that has been released to the public includes place of employment, vehicle description, supervision conditions, and whether or not the offender completed sexual deviancy treatment. Of the 18 offenders arrested for new sexual offenses following release from prison, nine were not convicted but had charges pending when the study ended. Thus, 11 convictions represent an eight percent rate of sexual offense recidivism. The new convictions broke down as follows: three first degree rape (one subject was convicted of two first degree rapes), two second degree assault with sexual motivation, one second degree rape, one indecent liberties, two communication with a minor, and one sexual exploitation. Approximately one quarter of the new sexual convictions ($n=3$, 27%) were for rape 1, while nine percent of the new sexual offense convictions ($n=1$) was for rape 2. One other contact sexual offense conviction, indecent liberties ($n=1$), occurred. Therefore, five out of the eleven new sexual offense convictions were hands-on offenses, representing four percent of the total community notification sample. This recidivism rate is consistent with the lower end of some recidivism studies for sex offenses (Lotke, 1997). Even if the sexual offense recidivism rate is calculated based on any new arrest during the three year follow-up period, as the authors did (Schram & Milloy, 1995), then the resulting 14 percent recidivism rate is entirely consistent with Hanson and Bussiere's meta-analysis (1998), which reviewed 61 recidivism studies and found an average sexual offense recidivism rate of 13.4 percent ($n=23,393$). Hanson and Bussière characterized this reoffense rate as "low" (p. 348).

The adult community notification group was generally white males in their mid-thirties with a history of alcohol or drug abuse (Schram & Milloy, 1995). They were most likely to be unemployed, to never have been married, and to have nonsexual criminal convictions as well as sexual criminal convictions. In addition, the typical adult sexual offender subjected to the highest level of community notification was a child molester with at least two sexual offense convictions, whose victims were young females known or related to him, and who may have been under the influence of alcohol or drugs at the time of the sex offense. Moreover, "few of the offenders had engaged in treatment for their sexual offense behavior" while incarcerated (Schram & Milloy, 1995, p. 9), and less than ten percent of the notification sample ($n= 12$ or 12.5 %) participated in outpatient treatment as a condition of parole. Mental health problems among the community notification group included the following: one half of the offenders did not complete high school or receive a GED; 40 percent of the group had been arrested for some type of offense before age 16; one quarter of the men had been physically abused; one third had been sexually abused; and most of the men had substance abuse problems. In light of the presence of these deficits, traumas, and disorders, in conjunction with the absence of mental health treatment for 90% of the sample, it is surprising that only four percent of the notification sample was convicted of new sexual offenses.

Research among other types of offenders consistently show that two out of three prisoners reoffend following their return to the community (Lotke, 1996). Schram and

Milloy (1995) noted that less than one-half of their 125 study subjects (n=52, 42%) recidivated, based on a new arrest, and not necessarily a conviction, of any kind, "but most of the new arrests were for nonsexual crimes" (Schram & Milloy, 1995, p. 11). Only 14 percent of the sample (n=18) were arrested for new sex offenses.

Schram and Milloy's (1995) results could be interpreted in several ways. First, it seems that sex offense recidivism tends to happen a great deal less than other types of offense recidivism. Next, ignoring offenders' mental health issues and social deficits by not providing a minimum of resources to them, while incarcerated and especially once released to the community, might be contributing to additional crime. Lotke (1996) documented that recidivism among sexual offenders who received mental health treatment was substantially lower than the rate of recidivism among sexual offenders who did not receive therapy.

If community notification is designed to warn unsuspecting children and their families of potential danger, it seems odd on the surface that the majority of the offenders had victimized children known or related to them. It would seem that the families of the victimized children would already know of this person's offense behavior. So then the purpose of community notification is not to protect children already sexually assaulted but to warn potential child-victims of potential sexual reoffenders. As Jenkins (1998) argued, several assumptions underlie the reasoning behind placing nonviolent, sexual-touching-of-children-under-the-age-of-13 types of cases (e.g., aggravated sexual battery) on the highest level of community notification and labeling the offenders so placed as sexually violent offenders.

First, implicit in the act of being subject to community notification is the notion that a person who molested a child relative or child friend of the family will, if given the opportunity, molest other children. The most expensive and broadest recidivism study ever to be conducted, and unlikely ever to be done again because of the cost, showed an average recidivism rate of 13.4 percent for sex offenders (Hanson & Bussière, 1998). In addition, for some subcategories of sexual offenders the recidivism rate is lower, i.e., 12.7 percent (n=9,603) for child molesters. Hanson points out that offenders who sexually abused girls who were either related to them or known to them (e.g., not strangers) were not more likely to recidivate. In other studies, incest offender subcategories show an even lower rate of recidivism, less than five percent (Lotke, 1997). Yet, Schram and Milloy's (1995) sample consisted mostly of exactly this group of offenders. Hanson and Bussière concluded the following:

The present findings contradict the popular view that sexual offenders inevitably reoffend. Only a minority of the total sample (13.4% of 23, 393) were known to have committed a new sexual offense within the average 4- to 5-year follow-up period examined in this study. This recidivism rate should be considered an underestimate because many offenses remain undetected. Nevertheless, even in studies with thorough record searches and long follow-up periods (15-20 years), the recidivism rates almost never exceeded 40 percent. Low rates of recidivism can, nevertheless, be worrisome, given the serious effects of sexual victimization (p. 357).

Hanson and Bussiere's (1998) last comment, about the serious effects of sexual abuse, assumably refers to consequent psychological and psychosocial problems that develop for some victims of sexual abuse. However, a recent meta-analysis of the psychological and psychosocial harms experienced by the sexually abused show that not all adult to child sexual interaction causes harm (Rind, Tromovitch & Bauserman, 1998). The study further found that being sexually abused, defined as it is sociolegally, has no built-in or inevitable outcome or set of emotional reactions. The authors determined that the reason for their findings were the overinclusive definitions of sexual abuse that contained both willing sexual experiences accompanied by positive reactions on part of the child and coerced sexual experiences with negative reactions. According to Rind, Tromovitch, and Bauserman, this overinclusive operationalization, a staple of moral panic movements (Jenkins, 1998), leads to poor predictive validity.

The fear that sexual offenders will reoffend and the fear that the consequence of this reoffense will be severe (e.g., violent or debilitating) is a seemingly unassailable concern that has driven the passage of Megan's laws in almost every state in America and the federal government (Jenkins, 1998). Jenkins asserted that what has driven this fear, in spite of countervailing evidence just reviewed, were activist groups who have successfully linked sexual molestation with child murder. The number of children killed by strangers has been estimated at less than one percent of child homicide (Lotke, 1996). The case of Megan Kanka is the most representative for purposes of this paper. Once this nexus was made in the minds of the public through the media, mental health researchers also active in the movement to end sexual victimization of children leant their support through research studies to further this connection between violent murderers and sexual offenders.

The research cited by the State of New Jersey in support of Megan's Law revealed selective attention to some studies and inattention to others. The most egregious example is the state's citation of a work by Vernon Quinsey et al (1993) and the absence of a citation of a critique of Quinsey's research by William Marshall (1993). Marshall's article immediately follows Quinsey's piece in the same journal at the same time cited by the government. Had the state considered the assessment of William Marshall it would have seen why Quinsey's research is subject to question.

Quinsey et al (1993) studied men who had been sentenced to long prison terms for serious sex offenses. This itself leads to substantial sample selection bias because the people in the study were at the more serious end of the spectrum of offenders, both in terms of severity of offense and frequency of commission. They were also more likely to have severe and chronic psychiatric disorders and the sanity of many was under investigation. Overall, most of the people in the study were probably more serious offenders and more complicated psychologically than many people subject to notification under the New Jersey Community Notification Act.

In addition to selection bias, the treatment regimen under investigation was poorly constructed. In Marshall's words, "Their setting is far from therapeutically ideal and their

population is almost exclusively composed of chronic violent sex offenders (many of them found to have been insane) . . . (p.534)." Furthermore, "many of the offenders were left to languish for a considerable time after treatment was complete, in an environment that did not encourage maintenance of treatment gains, before being released with no follow-up relapse prevention (p. 535)." With all this in mind, Marshall concludes that "it was no surprise at all to me that [Quinsey's] very limited program was a failure (p. 536)." Furthermore, the wide citation Quinsey's study enjoyed in all likelihood strengthened the gross misperception of a nexus between violence and sexual offending.

Another factor underlining the assumption of sexual offending and violence is the sexual addiction model of compulsive sexual behavior. This model transfers the tenets of alcohol addiction and the twelve-step self-help model of recovery to compulsive sexual behavior. The foundation of alcohol addiction theory is the belief that addiction, in any form, is progressive. This idea implies that a person will progress from beer to vodka, marijuana to heroin, and from exhibitionism to violent, sadistic sexual torture and murder if unimpeded. However, this model is not accurate nor does it convey the actual meaning of the term progressive, which largely refers to the addiction gradually taking over the addict's entire person: emotionally, psychologically, spiritually, and physically. Although examples that fulfill the model criteria may occasionally happen, they are the exception rather than the rule and no rigorous scientific evidence supports the notion (Masters, Johnson, & Kolodny, 1994). Looking at the above study through the conceptual lens of moral panic, Jenkins (1998) discussed an escalation theory of sexual offending that "has been the prevailing orthodoxy for most of the twentieth century" (p. 9). From this theory comes the belief that minor sexual offenses are stepping-stones to child murder and forcible rape.

Regarding the unforeseen consequences of moral panic movements (Jenkins, 1998), statistics show that approximately 90 percent of incidents of child molestation occur within the family (Lotke, 1997). Potentially, community notification could have a negative impact on the innocent victims of these offenses by revealing to the neighborhood and local school officials the incest-abuse cases. Although the initial intent of community notification was to prevent cases like Megan Kanka, the actual effect has been to sweep the great majority of sexual offenders into community notification with little thought about the consequences, especially on prior victims and family members of offenders (Lotke, 1997).

Yet who is going to stand up for the sex offenders and argue their case? As Weinrott (1996) sagely observed, sexual offenders as a constituency have no chance of any political standing and, on their own, will not do anything to bring attention to their plight since they in fact want to avoid attention because of fears of vigilantism.

As noted previously, a characteristic of moral panic is selective inattention to countervailing evidence (Talbot, 1999). In Schram and Milloy's (1995) study, 1(juvenile sex offenders comprised the study sample that was subject to the highest level of community notification. All but three of the youth reoffended and six of the 11 boys committed new sexual offenses, a 79% rate of recidivism. Most of the juveniles in this

sample were Caucasian, had a prior nonsexual offense, and had a single sexual offense. In addition, there was no mention of treatment while incarcerated or mental health therapy aftercare. Those juveniles who received the highest category of community notification met the statutory criteria of a sexually violent predator (as defined by the Community Protection Act) and would be considered "dangerous juvenile sex offenders" (p.1). The authors concluded that the recidivism rate of juvenile sex offenders was "disappointedly high" (p.16) and that community notification did not prevent reoffense. Schram and Milloy did not proffer any explanation for this failure among their juvenile sex offender sample. Yet, I suggest that the study inadvertently supported the notion that juvenile sexual offenders considered at high risk will in all likelihood reoffend, bolstering a moral panic about this population as untreatable and dangerous. However, the high recidivism rate for this particular sample might be explained by conclusions reached in a critical review of juvenile sexual aggression conducted by Mark Weinrott (1996).

Juvenile Sexual Aggression: A Critical Review

The purpose of Weinrott's (1996) review was to "summarize what we know about JSOs [juvenile sex offenders], what we don't know, how we're going to find out, and what we're going to do in the meantime" (p.1). Weinrott stated that the burgeoning field that processes juvenile sexual offenders suffers from a lack of empirical research. Because of certain ingrained assumptions there is an unusual degree of consensus about juvenile sexual offenders despite a terribly weak empirical foundation. Jenkins (1998) held that with moral panic there is consensus among the experts. Weinrott contends further that institutions became overwhelmed by the need to react quickly and consequently experimental research has taken a back seat:

Sex offenders do not have a strong constituency to say the least. While women's groups and mainstream child advocates are opposed neither to offender research nor treatment, they have a greater investment in tougher laws, longer sentences, offender registration, and community notification. Since the perpetrators themselves are disinclined to call attention to their plight, there is really no political base. This translates into relatively little research funding (p.3-4).

Weinrott (1996) also argued that in most communities, there exists a monopoly among treatment providers for the JSO. Thus, the treatment industry is immune to market forces and will maintain the status quo. Without demand for new methods, there is not much economic incentive to develop alternative therapies.

Weinrott's review of available studies showed that only a small fraction of JSOs commits sex crimes that result in physical injury. Generally speaking, he concluded, JSOs employ no more force or coercion than is necessary to complete a desired sex act and that hands-on offenses, which most often involve child victims, suggest a distaste for violence among JSOs. Accordingly, most study samples include a mix of sex offenders only a few of whom could be construed as violent. Additionally, Jenkins (1998) has noted that moral

panic contains the indiscriminate merging of crime categories, which is essentially Weinrott's point.

Weinrott (1996) concluded that JSOs are a heterogeneous group. Although few studies of violent JSOs have been conducted, Weinrott believed it unlikely that juvenile sex offenders will be found to be substantially different from nonsexual delinquents in personality, intelligence, drug addiction, testosterone levels, social competence, and general attitudes about women. Moreover, in the study that included the largest number of JSOs, virtually all of the victims were either related to or known by the offender. Weinrott showed that juvenile child molesters are more likely to have been molested themselves than are peer rapists or nonsexual delinquents. Rates of prior physical abuse and neglect are also relatively high among JSOs. With respect to child neglect, JSOs who commit rape are far more likely to have been exposed to this condition than are juvenile child molesters or adult onset sex offenders. It is also clear that JSOs are likely to have suffered some form of abuse or parental neglect. For example, JSOs who were sexually victimized are more likely to demonstrate deviant sexual arousal (measured phallometrically) than JSOs who were not. Thus, treatment for JSOs must address these broader issues.

According to Weinrott, the majority of JSOs feel isolated from both female and male peers, and they, particularly those who molest children, operate outside the social mainstream. Yet, JSOs appear to be no more socially isolated nor inept than delinquent or psychiatric populations. For the most part, however, adolescent child molesters are shy if not socially isolated, lack self-esteem and have been sexualized at an early age. Youths who were themselves victims show the highest, most persistent levels of deviant arousal and are presumably most at risk for developing pedophilia. The majority of JSOs offend solely against younger children, and their victims are most likely to be female acquaintances or siblings; rarely are they strangers. Also, most of their offenses could be construed as coercive rather than overtly aggressive or violent.

Weinrott (1996) emphasized that boys who used threats, force, or violence to commit sex crimes against peers or adults are a different type of JSO than those involved in most other sexual offenses. Yet, most study samples combine the two for both clinical treatment and scientific study. JSOs who desist from offending as adults are (on the basis of recidivism studies) more the rule than the exception. Family dysfunction, as measured by the presence of physical abuse, sexual abuse, or neglect, is associated with early onset of sexual aggression.

Regarding methodology, Weinrott (1996) concluded that juvenile sexual offenders are heterogeneous, but descriptive research, at the time of his review, was doing as much to muddy the waters as to clarify them. He stated:

Paraphiliacs are lumped together with boys whose sexual aggression is exploratory or part of a general antisocial lifestyle. Those who are socially isolated or anxious are combined with those who are not. Samples include families that are well adjusted and those that are either

dysfunctional or nonexistent. Victim age and sex preferences are often obscured in descriptive or intervention studies. Yet JSOs may be very different from each other, but this is often not reflected in research designs (p. 47-48).

Case in point, Schram and Milloy's (1995) study on community notification does not break down the adult sample into different subgroups with background correlates, like sexual abuse, physical abuse, or less than high school education, to be connected to the men who recidivated. Nor was there any indication of whether the small percentage that did participate in treatment offered in prison were among those men who recidivated sexually, nor whether those men with substance abuse problems were among the recidivists.

Schram & Milloy (1995) also found that the adult offenders who recidivated sexually were twice as likely (72% compared to 36%) to have injured their victims during the commission of a prior sex offense than those who did not recidivate sexually. Unfortunately, whether the offenders who injured their victims also tended to be from the group of men who suffered physical abuse themselves is not distinguished. It seems that tracking the physically abused throughout the study would be helpful to support or diverge from the literature on violent offenders.

The above analysis supports Jenkin's (1998) argument that moral panic involves the merging of crime categories and offenders indiscriminately and thus contributes to overreaction to the problem in concrete legislative action like community notification. For instance, initially, Virginia automatically placed all sexual offenders on the highest level of notification without any regard for the differing characteristics of their offense. Even after a distinction between sexual offender and violent sexual offender was legislated, the categories for violent sexual offenders that resulted are still overly broad, containing a majority of nonviolent offenders.

Returning to the analysis of sexually aggressive juveniles, Weinrott (1996) continued to note that youths should be described on those dimensions theoretically linked to dangerousness, recidivism, or some other criterion rather than mixing apples and oranges. Large subgroups of JSOs might very well yield distinct profiles. Weinrott referred to a study, which compared mixed JSOs and nonsex offenders, that revealed no meaningful differences between groups on 24 variables. So consistent was this set of findings that the author used them to equate sexual and general violence with respect to etiology.

Moreover, Weinrott (1996) noted, with respect to etiology, that the most widely accepted model of accounting for sexual deviancy, the "sexual assault cycle," is probably the least scrutinized. The sexual assault cycle has been promoted for nearly 20 years, yet virtually no empirical validation of the model has been presented. For instance, the only systematic investigation of distorted thinking yielded no differences in several attitudes between JSOs and nonsexual delinquents. That the framework of a cycle is superimposed on most cognitive-behavioral programs suggests that nearly all JSOs in treatment are either undersocialized child exploiters or sexual aggressives, but no one really knows if

this is true. Where the cycle model falls most short is in explaining why only a small fraction of youths with a negative self-image act out sexually. Recidivism studies, however flawed, suggest that once apprehended many JSOs learn to control their behavior without clinical intervention and that others do so with out their offenses ever being detected.

Given the dearth of even descriptive studies little is known about why youths opt to act out sexually (Weinrott, 1996). Unquestionably, being the victim of child abuse or neglect can be a precipitating factor. Furthermore, an early history of sexual victimization appears to portend child molestation whereas a history of emotional or physical neglect is associated with rape. It seems clear that sexual victimization is an important etiological factor in the development of homosexual pedophilia, yet the studies do not report if the sexual abuse suffered by the juvenile offenders was from a male or female.

There is no reason to believe that those whose crimes are intrusive or violent are also the most likely to reoffend (Weinrott, 1996). Contrarily, nuisance offenders have the highest base rates of sexual offending. In a study of juvenile sex offender recidivism, sex offenders were twice as likely to desist than either nonsex violent offenders or property offenders. Although the JSOs were four times as likely to commit another sex crime, still only 12.4% reoffended in this manner. As in most other studies, those JSOs who failed did so in a manner that was neither sexual nor violent.

Weinrott (1996) cited a previous study, from 1994, conducted by Milloy, who was the coauthor with Schramm on the community notification study previously examined. Milloy's 1994 recidivism study revealed that none of the JSOs (n=59) was reconvicted of a subsequent sex offense. However, the recidivism rate for the delinquent comparison group (n=197) was 0.5% for sexual offending. Eighteen percent of the JSOs reoffended in a violent, nonsexual fashion compared to 21% for the delinquent group; and 37% of the JSOs reoffended in a non-violent manner compared to 55 % of the delinquent group. Weinrott concluded from this study that neither JSOs nor delinquents are likely to reoffend sexually, and that both groups showed a pattern of generalized delinquency prior to and following placement. Contrasting Milloy's 1994 study with her 1995 evaluation on community notification, it seems community notification contributed to increased recidivism among juveniles.

Weinrott (1996) concluded that there is no scientific evidence to support the notion that intervention should take the form of lengthy, offense-specific, peer-group therapy. The only experimental evidence of therapeutic efficacy comes from a more general, delinquency-oriented approach. By the same token, there exists no data to promote a more heavy-handed correctional orientation. Granted, conceded Weinrott, there is growing support for community notification, prohibiting expunction of criminal records, remanding juveniles to criminal court, and paying restitution to victims. Yet there is nothing that shows such practices will deter youths from committing sex crimes or reduce recidivism among existing JSOs.

Weinrott (1996) foresaw a trend that supported the moral panic thesis of this paper. He predicted that the balance of research on juvenile sexual aggression will likely shift from psychological to criminological based approaches. Where the influence of mental health administrators is waning, correction officials are playing a larger role. As a growing percentage of sex offenders are processed exclusively within the purview of the criminal justice system, empirical research will decrease, at least the rate at which studies are mounted.

Jenkins (1998) underlined this same trend of law enforcement and criminal justice goals weighing in more heavily than a mental health/psychiatric approach to addressing the problem of sexual offending. By framing sex offending narrowly as sexually deviant individuals that need to be managed by the criminal justice system, underlying causes are overlooked and mental health professional values and ethics are abrogated within the correction/law enforcement oriented context of treating this population.

Virginia-Certified Sex Offender Treatment Provider Licensure

For the first time in Virginia's history, the Department of Corrections (DOC) is contracting sex offender treatment providers by specifying in elaborate detail how they must conduct their treatment. Consequently, DOC vendor contracts prescribe that sex offender treatment providers must be certified by the state and must cooperate with the probation/parole officer (i.e., "It's Not Just About Treatment Anymore" was the title of the annual DOC sponsored conference on sex offenders, the members of which are largely non-mental health practitioners.). One of the rationales in support of the above "community containment approach" (English, Pullen & Jones, 1996) is that this model will prevent the state from having to pay out limited resources for more prison construction, which will be the likely result of civil commitment of sex offender legislation. This development highlights how policy has come full circle from the initial basis for civil commitment, which was institutionalizing the truly dangerous offender, to the current trend of civilly committing the small percentage of violent sex offenders and the far greater proportion of non-violent sex offenders to imprisonment based on moral panic: sex offender recidivism and the myth of its high incidence.

Yet, it seems that this realization is perpetually ignored consciously and driven by isolated, horrifying, media-driven cases of white, middle-class girls: Klaas and Kanka. The discourse during debate was on the traveling, child predator, a very rare bird indeed. If we are to accept the rate of victims of abuse (1 in 4 for females and 1 in 6 for males), which is considered underreported because many victims of sexual abuse choose not to come forward and perpetrators choose not to reveal the extent of their abuse, perhaps unconsciously these statistics reverberated among the hearts and minds of our legislators who, at some level, understood these pervasive and epidemic figures. As a result, the sweeping nature of the final language and the sweeping consequences for the sex offenders among us is characterized in Virginia's sex offender legislation with indiscriminate categories of most sex offenders as "violent" and civil commitment laws that are projected to cost in the millions with prison construction a necessary component.

This appears a far cry from the rhetoric of isolating the most dangerous and most violent, the "sexually violent predator."

Conclusion

So what are the consequences of the moral panic against sexual offenders? Windlesham (1998) observed the following:

Although the recidivism may not be greatly affected, notification may nevertheless have a valuable function if the corrosive fear of crime in a local community is reduced, without being replaced by a false sense of security. Perceptions, how people feel, can sometimes count for more than the actuality (p. 187).

Perhaps Lord Windlesham is correct! However, a false sense of security it seems is precisely what has been constructed: the majority of offenders are related and known to the victims, socio-economic demographics do not distinguish the sexual offender from non-offenders (e.g., meaning we are more alike than different), and far greater incidences of neglect of and violence toward children are discovered than is sexual abuse. The prevention of sexual offending is served poorly by the Megan's laws and their underlying moral panic. In fact, the evidence marshaled in this paper supports the finding that greater harm has been done. In his recent reissue of the negative, unforeseen consequences of Megan's laws, Freeman-Longo (2000) warns as follows:

With the writing of this paper, I hope we will not take another five or six years to revise these laws. The laws need to be more uniform between states, less punitive and destructive to sex offenders, less destructive to the lives of innocent persons, and more preventive (even though prevention will only occur in a limited way with these laws). Until we look at them closely and research their potential effectiveness, I am concerned that laws designed to protect our citizens may, instead, do more damage than if they did not exist at all.

References

Belin, P. (1997). Dodging due process: Repeat sexual offenders can be denied life, liberty and the pursuit of happiness. Princeton University Law Journal, 2 (1).

Berlin, F. S. (1989). Perfect relationship. In R. L. Spitzer, M Gibbon, A. E. Skodol, J. B. W. Williams, & M. B. First (Eds.), DSM-III-R case book: A learning companion to the diagnostic and statistical manual of mental disorders (pp. 116-117). Washington, DC: American Psychiatric Association Press.

Chiricos, T. (1995). Moral panic as ideology: Drugs, violence, race and punishment in America.

Code of Virginia, §§19.2-298.1.

Cohen, S. (1972). Folk devils and moral panics: The creation of mods and rockers. Oxford: Blackwell.

English, K., Pullen, S., & Jones, L. (Eds.) (1996). Managing adult sex offenders on probation and parole: A containment approach. American Probation and Parole Association. Lexington, KY.

Finkelhor, D. (1984). Child sexual abuse: New theory and research. NY: Free Press.
Freeman-Longo, R. E. (1996). Survey of sex offender treatment programs. The Safer Society Clearinghouse. Brandon, VT: Safer Society Press.

Freeman-Longo, R. E. (2000). Revisiting Megan's law and sex offender registration: Prevention or problem. American Parole and Probation Association web site.

Gilligan, J. (1996). Violence: Reflections on a national epidemic. NY: Vintage Books.

Hagler, H. L. (1995). Polygraph as a measure of progress in the assessment, treatment, and surveillance of sex offenders. Sexual Addiction & Compulsivity, 2, (2), 98-111.

Hall, S., Critcher, C., Jefferson, T., Clarke, J., & Roberts, Brian (1978). Policing the crisis: Mugging, the State and law and order. London: MacMillan.

Hanson, R. K., & Bussière, M. T. (1998). Predicting relapse: A meta-analysis of sexual offender recidivism studies. Journal of Consulting and Clinical Psychology, 66 (2), 348-362.

Hanson, R. K. (2000). Risk Assessment. Prepared for the Association for the Treatment of Sexual Abusers. Beaverton, OR: ATSA.

Holmes, M. D., & Machalek, R. (1998). The myth of "predatory" crime: Mistaking parasites for predators. Presented at the annual meeting of the American Society of Criminology in Washington, D.C., on November 11, 1998.

Jenkins, P. (1998). Moral panic: Changing concepts of the child molester in modern America. New Haven, CT: Yale University Press.

Jenkins, P. (1992). Intimate enemies: Moral panics in contemporary Great Britain. NY: Aldine De Gruyter.

Kansas v. Hendricks (1997). U.S., 117 S. Ct. 2072.

Kincaid (1995). Child loving.

Lotke, E. (1996). Sex offenders: Does treatment work? Research Update, National Center on Institutions and Alternatives, Alexandria, Virginia.

Lotke, E. (1997). Politics and irrelevance: Community notification statutes. Federal Sentencing Reporter, 10 (2), 64-68.

Marshall, W. L. (1993). The treatment of sex offenders: What does the outcome data tell us? A reply to Quinsey, Harris, Rice and Lalumiere. Journal of Interpersonal Violence, 8, 524-541.

Marshall, W. L. (1996). The sexual offender: Monster, victim, or everyman? Sexual Abuse: A Journal of Research and Treatment, 8, (4), 317-335.

Mason, M. A. (1991). The McMartin case revisited: The conflict between social work and criminal justice. Social Work, 36, (5), 391-395.

Masters, W. H., Johnson, V.E., & Kolodny, R. C. (1994). Heterosexuality. NY: HarperCollins.

National Association of Social Workers (1997). Code of Ethics. Washington, DC: Author.

O'Connell, M.A., Leberg, E., & Donaldson, C.R. (1990). Working with sex offenders: Guidelines for therapist selection. Newbury Park, NJ: Sage.

Quinsey, V. L., Harris, G. T., Rice, M. E., & Lalumiere, M. (1993). Assessing treatment efficacy in outcome studies of sex offenders. Journal of Interpersonal Violence, 8, 512-523.

Rind, B., Tromovitch, P., & Bauserman, R. (1998). A meta-analytic examination of assumed properties of child sexual abuse using college samples. Psychological Bulletin, 124 (1), 22-53.

The Safer Society Foundation Inc.: A Nonprofit Agency for the Prevention and Treatment of Sexual Abuse. P.O. Box 340, Brandon, VT 05733-0340, (802) 247-3132.

Salter, A.C. (1988). Treating child sex offenders and victims: A practical guide. Newbury, NJ: Sage.

Schram, D. D., & Milloy, C. D. (1995). Community notification: A study of offender characteristics and recidivism. Washington State Institute for Public Policy. Olympia, Washington.

Talbot, M. (1999). Against innocence: The truth about child abuse and the truth about children. The New Republic, pp. 27-38.

Thurow, L.C. (1996). The future of capitalism: How today's economic forces shape tomorrow's world. NY: Penguin Books.

U.S.A.Today (May 8, 2000). Crime rates continue to fall.

Vermont Department of Corrections (1995). Facts and Figures: Legislative Presentation, p. 85.

Virginia State Police (1999). Web site and sex offender registry.
<http://www.vsp.state.va.us/>

Washington Post (April 26, 2000).

Weinrott, M.R. (1996). Juvenile sexual aggression: A critical review. Boulder, CO: Center for the Study and Prevention of Violence.

Windlesham, D. (1998). Politics, punishment, and populism. NY: Oxford University Press.

Youth Law Center (2000). Justice for some.

Technically Disposed: Parole Violators and Prison Crowding in Hawaii

Janet Davidson-Coronado*

Abstract

For the past two decades, the prison population in Hawaii has grown at a steady rate. For example, the prison population numbered roughly 500 in 1977 and is roughly 4800 in 2000. At the same time, however, average sentence lengths have remained relatively stable and the crime rates have been dropping. Nonetheless, the prison population in Hawaii continues to grow at a rate above most other states. As a direct result of this crowding, we are now sending a quarter of our inmates to privately run facilities on the mainland. Although these figures speak volumes about the sheer magnitude of the prison crisis in Hawaii, little academic work has focused on the causes of crowding in this state. This paper explores the relationship between technical violators of parole and prison crowding. The numbers of technical violators of parole have risen dramatically over the past 25 years. As such, these types of prison entries are essentially ‘back door’ entrances that allow for a continued and steady flow of admissions through the ‘front door’. The result: a continually increasing population that the state is not able to handle

Introduction

Following a 1984 class action suit filed on behalf of Agnes Spear by the Hawaii branch of the ACLU, the federal courts issued what is now referred to as the Spear Consent Decree. This Decree, initiated by the federal courts in 1985, required the state of Hawaii to make changes in two of its prisons, including areas involving programs for inmates, sanitation, and medical care. More importantly, though, the Decree required the state to address and alleviate the serious overcrowding crisis that the Hawaii prison system faced.

To help alleviate the problem of overcrowding in Hawaii’s prisons, the state initiated plans to ship inmates out of state to privately owned mainland facilities. As of September 2000, the state has sent roughly 1,100¹ inmates to such facilities in the following states: Oklahoma, Arizona, and Minnesota (Kakesako, 1998; Hawaii Department of Public Safety, 2000). Less the mainland inmates, the eight Hawaii prisons now house over 3,700 inmates in a system originally designed to hold 2,500 inmates but re-designed to hold roughly 3,400. In other words, even after shipping inmates to mainland facilities and expanding the existing facilities, Hawaii’s prisons are still overcrowded.

Hawaii is certainly not the only state in the nation that is and has been experiencing serious overcrowding. However, Hawaii is one of the few states actively transferring inmates to out of state private facilities simply because the in-state facilities are not

* Janet Davidson-Coronado is a graduate student at the University of Hawaii at Manoa. She is working on her Ph.D. in the Department of Sociology and can be contacted at janetd@hawaii.edu.

adequate. The inmates that are shipped out are sent far away from their families and their communities. Incarceration already serves to estrange, alienate, and deprive individuals. However, incarceration on the mainland, an extreme distance from Hawaii, enhances this alienation and estrangement. The inability to receive visitors, while being housed on the mainland, further serves to dissolve the bonds to family and community that these individuals had prior to incarceration.

How does the state plan to further alleviate the lack of bed space - keeping in mind that the Consent Decree calls for a cap on bed space at each existing facility? The answer: the state is now involved in negotiations to build a new facility either on the mainland or on the big island of Hawaii. The plan is to build a 2,300 bed facility — one that might be completed by the year 2002 (Kakesako, 1999).

Building a new prison is yet another unimaginative solution to a serious problem. It is likely that building a new prison facility will merely exacerbate the prison problem in Hawaii. A study conducted by the National Institute of Justice reported that when new cells are built, they are filled to capacity within a span of two years (Mullen, 1980). The NIJ study also indicated that construction as a means to manage prison populations is unaffordable and offers only short-term results. The construction of a new prison facility in Hawaii will only produce a short term solution to the current overcrowding. One need only look at California as an example. In the last three decades, California opened 21 new prisons (Chesney-Lind, 1998), yet California prisons are still struggling with overcrowding. Building a new prison as a solution is nothing more than putting a Band-Aid on a condition where serious surgery is required.

Are there other ways to deal with this problem? Are there more creative solutions to deal with the increasing prison population here in Hawaii? In short, yes. A report by the Corrections Panel, entitled *Spring 1989 Report of Panels of Experts* (pg.15), noted that the original decree dictated that "the corrections division shall also explore other alternatives for reduction of the population with the Hawaii Paroling Authority (HPA) and the various Hawaii State courts as appropriate to reduce the population pressures at OCCC and WCCC." However, four years after the Consent Decree was issued, the Corrections Panel was unable to find evidence of any type of serious population reduction alternatives. They also found that "placements in alternatives such as community furlough programs, drug treatment centers, etc. has declined since the filing of the Consent Decree" (pg. 15).

Even before the Consent Decree was federally imposed on prisons in Hawaii, other agencies recognized the serious overcrowding problems our prisons were facing. These agencies also outlined measures that would serve to reduce the prison population in Hawaii. The Hawaii Council on Crime and Delinquency issued a report in 1982, entitled *Controlling Prison Populations*, which outlined measures to control Hawaii's rapidly increasing prison population. The Council noted that in 1978 Hawaii had the greatest proportional increase in its incarcerated population than any other state in the nation.

Further, the council noted that if the rate of growth continued, the state's prison population would double in the span of ten years. The council suggested that the state find ways to reduce and control the prison population before it was too late. They called for a collaborative process between the legislature, the prosecutors, the defense bar, the judiciary, public non-criminal justice and private agencies, probation and parole agencies, and the governor. The council then identified three major types of actions that would have positive impacts on the prison population: changes affecting the number of people who enter prison; changes affecting the length of time people spend in prison; and changes aimed at altering system capacity. It should be noted that the first two of these major changes could have been initiated by making changes in the HPA practices.

The Hawaii Council on Crime and Delinquency issued a second report in 1982, entitled *Reducing Prison Populations: A Review of Options*, in which they continued to make recommendations regarding the reduction of prison population growth in Hawaii. Among these options were revisions to probation and parole guidelines as well as a call for the Governor to assume more of a leadership role in examining corrections policies and practices. With regard to parole, the council called for adopting parole guidelines that would favor release at first eligibility thus reducing overall time served. In addition, the council suggested using special screening for the use of early release and the adoption of a mini parole. Most importantly, though, the council recognized that a revision of the Hawaii Paroling Authority's revocation policies might effectively serve to reduce the prison population.

It is time for the state of Hawaii to take heed and become proactive in its approach to prison overcrowding. By proactive I mean that the state needs to address issues that would effectively serve to reduce the prison population and not merely shift bodies around. The state needs to begin taking a good look at the numbers. What are the trends? What seems to be contributing to the prison population? What can be done to relieve the pressure?

This paper serves to shed some light on what might be one of the causes, or at least contributors, to the problem of prison overcrowding in Hawaii. Specifically, I will attempt to argue that the number of parole violators has been increasing over the years. In addition, these parole violators have often committed technical violations of parole, not violations due to the commission of a new crime. Nonetheless, these technical violations often result in a parolee being sent back to prison — taking up valuable bed space. Before looking at specific numbers, though, it is instructive to describe in further detail the nature of parole and parole violations. A broader understanding of the nature of parole allows for a meaningful examination of the corresponding numbers.

Parole and Parole Violations

The Hawaii Paroling Authority (HPA) is managed under the parole board, made up of one full-time member, who serves as the chair, and two half time members. The governor appoints all three members. The HPA establishes minimum terms of imprisonment, sets parole dates, determines who will be granted parole, regulates proper supervision of

parolees, revokes parolees when necessary, discharges parolees from parole when warranted, and makes recommendations to the governor on petitions for pardon (1996 Annual Report of the HPA). The HPA describes parole as "...a conditional release of an inmate from a penal institution which permits the inmate to serve a portion of his sentence 'outside' the institution to which he was committed." Parole does not release the inmate from supervision by the state. Indeed, the HPA falls under the umbrella of the Department of Public Safety. Parole serves as a contractual agreement between the state and the inmate regarding certain behaviors and requirements that allow the inmate to reside in the community in lieu of prison — once he or she has served their minimum sentence.

When prison crowding becomes a serious problem, corrections officials and politicians often look to parole as a means of helping relieve the crowded conditions. Holt (1998) states that by 1988 twenty-one states, including Hawaii, had in place some type of emergency release mechanism that allows inmates to be released prior to the expiration of their minimum sentence if prison conditions warrant.

However, parole as a procedure is also an effective tool available to the state in terms of returning inmates to prison. It is ironic, then, that people often look to parole as a means of releasing tension in prison yet fail to turn backward to see whether or not parole is a *contributor* to the problem of prison crowding. The very people, often the parole board, who make decisions as to who is released also make the decision to revoke parole. When the state releases more inmates to parole so that more offenders may be admitted to prison, yet turns around and sends half of the parolees back to prison on parole violations, how has the prison system benefited from the initial release? Is the situation not actually worse? Parole, via parole revocations, can just as easily *add* to prison overcrowding as it can *aid* in alleviating prison overcrowding. The conditions of parole are many. Not surprisingly, violations of the parole rules are the reason for the majority of parole revocations. Indeed, Holt states that the great majority of parole violators "...would not be in prison had they not been on parole." In other words, the conditions of parole that a parolee may violate are not typically unlawful acts that would otherwise result in prosecution (California Board of Corrections, 1995; Simon, 1993).

Holt cites a 1982 survey in which parole boards nationwide identified 135 various conditions of parole that could be categorized into an average of 14.8 standard conditions. The most common included "obey all laws." The following were also considered the most prevalent conditions of parole: gainful employment (78%), no association with persons of criminal records (61%), pay all fines and restitutions (53%), and support family and all dependents (53%). Table 1 summarizes the terms and conditions of parole for Hawaii inmates.

Table 1: Summary of Terms and Conditions of Parole

Category of Term/Condition	Examples / Summary
Laws and Conduct	Compliance with the law, curfew restrictions, no possession of illegal drugs.
Association	No contact with other persons convicted of a criminal act.
Reporting	Report and maintain contact with parole officer as the parole officer directs.
Employment	Actively seek / retain employment; obtain the permission of the PO before accepting or changing employment.
Residence	Keep PO informed of whereabouts; notify before changing whereabouts; residence must meet with approval of PO.
Travel	Cannot leave the state of island without permission of PO.
Obligations	Support and maintain legal dependents.
Special Conditions (50 possibilities)	Submit to drug/alcohol testing; obtain and participate in treatment at direction of PO; mental health treatment; disclosure to PO by any provider; geographic restrictions; no hitchhike; restitution; no driving; home detention; sex offender treatment requirements.

* Source: Terms and Conditions of Parole from the Hawaii Paroling Authority.

All persons released on parole in Hawaii are subject to the requirements that fall into the following categories: laws and conduct, association, reporting, employment, residence, travel, obligations, and special conditions. The requirements that fall under special conditions vary by parolee. The Parole Officer (PO) assigned to the individual helps outline the special conditions that the parolee must satisfy. For example, a parolee with a history of sex offenses involving children will be required to stay out of any area where children are knowingly present. Or, a parolee with a known substance abuse problem may be required to obtain substance abuse treatment and to stay in the program until clinically discharged. An all-encompassing condition calls for parolees to obey and follow the directions of the PO. There are 50 such examples of conditions that fall under special conditions — again these are conditions that are normally tailored to the needs of each individual parolee.

However, in Hawaii, as in the rest of the nation, many of the conditions of parole are unrealistic. Parolees have a hard time finding and maintaining employment and are thus unable to support their dependents, pay any restitution and fines, or make a legal living. Parolees are often stigmatized by the prison sentence. This, coupled with a lack of marketable skills or adequate education often leaves the parolee in a very undesirable position.

Alcohol and Drug Use on Parole

As if to make matters worse, many parolees have substance abuse problems. Not only do these problems frequently lead to involvement in criminal activity, but detection is also a

constant threat. A common condition of parole is the urinalysis test. A test that is positive for an illegal substance greatly enhances a parolee's chance of going back to prison. Simon (1993) asserts that today parole is used more as a management tool than as any type of rehabilitation. Correspondingly, Simon notes the use of drug testing as the number one method of surveillance. Drug testing has become one way of managing ever increasing parolee caseloads. In fact, in interviews conducted with POs in Hawaii, all mentioned urinalysis testing as the number one method of determining whether or not a parolee is remaining compliant with the conditions of parole.

In Hawaii, the POs order, as deemed necessary, urinalysis tests for the parolees on their caseloads. A new policy, though, initiated in 1998, goes one step further. A random list of parolees is now produced each week. The PO assigned to the names that appear on the list have 5 days to get their parolees into the office and drug tested (Interview, PO Cathy Shimata). These tests are done in the HPA office. Therefore, should a parolee test positive, he may immediately be sent back to prison to await a revocation hearing — which almost always goes against him. Other times, though, a PO may decide against reporting the violation in an effort to find drug treatment for the parolee. But, treatment facilities for parolees in Hawaii are far and few between. Nonetheless, as all of the POs interviewed suggest, they already use urinalysis as a major means of surveillance. By increasing the use of this method, violations due to dirty UAs are likely to increase.

As Holt states "...we design systems so that almost all parolees are likely to fail at some point." Nationally, about 50% of all parolees do fail at some point — if indeed we continue to measure failure as a return to prison. Simon further notes that "...parole is as much in the business of sending people to prison as it is in the business of managing people on the street" (pg. 167). One needs to look closely, though, at why these parolees are being returned to prison. Again, at the national level, roughly 13% of parole violations are for the commission of a new crime. The majority, an estimated 34%, are returned for either a technical violation of parole or a pending technical violation of parole (Walker, 1998).

These national figures roughly parallel the statistics in Hawaii. Researchers for the Attorney General's Office in Hawaii found that 48% of a cohort of parolees released in 1996 failed parole (Kassebaum et al. 1999). Again, 17% were returned for the commission of a new crime and the remaining 31% were returned for technical violations of parole. The condition most often violated is that of a 'dirty UA', or testing positive on a drug urinalysis test. Rather than rehabilitate these individuals, the state has chosen to 'treat' them to a round of reincarceration. The return rate is likely to rise with the introduction of the new random UA testing.

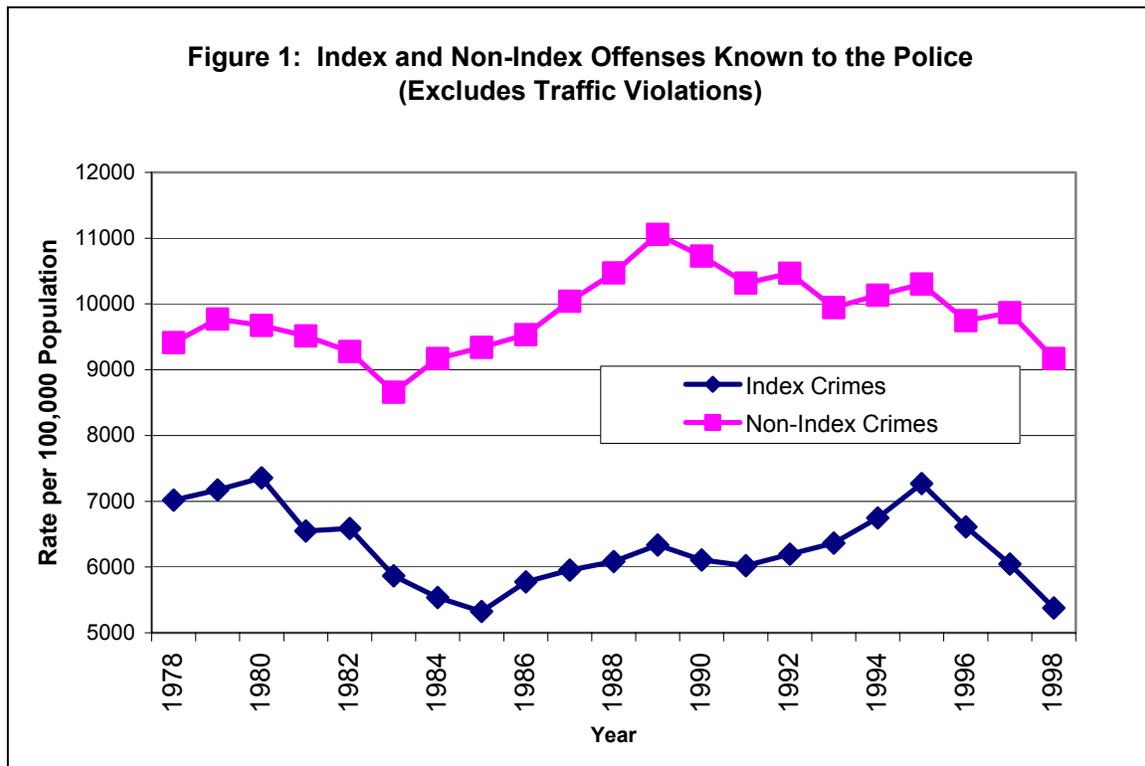
So what do parole revocations have to do with prison overcrowding? If the prison continues to fill from the front door with new convictions, room quickly becomes limited as persons continue to re-enter prison through the back door. Although parole violators that have committed a new crime are valid front door entrances, parole violators who are returned for technical violations are in essence sneaking in the back door. The contractual agreement between the parolee and the parole board creates a very efficient tool for

returning parolees back to prison. The back door entrances are putting a strain on prison systems nationwide and allow the "...prison to fill sooner" (Ekland-Olson and Kelly, 1993). It is my hypothesis that this same back door phenomenon is occurring in Hawaii's prisons. Even though more parolees have been released over the years, many more are also being returned for technical violations of parole. As a result, technical violators are taking up valuable bed space that could be utilized in more efficient ways.

Trends in Hawaii

Offense, Arrest and Incarceration

In an effort to determine whether or not parole violations are contributing to the crowded prisons in Hawaii, I decided to look at trends in certain areas of the criminal justice and the corrections systems over the last 20 years. I chose the last 20 years for two reasons. First, the data are readily available for the past 20 years. Secondly, and more importantly, I wanted to look at the trends both before and after the Consent Decree came into effect.



I chose to look first at the trends in factors not related to parole violations in an effort to determine various shifts over time in other aspects of the criminal justice system in Hawaii. It is instructive to either discount or point out obvious inclines or declines in rates of the various factors before looking at the trends for parole violators. As a result, I looked at the trends involving crime rates, arrest rates, prison population growth compared to average sentences, actual time served, and finally factors related to the

parole population. The first figure, Figure 1, presents a comparison of crime rates for both index and non-index offenses for the years 1978-1995.

When assessing the prison population and prison population growth, it is useful to first look at the crime rate. An increase in the crime rate is often taken as a sure sign that the prison population should be increasing as well. What is perhaps most obvious in this Figure is the relatively stable level in the non-index offense rate for Hawaii throughout the 1980s with a slight decline in the 1990s. Non-index offenses are typically crimes that are much less serious than index offenses. Offenses that make up this category include assault, driving under the influence, disorderly conduct, fraud, prostitution, and other low level offenses (State of Hawaii, 1996). These are offenses for which an offender would typically not receive a prison sentence, although may receive probation. Growth in the prison population does not seem to have impacted the crime rates for non-index offenses. In other words, the prison population has risen steadily over the past 25 years whereas the non-index crime rate has fluctuated.

Index crimes are typically the crimes that the public most often wishes to be protected from. In addition, these are the offenses that often pose the greatest risk to public safety. The crime rate for index offenses, which includes murder, manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson, showed a dramatic decline in the early 80s and has been increasing slightly since.

However, the overall rate for these offenses has not increased over time. The rate for index crimes is lower today than it was 20 years ago. The prison population has not followed the same pattern. The prison population has grown at a steady rate in Hawaii for the past 25 years. As a result, there does not appear to be a correlation between the crime rates and the prison population.

Again, though, Figure 1 represents only those offenses that are known to the police. It is also important to look at the arrest rate for the past 20 years in an effort to determine whether or not arrests are up, down, or stable. Figure 2 shows the trends in arrest rates for index non-index offenses.

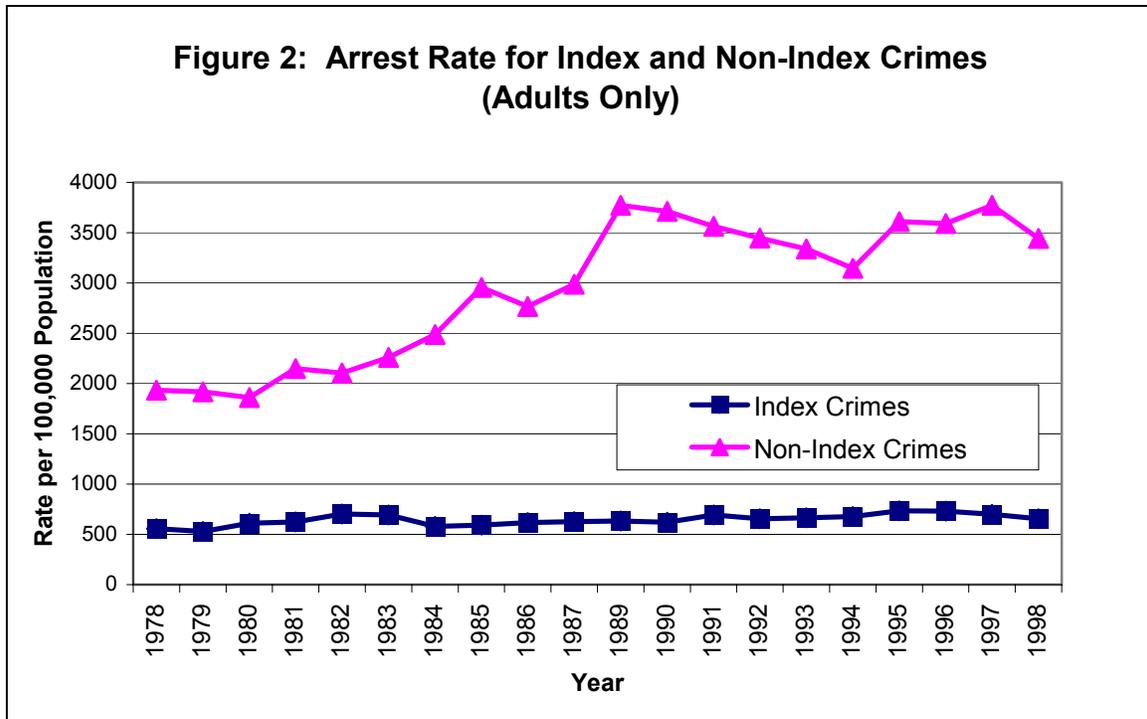


Figure 2 presents the trends in the arrest rates over the past 20 years. Much like the previous figure would predict, the growth in arrests for non-index offenses has grown dramatically since 1978, following the pattern of the growth in the crime rates for non-index offenses. It is worth re-iterating, though, that these are the crimes for which public safety is in the least jeopardy as well as those for which an offender is least likely to receive a prison sentence.

The arrest rate for index offenses has grown very slowly since 1978. The arrest rate for index offenses has remained much more stable than the Part I crime rate. Again, these arrests represent offenders who commit the more violent or more serious crimes. These are the very people that we would expect our prisons to be filling up with. However, there are no dramatic trends to report from the arrest rates for index offenses. Let us now turn to a third Figure depicting the prison population growth against the average time served by felons in Hawaii.

Length of Sentence and Time Served in Hawaii

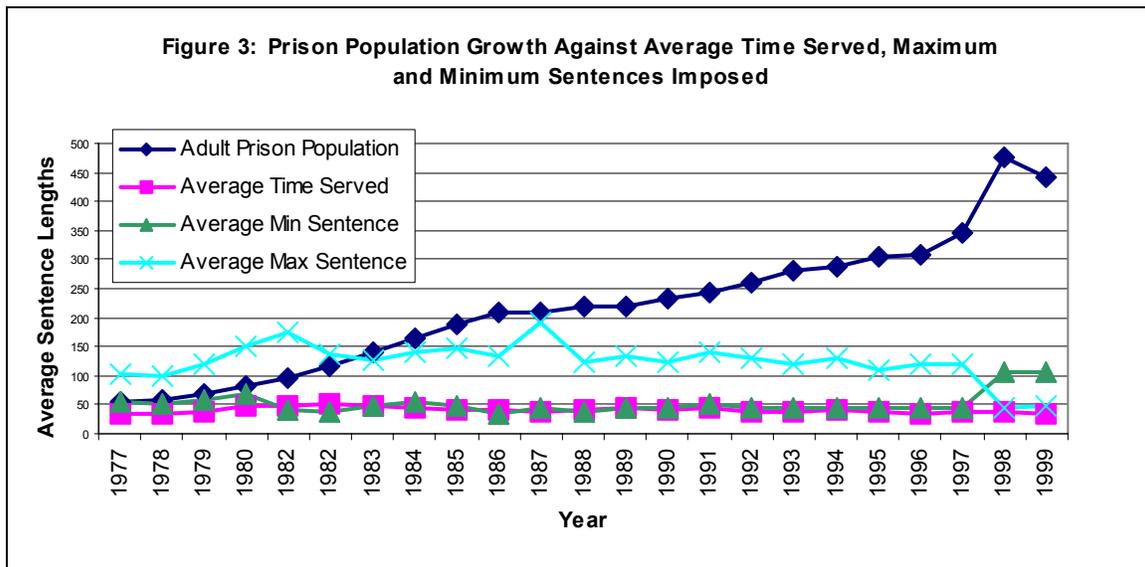
If indeed the most serious crime rates and arrest rates demonstrate no dramatic incline over the past 20 years, perhaps the average sentence length has been increasing. Figures 3 and 4² show the trends in sentence length for felons over the past 20 years.

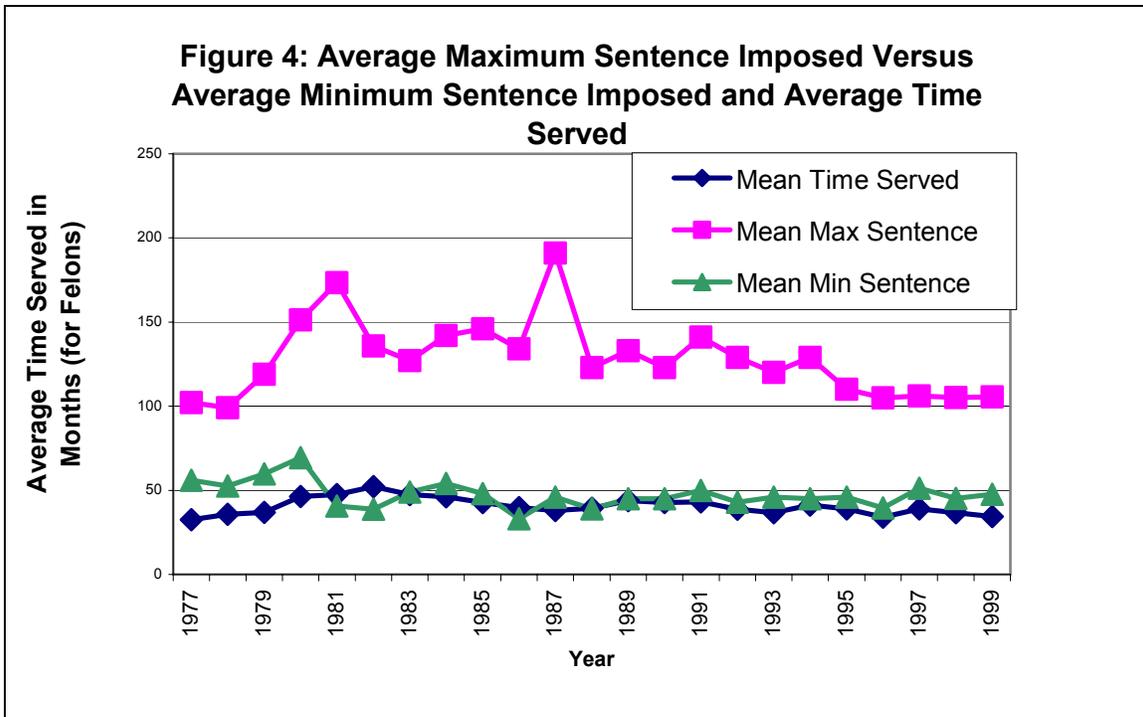
Both of these Figures, Figures 3 and 4, deal with sentencing trends as well as actual time served. Hawaii is not a ‘truth in sentencing’ state; rather, it is an indeterminate sentencing state. The Judiciary sets the maximum sentence for those sent to prison while the HPA sets the minimum term. In addition, the paroling authority also decides when an inmate

will be released. This is important because even though maximum sentences may fluctuate over time, the real factor to look at in determining prison length is the actual time served. In other words, although the maximum sentence length may increase or decrease over time, it is the actual time served that makes a difference in the prison population.

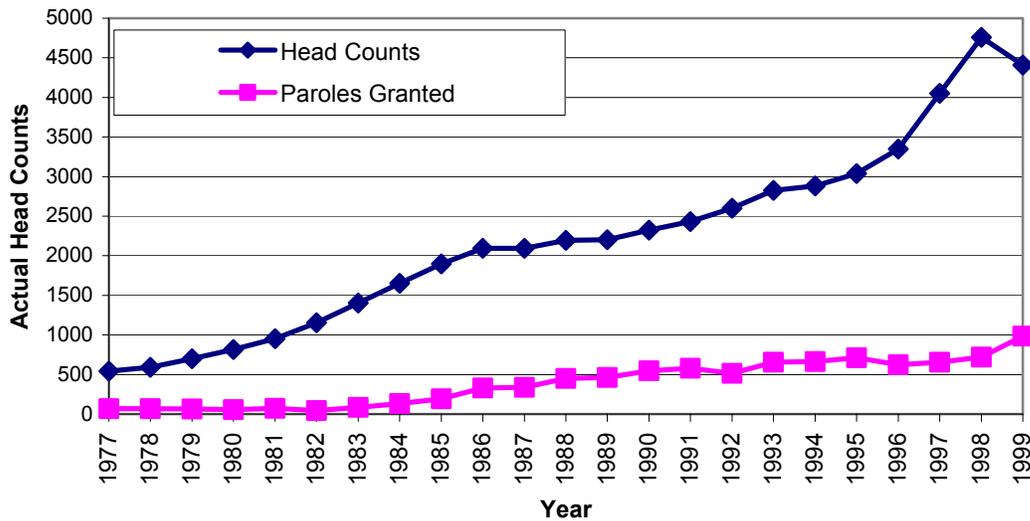
These Figures show that, first of all, maximum or minimum sentences imposed have not fluctuated in the same manner as the prison population. Figure 3³ shows that the prison population steadily grew over the last 20 years while sentence lengths demonstrated no discernible pattern, only minor fluctuations. Note that in figure 3, the line representing the mean minimum sentence is obscured by the line representing the actual mean time served - indicating the relative similarity of these two measures.

Figure 4 compares sentence lengths on the same scale. Whereas figure 3 is useful to compare overall trends, this graph presents a clearer picture of the overall various sentence lengths. Maximum sentence length does show an overall increase over the past 20 years. However, there is no great increase. Certain years, namely 1979, 1980, and 1986 do show noticeable increases in the maximum sentence length imposed. At the same time, though, the crime rates for these years did not increase nor did the arrest rate. On the surface, these increases seem to be anomalous patterns of time imposed by the Judiciary for those respective years.





Nonetheless, as is the overall case with maximum sentence length, the average minimum sentence and the average actual time served show no real discernible pattern over the years. However, there does seem to be a leveling off of both actual time served and minimum sentence length from roughly 1988 to the present. From 1988 to the present, data indicate that for sentenced felons, the actual time served is less than the actual minimum sentence imposed. However, this may in fact be due to pre-confinement credits. Once a person is convicted of a felony and sentenced to prison, he or she receives credit for the time spent in jail awaiting trial and sentence. This may not be reflected in the average time served and as a result, it appears as if actual time served is less than the actual minimum sentence imposed. However, it is not the practice of the HPA to release inmates prior to the expiration of their minimum sentence (Personal conversation with the parole administrator, 1998).

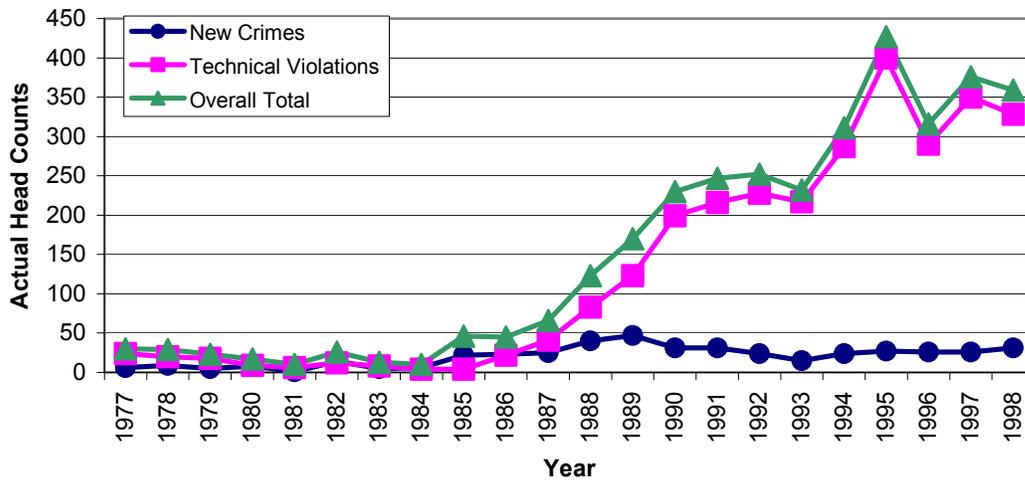
Figure 5: Number of Paroles Granted Against the Prison Population

The overall pattern, then, suggests that there has not been a great increase in maximum sentence length imposed. In addition, the minimum sentence length and actual time served have remained relatively stable over the last 10 years. In short, time in prison is not contributing to prison crowding.

As Figure 5⁴ shows, the growth in the prison population has risen steadily and consistently over the past 20 years. However, it is also obvious that the number of paroles granted has also risen consistently and steadily over the past 15 years. The federal Consent Decree was imposed on Hawaii in 1985. One can see from looking at this Figure that in 1983 the number of parolees granted began a steady increase as well. The steady increase that began in 1983 was a likely result of the growing awareness of prison overcrowding as a major problem in Hawaii — even before the federal courts intervened.

However, the increase in the number of parolees does not appear to have had an impact upon the prison population. Instead, as the number of paroles increased, the numbers committed to prison continued to increase as well. In fact, the incline in the number of prisoners seems to demonstrate a sharper incline than that of the number of paroles granted. What else might be going on? A more detailed look at the yearly number of parole revocations over the last 20 years points to a possible answer.

Figure 6: Total Revocations Compared to Revocations due to New Crimes and Those Due to Technical Violations



Parole Revocations

Figure 6 is the most telling of all the figures presented. It shows that over the last 20 years, the total number of revocations has risen dramatically. From the years 1977 until about 1982, revocations due to new offenses comprised the majority of the parole revocations. However the numbers of overall revocations for this period were extremely small, in many of these early years there were fewer than 20 parolees.

However, around 1985 parole revocations began a tremendous incline. Again, note the time frame, this is around the same time that the federal courts imposed the consent decree upon Hawaii’s prisons. In addition, this is the same time that a noticeable increase in parole releases took place. One of the conditions of the Consent Decree was a reduction of the prison population. Again, parole release is often seen as a release valve for prison overcrowding. From the available data, it does appear as if this was the case in Hawaii.

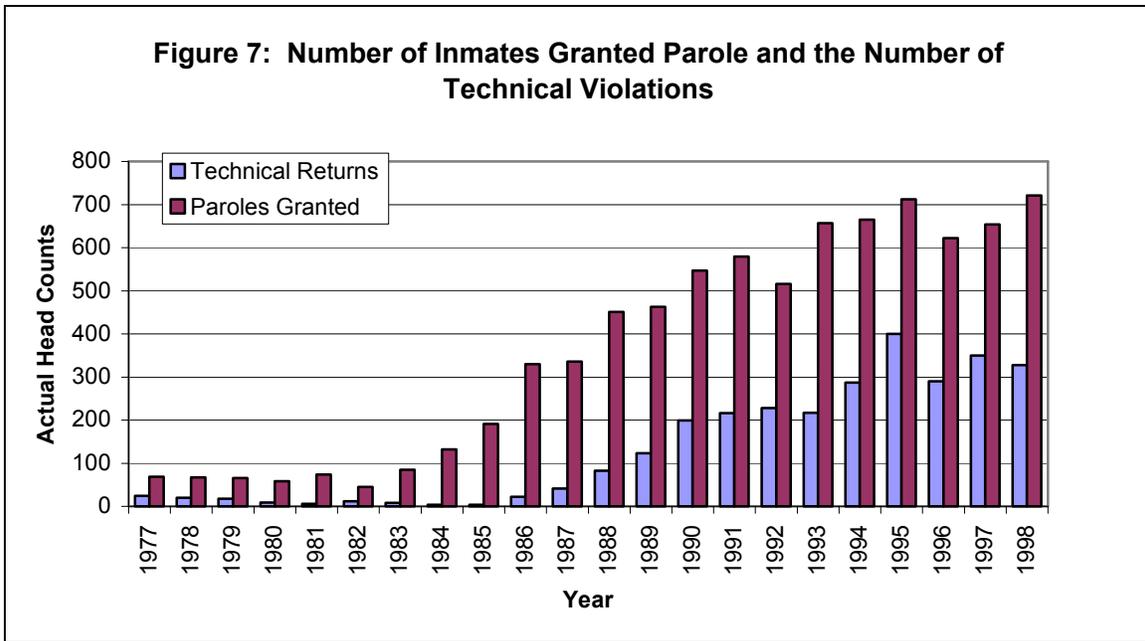
Around the mid-80s, something new was happening with parole revocations. The number of parolees whose parole status was being revoked (with a return to prison) due to technical violations greatly outnumbered those parolees whose parole was revoked due to the commission of a new crime. The numbers of parolees revoked due to the commission of a new offense has remained low for the past 7 years and was declining the few years prior to that. On the other hand, the number of parolees being returned to prison due to technical violations continually increased, with a small dip from 1994 to 1995. Since 1985 the overwhelming majority of parole revocations have been the result of technical violations of parole.

The pattern of returns in Hawaii mirrors those in California at about the same time. Messinger et al. (1988) explain that the result of the greater increase in returns to prison

for technical violations of parole is partly a result of the increase in the parole population. Beyond that, though, they cited that a change in correctional policies, rather than some change in the parolees' behaviors, coupled with fewer alternatives to prison, as possible reasons for the increased returns to prison from parolee. It is quite possible that these are contributing factors in the return patterns noted in Hawaii as well.

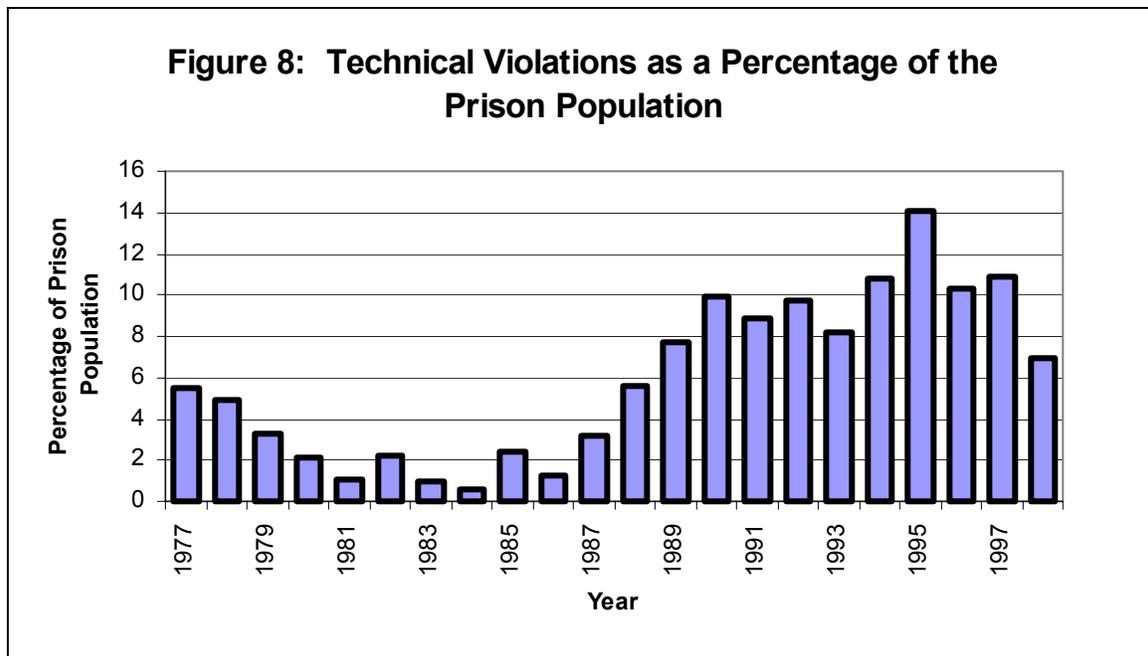
To reiterate, when an inmate is released to parole, he or she must sign what amounts to a contractual agreement with the paroling authority. This agreement states that the inmate will abide by certain conditions that will allow him or her to reside in the community. If the inmate fails to comply with these conditions, he or she is often returned to prison to continue serving time on the original sentence. The inmate may be held in prison until the maximum sentence expires. However, it is often the case that the inmate will serve a partial amount of time on his sentence and be released to parole once again. Statistically, though, the odds of returning to prison from parole increase with each subsequent parole. For example, Kassebaum et.al. (1999) found the revocation rate for parolees to be 39% for those on their first release to parole, 57% for those for whom the release was the second parole, 71% for those paroled a third time, and 80% for those for whom the parole was either the 4th, 5th, or 6th release to parole. These statistics suggest that diverting parolees from prison for a parole violation after the first parole release will help reduce the total number of returns to prison by reducing the overall revocation rate.

Figure 7 shows the actual number of inmates granted parole against the actual number of parolees returned for technical violations. As this figure clearly demonstrates, the number of paroles granted each year has risen steadily and sharply over the last 15 years. However, the number of parolees returned to prison for technical violations has also risen sharply over the last 15 years. This figure marks the returns for technical violations only — it does not account for the remaining parolees who are returned for the commission of a new crime. As stated earlier, if parole is utilized at least partially to relieve prison crowding, it is succeeding at that task only half of the time.



This last figure, Figure 8, represents the percentage of the prison population that is comprised of technical violators of parole. From 1986 forward there has been a steady increase in the percentage of the prison population that is made up of technical violators of parole. Again, these are not parolees committing new crimes. Beginning in the year 1989, an average of 10% of the prison population was comprised of technical violators of parole. In 1995, these technical violators made up roughly 14% of the entire prison population in Hawaii.

Although these figures may appear relatively small, one needs to consider the impact this has on Hawaii’s precious prison bed space. Each of these percentage points represents actual individuals returned to prison who would otherwise be in the community. For example, in 1995 four hundred parolees were returned to prison as inmates. Again, this number represents 400 inmates who did not commit a new crime. One needs to examine the magnitude of this number. If the state diverted these 400 inmates from prison, their need to ship this same number of inmates to mainland facilities is negated. In addition, the gains in both financial and human costs are unimaginable.



Implications

Following probation, parole serves as the second most prevalent rehabilitation program in the nation (Walker, 1998). But if parole is truly meant as a type of rehabilitation program, it is so only in theory — not in practice. The 1996 Annual Report of the HPA states that "...the purpose of parole supervision is the protection of society by providing leadership, assistance and guidance to the parole population in an effort to effect changes in behavior and lifestyles. The end result is to enable these individuals to become stable, self-sufficient law-abiding citizens."

This sounds good on paper. However, parolees, especially those under regular supervision, meet with their parole officer either once a month or once every 2-3 months. In addition, the average caseload for a PO supervising regular parolees in Hawaii is 80 parolees — well above the recommended level of 40 (interviews with POs in Hawaii). As long as the parolee is staying out of trouble, or not getting caught, he or she will remain on parole. The parolees are not getting the help they need, the POs are often unable, not necessarily unwilling, to effect changes in the parolee's behavior and lifestyle.

However, there are many parolees who need help. They are often in need of drug treatment and job skills. "The availability and use of drugs is a factor in 90 percent of cases where people have returned to prison" said HPA administrator Commendador in a 1996 Star-Bulletin piece entitled "Newsmaker." Parole officers in Hawaii are trapped though. The public desire to get tough on crime has corresponded with a reduced budget to fund such 'helping' programs. Instead, monies are being spent, at least in Hawaii, to send our inmates to private, mainland facilities or to build a new prison.

The preceding analysis has shown that over the last 20 years violent crime rates and arrest rates for violent crimes have not risen in this state. Although the average maximum

sentence imposed has risen over the past 20 years, the actual time served has not. What has risen over the last 20 years is the prison population — at a steady rate.

Correspondingly, the parole population seems to have followed suit. The parole population has risen steadily over the past 15 years. Aside from the parole and prison population growth, though, the great increase corresponds to the number of parole *revocations* per year. Returns to prison for what amounts to a violation of a contract have risen dramatically over the past 15 years. In addition, in the past 10 years Hawaii has witnessed an increase in the proportion of the prison population comprised of technical parole violators. These parolees have little chance of becoming ‘stable, self-sufficient law-abiding citizens’ given their current processing in and out of the community.

What needs to be considered at this point is a diversion program. Much like the call for intermediate sanctions as an alternative in the continuum between probation and prison, there needs to be some type of alternative to technical violators. The HPA does have a structured living program that serves as an alternative for technical violators of parole. However, there is room for only 25 parolees. Again, abstracting from the year 1995, 400 parolees were returned to prison for technical violations. Even if the HPA could have diverted 25 of these parolees, 375 would have still been returned to prison on technical violations. There needs to be greater community resources.

Even conservative scholars agree to this. In a recent op-ed for the New York Times, DiIulio and Tierney (2000) argue that we need to reinvent probation — ideas that significantly relate to parole as well. They argue that the way in which we supervise offenders in the community needs to be completely revamped, or ‘reinvented’. And, we should not forget that parole overcrowding can also pose a serious threat to public safety (Byrne, 1996). The argument is that we are too lax with offenders — and the offenders know it as well. In a system of this type, there is no incentive to conform to conditions of probation or parole. The solution: DiIulio and Tierney suggest the utilization of more supervision is critical to effective supervision. But, this should be supervision that ties into a ‘first hand knowledge’ of the offenders community, including family and neighborhood dynamics in a manner that serves to enhance social capital, not deplete it. With such close supervision, though, people will argue that violations will increase and thus more offenders will be sent back to prison. But DiIulio and Tierney argue that a violation need not be ignored. Instead, the response to violations should be met with graduated sanctions — not either prison or unsupervised continuation in the community. Clear and Braga (1998) support this notion by arguing for a philosophy that guides probation and parole officers to retain offenders in the community. This necessarily requires that occasional violations of the conditions of release not only be expected, but also be worked in as a matter of supervision. Clear and Braga remind us that surveillance and control are not values in themselves but are useful only if they lead to positive results. Restructuring based on this ideology ensures that we will ‘repair’ the net rather than widen the net of social control (DiIulio 1997).

In Hawaii, that repairing should begin with treatment. In particular, this state needs to fund programs for the substance abusing population of parolees. Substance abuse

accounts for the majority of the technical violations and subsequent returns to prison. More than any other factor, substance abuse needs to be addressed. Many of the parolees in the Kassebaum et. al. (1999) study had been enrolled in some type of substance abuse program in the past or at the time of their parole revocation. However, the majority of these parolees, for whatever reason, did not complete their respective programs. With the introduction of random drug testing, the number of parolees returned to prison for technical violations will surely increase. The HPA needs funding that will allow for surveillance to go hand in hand with drug treatment. The emphasis on surveillance, rather than treatment, is the road frequently traveled yet the destination is never reached. There is another choice. Joan Petersilia (1998) noted that the most effective substance abuse programs are ones that combine sanctions with treatment. In addition, length of treatment is directly correlated with success in treatment programs. By providing meaningful sanctions other than incarceration, in addition to allowing for relapse, the chance of a parolee remaining in treatment until successful discharge greatly increases.

If we really want to reduce crime, sending parolees back to prison for drug relapse (measured by dirty UAs) is not the answer. The desire to punish parolees will do little to reduce crime. Clear and Braga (1998) indicate that offenders serving time in the community account for a minority of the overall crime committed in their respective communities. Clear and Braga cite Louisiana as a case in point. A study in Louisiana found that an average of 7 percent of all felony arrests in a given year are committed by individuals who are either on probation or parole (Geerken and Hayes as reported in Clear and Braga, 1998). Increasing the use of sanctions alone in probation and parole will do little to effect the overall levels of crime in the community. Clear and Braga ask an important question: should we be concerned about whether the offender should be on the streets at all or how the offender should be managed while on the streets? I think the answer lies in the latter part of their question.

Indeed, there are better, more profitable ways to manage the offender on the streets. Substance abuse treatment will provide the greatest benefit in terms of reduced recidivism and a corresponding reduction in crime. There is a growing body of research which indicates that sanctions coupled with substance abuse treatment (whether voluntary or coercive) actually serve to reduce recidivism, further criminal behavior, and substance abuse (Prendergast et. al. 1998, Petersilia 1998, Turner, 1998, Tonry, 1998). We need to be clear, though, that when there is a relapse, the ultimate sanction need not be re-incarceration.

Again, if indeed the goal is to reduce crime, the treatment of drug addiction is a primary key. Belenko and Peugh (1998) found that community based treatment, provided after release to parole, functions to reduce rates of re-arrest. In addition, there is a reduction in the costs associated with treating substance abuse as opposed to reincarceration. Belenko and Peugh cite a RAND study which found that treatment interventions would constitute one-seventh of the cost of reincarceration to achieve the same reduction in the amount of substance use. An example of the benefits of treatment can be found in Arizona. Arizona has recently enacted legislation that calls for mandatory probation coupled with drug treatment for some offenders. A recent evaluation found that of the 2,622 persons

sentenced to probation/ mandatory drug treatment, 77.5% tested free of drugs (Wren, 1999). Initial evaluation of this program demonstrates greater success than that achieved through straight probation alone. The financial savings are also worth noting. Wren reports that the probation/treatment/counseling combination costs \$16.06 a day whereas incarceration would cost \$50 a day. Hawaii could learn from as well as save from a program like this - with respect to both parole and probation. This seemingly 'soft on crime' approach is offset by the financial and crime reduction savings for the community.

The second need of parolees, in Hawaii as elsewhere, is the need for employment — meaningful employment. The 1996 cohort of parolees that Kassebaum et.al. studied demonstrated a definite need for employment. Interviews conducted in conjunction with that study revealed that parolees who do not get and keep a decent job are at a much greater risk of either making a living through illegal means or of turning to drug and alcohol use as a sort of self-medication.

If the state of Hawaii wishes to alleviate prison overcrowding, attention must be placed on both the number of parole technical violators filling the prisons as well as the reasons for these returns. The Hawaii Paroling Authority lacks any alternatives for parolees who have not complied with the conditions of parole, save the one HPA structured living program for parole technical violators. The HPA does not have the budget for new programs. However, on the savings gained from not re-incarcerating these violators, the state could easily afford to create and maintain such programs. California is a recent case in point. The increased focus, and resources, placed on parole supervision in that state is now linked with an 'unexpected' drop in that state's prison population (Thompson 2000).

Again, this paper sheds light on only one of the factors contributing to prison overcrowding in Hawaii. Another large piece of the puzzle is likely to be found in the incarceration of probation violators. The State of Hawaii could undoubtedly tame the growth of the prison population by developing and maintaining meaningful alternatives to incarceration for both parole and probation violators.

ENDNOTES

1. This number represents the total number now housed on the mainland facilities, although there has been a steady flow back and forth since the first inmates began to be housed privately on the mainland.
2. Data for figures 3 and 4 are taken from The State of Hawaii Data Book, Years 1979-1999 and The Annual Reports of the Hawaii Paroling Authority, Years 1977-1997.
3. Note that the prison population is not represented at scale the total prison population was divided by a factor of 10 for ease of analysis.

4. Data for figures 5 and 6 are taken from The State of Hawaii Data Book, Years 1979-1999 and The Annual Reports of the Hawaii Paroling Authority, Years 1977-1997.

REFERENCES

Belenko, Steven and Jordon Peugh. 1998. "Fighting Crime by Treating Substance Abuse" *Issues in Science and Technology* 15: 53-75.

Burke, Peggy B. *Policy-Driven Responses to Probation and Parole Violations*. U.S. Department of Justice, National Institute of Corrections, Washington, D.C., 1997.

Byrne, James M. 1996. "Reintegrating the Concept of Community into Community-Based Corrections." Pp. 422-448 in *Contemporary Community Corrections*, edited by Thomas Ellsworth. Prospect Heights: Waveland Press.

California Department of Corrections. 1995. "Inmate and Parole Population Management Issues." <<http://www.lao.ca.gov/chd5240b.html>> (14 February 1999).

Chesney-Lind, Meda. "Building More Prisons Won't Make Hawaii Better." *Honolulu Star-Bulletin* 6 Feb. 1998.

Clear, Todd R. and Anthony A. Braga. 1998. "Challenges for Corrections in the Community." pp. 213-218 in *Community Corrections*, edited by Joan Petersilia. New York: Oxford.

Commendador, Anthony. Hawaii Paroling Authority Administrator. Personal Interview. 16 Nov. 1998.

Corrections Panel. *Spring 1989 Report of Panels of Experts*. Filed in the United States District Court of Hawaii, 1989.

DiIulio, John Jr. and Joseph P. Tierney. 2000. "An Easy Ride for Felons on Probation". *New York Times*. Op-Ed August 29, 2000.

DiIulio, John Jr. 1997. "Reinventing Parole and Probation." *Brookings Review* 15: 40-42.

Ekland-Olson, Sheldon, and William R. Kelly. 1993. *Justice Under Pressure*. New York: Springer-Verlag.

Hashi, Ken, and Cheryl Rodrigues. 1997. "A Statistical Report on Hawaii's Prison Population, Admissions, and Releases: Fiscal Years 1990-1991 to 1995-1996.

Hawaii Council on Crime and Delinquency. 1982. *Controlling Prison Populations*. Donald H. Moore, Executive Director.

Hawaii Council on Crime and Delinquency. 1982. *Reducing Prison Populations: A Review of Options*.

Hawaii Department of Business, Economic Development and Tourism, Research and Economic Analysis Division, Statistics Branch. *State of Hawaii Data Book; A Statistical Abstract*. Years 1979-1999.

Hawaii Department of Public Safety. *End of Month Population Report*. September, 2000.

Hawaii Paroling Authority. Parole Officers. Personal Interviews. 13 Oct. 1998.

Hawaii State Department of Corrections. *Annual Report of the Hawaii Paroling Authority*. Years 1977-1997.

Holt, Norman. 1998. "The Current State of Parole in America." pp. 28-41 in *Community Corrections*, edited by Joan Petersilia. New York: Oxford.

Jones, Peter. 1990. "Community Corrections in Kansas: Extending Community-Based Corrections or Widening the Net?". *Journal of Research in Crime and Delinquency* 27: 79-103.

Kakesako, Gregg K. "Improved Prison Conditions May End Federal Supervision." Honolulu StarBulletin. February 5, 1999.
<<http://starbulletin.com/1999/02/05/news/story4.html>> (10 February 1999).

Kakesako, Gregg K. "State Sends 16 Female Inmates from Kailua to Oklahoma." Honolulu StarBulletin. November 10, 1998.
<<http://starbulletin.com/1998/11/10/news/story4.html>> (10 February 1999).

Kassebaum, Gene, Davidson-Coronado, Janet, Silverio, Mel, and Nancy Marker. 1999. "Survival on Parole: A Study of Post-Prison Adjustment and the Risk of Returning to Prison in the State of Hawaii." Report of the Social Science Institute to the Hawaii State Department of Hawaii. Pending Publication.

Messinger, Sheldon L., Berecochea, John E., Berk, Richard A., and David Rauma. 1988. *Parolees Returned to Prison and the California Prison Population*. State of California/ Department of Justice/ Bureau of Criminal Statistics and Special Services.

National Institute of Corrections. *Intervening with Substance-Abusing Offenders: A Framework for Action*. The Report of the National Task Force on Correctional Substance Abuse Strategies. U.S. Department of Justice, Washington, D.C., 1991.

"Newsmaker." Honolulu StarBulletin. December 6, 1996.
<<http://starbulletin.com/96/12/20/news/newsmaker.html>> (10 February 1999).

Oshiro, Thomas T., Chairman Hawaii Crime Commission. *Sentencing Practices and Alternatives to Incarceration in Hawaii*. Report to the Hawaii State Legislature, 1981.

Prendergast, Michael L., Anglin, M. Douglas, and Jean Wellisch. 1998. "Treatment for Drug-Abusing Offenders Under Community Supervision." Pp. 113-124 in *Community Corrections: Probation, Parole, and Intermediate Sanctions*, edited by Joan Petersilia. New York: Oxford.

Petersilia, Joan. 1998. *Community Corrections: Probation, Parole, and Intermediate Sanctions*. New York: Oxford.

Shimata, Cathy. Personal Interview. 4 Nov. 1998.

State of Hawaii. Department of the Attorney General. 1996. *Crime in Hawaii*. Hawaii: Hawaii Correctional Industries.

Simon, Jonathan. 1993. *Poor Discipline*. Chicago: University of Chicago Press.

Thompson, Mark. 2000. "Tighter Parole Linked to Drop in California Prison Population." *Corrections Journal* 4: 1-3.

Tonry, Michael. 1998. "Evaluating Intermediate Sanction Programs" Pp. 79-96 in *Community Corrections*, edited by Joan Petersilia. New York: Oxford.

Turner, Susan, Petersilia, Joan, and Elizabeth Piper Deschenes. 1998. "Drug Testing in Community Corrections: Results of an Experimental Evaluation." Pp. 125-134 in *Community Corrections*, edited by Joan Petersilia. New York: Oxford.

U.S. Department of Justice, National Institute of Justice. 1980. *American Prisons and Jails*. Joan Mullen, Principal Author.